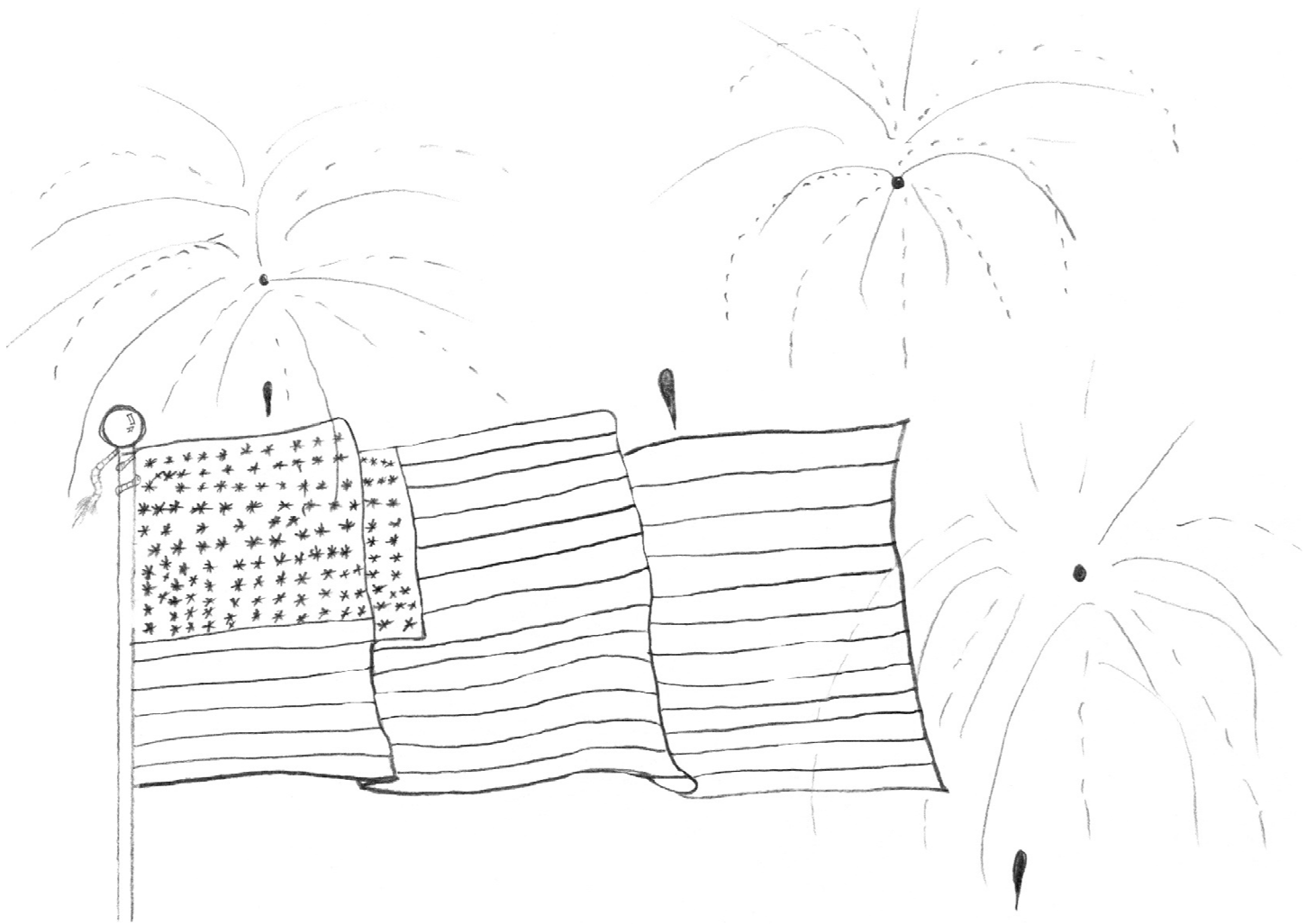

TEXAS REGISTER

Volume 44 Number 29

July 19, 2019

Pages 3595 - 3704



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***Texas Register*, (ISSN 0362-4781, USPS 12-0090)**, is published weekly (52 times per year) for \$340.00 (\$502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P O Box 1710, Latham, NY 12110.

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The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register*, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, TX 78711
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PROPOSED RULES

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

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

TITLE 7. BANKING AND SECURITIES PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 79. RESIDENTIAL MORTGAGE LOAN SERVICERS SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

7 TAC §79.20

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes an amendment to the name of §79.20, Subchapter A, concerning complaints. The amendments are proposed to provide consistent procedures for persons to complain about conduct of entities regulated by the department. The new rules are proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed amendments implement the applicable recommendations contained in the Sunset Model.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rules will be in effect, the rules 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;

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

positively or adversely affect this state's economy.

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendments must be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments are proposed under Government Code §2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code §11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, Finance Code §13.011, which provides that the savings and mortgage lending commissioner shall prepare information concerning the department's regulatory functions and consumer complaint procedures, and Finance Code §158.003, which provides that the finance commission may adopt rules necessary to ensure that residential mortgage loan servicers comply with federal and state laws, rules, and regulations.

Other statutes affected by the proposed amendments are found in Finance Code Chapter 158.

§79.20. *[Complaints and] Investigations.*

(a) Investigations will be conducted as deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include one of the following:

[(a) Upon receipt of a signed, written complaint from a person setting forth known, suspected, or asserted facts relating to acts or omissions of a person required to be registered under the Act, the Commissioner or the Commissioner's designee will:]

[(1) make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation;]

{(2) if it has been determined that the complaint warrants an investigation, advise the residential mortgage loan servicer who is the subject of the complaint by written notice to the authorized office specified on that person's registration that a complaint has been filed;}

{(3) if it is determined that a complaint does not warrant investigation, so advise the complainant and close the file, advising the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered;}

{(4) if an investigation is to be conducted, advise the party who is the subject of the complaint that an investigation will be conducted and conduct such investigation as is deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:}

(1) [(A)] review of documentary evidence;

(2) [(B)] interviews with complainants, registrants, and third parties;

(3) [(C)] obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies; and

(4) [(D)] [such] other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.

(5) [(E)] If the Department requests reports or other information of registrant and registrant does not respond as required a \$150 penalty may be assessed against the registrant.

(b) A complaint investigation fee may be assessed against a person required to be registered under this Act [after the Department opens a fifth complaint or expends 12 hours of investigative work on an annual basis from September 1st to August 31st]. The amount of the complaint investigation fee assessed is limited to costs incurred, will be at the discretion of the Commissioner, and may [be set at an amount] not [te] exceed \$975 per complaint.

(c) The Commissioner may conduct a Departmental investigation if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of the 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 July 8, 2019.

TRD-201902115

Ernest C. Garcia

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: August 18, 2019

For further information, please call: (512) 475-2534



SUBCHAPTER C. HEARINGS AND APPEALS

7 TAC §79.30

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes amendments to §79.30, Subchapter C, concerning hearings. The amendments are proposed to provide

consistent procedures for persons to complain about conduct of entities regulated by the department. The amendments are proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed amendments implement the applicable recommendations contained in the Sunset Model.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rules as proposed.

For each year of the first five years that the rules will be in effect, the rules 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;

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

--positively or adversely affect this state's economy.

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendments must be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments are proposed under Government Code §2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints; Finance Code §13.011, which provides that the

savings and mortgage lending commissioner shall prepare information concerning the department's regulatory functions and consumer complaint procedures; and Finance Code §158.003, which provides that the finance commission may adopt rules necessary to ensure that residential mortgage loan servicers comply with federal and state laws, rules, and regulations.

Other statutes affected by the proposed amendments are found in Finance Code Chapter 158.

§79.30. *Hearings and Appeals [and Hearings].*

As determined by the Commissioner, the [The] Hearings Officer for the Finance Commission or an Administrative Law Judge at the State Office of Administrative Hearings (SOAH) may be [is] designated as the hearings officer for hearings under this chapter. All such hearings are to be conducted in accordance with Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), including, but not limited to motions for rehearing, notices of appeal, and applications for review and shall be a contested case governed by Chapter 2001, Government Code. All such hearings, unless specifically authorized by the Commissioner, shall be conducted in Austin, Travis County, Texas. Such rules, as set forth in Chapter 9 of this title, are incorporated herein by reference for all purposes.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902116

Ernest C. Garcia

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: August 18, 2019

For further information, please call: (512) 475-2534



CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §80.301, §80.302

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes amendments to §80.301, concerning complaints and investigations, and to 7 TAC §80.302, concerning hearings. The amendments are proposed to provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the department. The amendments are proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed changes and additions implement the applicable recommendations contained in the Sunset Model.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rules will be in effect, the rules 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;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect this state's economy.

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the amendments must be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments are proposed under Government Code §2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints; Finance Code §13.011, which provides that the savings and mortgage lending commissioner shall prepare information concerning the department's regulatory functions and consumer complaint procedures; and Finance Code §156.102, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 156.

Other statutes affected by the proposed amendments are found in Finance Code Chapter 156, 157, and 180.

§80.301. *[Complaints.] Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions.*

(a) *Investigations* [Upon receipt of a written complaint alleging acts or omissions of a person, as defined in Finance Code, §180.002(14), required to be licensed under Finance Code, Chapter

156, the Commissioner or the Commissioner's designee will make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation:]

~~[(1) if it has been determined that the complaint warrants an investigation, advise all parties who are subject of the complaint by written notice that a complaint has been filed and an investigation will be conducted. The investigation] will be conducted as [is] deemed appropriate in light of all the relevant facts and circumstance then known. Such investigation may include any or all of the following:~~

~~(1) [(A)] review of documentary evidence;~~

~~(2) [(B)] interviews with complainants, licensees, and third parties;~~

~~(3) [(C)] obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies; and~~

~~(4) [(D)] other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.~~

~~[(2) if determined that a complaint does not warrant investigation, advise the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered, and close the file.]~~

(b) The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 156 and this chapter.

(c) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 156.

(d) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 156.

(e) A complaint which names a company or sponsored originator as the subject of the complaint is also a complaint against the qualifying individual at the time of any alleged violation. The qualifying individual of a company is responsible for all acts and conduct performed by or through the company and is required to fulfill his or her professional responsibility to the Commissioner and members of the public.

(f) If the Commissioner determines that a person has violated the requirements of Finance Code, Chapter 156, this chapter, or any order pursuant to Finance Code, Chapter 156 or this chapter, the Commissioner, after notice and opportunity for hearing, may impose an administrative penalty on that person. Such penalties shall not exceed \$ 25,000 per violation. The amount of the violation is at the Commissioner's discretion. In determining the amount of any administrative penalty(ies) for any violation(s) of Finance Code, Chapter 156 or this chapter, the Commissioner shall consider such factors as required by Finance Code, §156.302.

(g) If the Commissioner has reasonable cause to believe that a licensee has violated or is about to violate Finance Code, Chapter

156, this chapter, or an order issued pursuant to this chapter, the Commissioner may, without notice and hearing, issue an order to cease and desist a particular action or an order to take affirmative action, or both, to enforce compliance with Finance Code, Chapter 156 and this chapter. Any such order must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom an order is made requests a hearing, the Commissioner shall set and give notice of a hearing to be held in accordance with this chapter and Government Code, Chapter 2001. Based on the findings of fact and conclusions of law, the Commissioner may find by order that a violation has or has not occurred.

(h) The Commissioner may, after giving notice and an opportunity for hearing, impose against any person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$1,000 for each day on which the violation is continuing. In addition to any other remedy provided for by law, the Commissioner may institute in District Court for Travis County an action for injunctive relief and/or to collect the administrative penalty. A bond is not required of the Commissioner with respect to any request for injunctive relief under this subsection.

(i) The Commissioner may order disciplinary action after notice and opportunity for hearing against a company or an originator if the Commissioner becomes aware during the term of the license of any fact that would have been grounds for denial of an original license if the fact had been known by the Commissioner on the date the license was issued.

§80.302. Hearings and Appeals.

(a) ~~As determined by the Commissioner, hearings may [Hearings are to]~~ be conducted in accordance with Chapter 9 of this title including, but not limited to motions for rehearing, notices of appeal, and applications for review. All ~~[such]~~ hearings shall, unless specifically authorized by the Commissioner, be conducted in Austin, Travis County, Texas. All appeals of decisions of the Commissioner shall be made to the State District Court in Travis County, Texas. Such rules, as set forth in Chapter 9 of this title are incorporated herein by reference for all purposes.

(b) If a person against whom an order is made requires a hearing, the Commissioner shall set and give notice of a hearing before the Commissioner or a hearings officer. The hearing shall be governed by Government Code, Chapter 2001. Based on the findings of fact, conclusions of law, and any recommendations of the hearings officer, the Commissioner shall, by order, find that a violation has or has not occurred.

(c) Appeals of an order denying an application or the renewal of a license must be properly requested within ten calendar days of the date on which the initial order is received. All other appeals must be properly requested within thirty days of the date on which the initial order is issued. Any order not properly appealed by the applicable deadline becomes final without further action by the commissioner and cannot be appealed ~~[with no further action by the Commissioner].~~

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

Filed with the Office of the Secretary of State on July 1, 2019.

TRD-201902077

Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: August 18, 2019
For further information, please call: (512) 475-2534



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §102.1, concerning fees. This amendment to the existing rule will clarify the biennial nature of renewals for several license/registration types, establish a standalone nitrous oxide monitoring category for dental assistants pursuant to 22 TAC §114.4, and enable the Board to assess appropriate fees in a responsive manner for the prescription monitoring program, Texas.gov internet portal, and query and monitoring of practitioners through the National Practitioner Data Bank. Due to appropriations for the prescription monitoring program in the 86th Regular Session, the amounts assessed on dentists for the program may change, but the Board cannot determine the amount of change or if it will increase or decrease at this time. Previously, nitrous oxide monitoring registrations were not subject to renewal requirements, but pursuant to the alterations to Texas Occupations Code Chapter 265 brought about by Senate Bill 313, 85th Regular Session, these permits are now renewable and must be incorporated into the Board's fee schedule. This amendment also clarifies that practicing with an expired license or registration over one hundred eighty days past the applicable renewal date may present grounds for disciplinary action.

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

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

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

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis

for small businesses, micro-businesses, and rural communities is necessary for this rule.

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

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation pursuant to Tex. Gov't Code §2001.0045(c)(9), and, therefore, is not subject to Tex. Gov't. Code §2001.0045(b).

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

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

No other statutes or rules are affected by this rulemaking.

§102.1 Fees.

(a) Effective September 1, 2019, [2018,] the Board has established the following reasonable and necessary fees for the administration of its function. Upon initial licensure or registration, and at each renewal, the fees provided in this subsection and subsections (b) - (d) of this section shall be due and payable to the Board.

Figure: 22 TAC §102.1(a)

[Figure:22 TAC §102-1]

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

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

accordance with Texas Department of Information Resources approved fee rates, and in compliance with any other applicable Texas law.

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

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

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

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

Filed with the Office of the Secretary of State on July 3, 2019.

TRD-201902094

Alex Phipps

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: August 18, 2019

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



CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.2

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §104.2, concerning providers of continuing education. This amendment will clarify the process for addition or removal of approved providers from the Board's list, and will establish criteria for the Board or a committee of the Board to apply when considering addition, removal, or classification of providers.

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

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's protection of the public safety and welfare by ensuring access to high-quality continuing education courses.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect

local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §104.2, and the current Board rule does not specifically effect any geographic region of Texas. No expansion of applicability will occur by the adoption of this rule. Therefore, no new local economies will be effected by this rule amendment.

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

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

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

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

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §257.005, which directs the Board to develop a process to evaluate and approve continuing education courses and evaluate the overall effectiveness of programs.

No other statutes or rules are affected by this rulemaking.

§104.2. *Providers.*

(a) The Board hereby establishes a list of providers for continuing education courses. Unless specifically required by state law or Board rule, the Board shall not accept or approve specific continuing education courses for requirements related to the issuance or renewal of licensure, registrations, or sedation/anesthesia permits.

(b) At least once per calendar year, the Board shall review the list of providers for continuing education and any applications submitted for continuing education providers, and shall consider additions or removals of providers from the list provided in this section.

(1) The Presiding Officer may establish an ad hoc committee pursuant to 22 TAC §100.8 (relating to Ad Hoc Committees of the Board) to review the addition or removal of providers and make recommendations to the full Board for approval.

(2) The Board and any ad hoc committee shall consider classifying each provider for full continuing education provider authorization, including clinical, scientific, and sedation/anesthesia provider courses, or for a limited continuing education provider authorization restricted to courses related to risk management, recordkeeping, ethics, and non-clinical dental assistant duties continuing education. If no classification is assigned to a provider, the provider shall be considered a full continuing education provider.

(3) Any addition, removal, or classification of providers shall require a majority vote of the full Board in an open meeting. Any provider being considered for addition, removal, or classification shall be given 10 business days notice of the consideration, and shall be provided an opportunity to appear and make a presentation or submit supporting documentation at the scheduled meeting of the Board or any ad hoc committee regarding the addition, removal, or classification.

(c) Board staff shall develop and provide an application form for continuing education providers. The application form shall provide instructions for submitting provider information and supporting documentation. The Board shall provide the application form for continuing education providers and general instructions on the continuing education provider application process on its public website. Any request to become an approved continuing education provider must be submitted on the application form provided by the Board; failure to utilize the Board's application form shall be grounds to reject the application request.

(d) The Board shall consider the following criteria when reviewing providers:

(1) the health, safety, and welfare of the residents of Texas;

(2) access to providers for licensees and registrants in all portions of Texas;

(3) competency of course providers, and quality of course materials;

(4) internal and external audits, guidelines, safeguards, and standards to ensure consistent and quality education; and

(5) demonstrable clinical, professional and/or scientific education experience.

(e) Continuing Education courses endorsed by the following providers will meet the criteria for acceptable continuing education hours if such hours are certified by the following providers:

(1) American Dental Association--Continuing Education Recognition Program (CERP);

(2) American Dental Association, its component, and its constituent organizations;

(3) Academy of General Dentistry, and its constituents and approved sponsors;

(4) Dental/dental hygiene schools and programs accredited by the Commission on Dental Accreditation of the American Dental Association;

(5) American Dental Association approved specialty organizations;

(6) American Dental Hygienists' Association, its component, and its constituent organizations;

(7) American Medical Association approved specialty organizations;

(8) American Medical Association approved hospital courses;

(9) National Dental Association, its constituent, and its component societies;

(10) National Dental Hygienists' Association, its constituent, and its component societies;

(11) Medical schools and programs accredited by the Standards of the Medical Specialties, the American Medical Association, the Advisory Board for Osteopathic Specialists and Boards of Certification or the American Osteopathic Association;

(12) Western Regional Examining Board;

(13) American Academy of Dental Hygiene;

(14) American Dental Education Association;

(15) American Heart Association;

(16) Texas Dental Hygiene Educators' Association;

(17) Dental Laboratory Association of Texas;

(18) Dental Assisting National Board;

(19) American Dental Assistants Association and its constituent organizations;

(20) The Compliance Division, LLC;

(21) Dental Compliance Specialists, LLC; and

(22) Other entities approved by the Board as shown in the attached graphic for this section.

Figure: 22 TAC §104.2(e)(22)

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

Filed with the Office of the Secretary of State on July 3, 2019.

TRD-201902095

Alex Phipps

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: August 18, 2019

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



PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

The Texas State Board of Social Worker Examiners (board) proposes amendments to §§781.102, 781.310, 781.311, 781.317, 781.401, 781.404, 781.405, 781.413, §781.419, 781.511, 781.512, 781.517, 781.603, 781.604, 781.605, 781.610, 781.703, and 781.808, the repeal of and new §781.505, concerning the licensure and regulation of social workers.

BACKGROUND AND PURPOSE

The proposed rules clarify the change from the Department of State Health Services to the Health and Human Services Commission, reduce the number of experience years for licensees from another jurisdiction, and corrects the requirements regarding inactive status.

SECTION-BY-SECTION SUMMARY

The amendments to §§781.102, 781.310, 781.311, 781.317, 781.404, 781.405, 781.413, 781.511, 781.512, 781.517, 781.603, 781.604, 781.605, 781.610, 781.703, and 781.808 update the change in the state agency that provides administrative support to the board by replacing "department" with "commission" or "department's" to "commission's" for clarification.

The amendments to §781.401 and §781.419 will reduce the number of required experience years for applicants who are licensees from another jurisdiction. Applicants who have been licensed in another jurisdiction for one year immediately preceding application will be deemed to have met the experience requirement for licensure.

Section 781.505 is a repeal and new rule and discusses how a licensee can put their license on inactive status.

FISCAL NOTE

Alice Bradford, Executive Director, has determined that for each year of the first five years that the proposed repeal, new section and amendments will be in effect, there will be no anticipated cost or savings, nor effect on revenue, to state or local governments as a result of the proposed rule changes.

GOVERNMENT GROWTH IMPACT STATEMENT

As required by Texas Government Code, Chapter 2001, §2001.0221 relating to government growth impact statements board staff has determined that during the first five years these provisions would be in effect:

- the proposed rules neither create nor eliminate a government program;
- implementation of the proposed rules requires neither the creation of new employee positions nor the elimination of existing employee positions;
- implementation of the proposed rules requires neither an increase nor decrease in future legislative appropriations to the agency;
- the rules will not increase or decrease any fees paid to the agency;
- the proposed rules do not create a new regulation;
- the proposed rules neither expand nor limit rules but will repeal a rule and replace with a new rule;
- the proposed rules neither increase nor decrease the number of individuals subject to the rules' applicability; and
- the proposed rules neither positively nor adversely affect this state's economy.

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

Ms. Bradford has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses, micro-businesses or rural communities will not be required to alter their business practices in order to comply with the sections. 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. The proposal will not affect a local economy. 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.

PUBLIC BENEFIT

In addition, Alice Bradford, Executive Director, has also 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 is to continue to ensure public health and safety through the effective licensing and regulation of social workers. Finally, the changes in the rules should improve comprehension and clarity in the rules.

REGULATORY ANALYSIS

The board has determined that 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, the specific intent 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. The proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board 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

Comments on the proposal may be submitted to Alice Bradford, Executive Director, Texas State Board of Social Worker Examiners, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347, or by email to lsw@hhsc.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 31 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §781.102

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendments will implement Texas Occupations Code, Chapter 505.

§781.102. *Definitions.*

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

(1) - (12) (No change).

(13) Commission--Health and Human Services Commission.

~~[(13) Confidential information--Individually identifiable information relating to a client, including the client's identity, demographic information, physical or mental health condition, the services the client received, and payment for past, present, or future services the client received or will receive. Confidentiality is limited in cases where the law requires mandated reporting, where third persons have legal rights to the information, and where clients grant permission to share confidential information.]~~

(14) Completed application--The official social work application form, fees and all supporting documentation which meet the criteria set out in this chapter.

(15) Conditions of exchange--Setting reimbursement rates or fee structures, as well as business rules or policies involving issues such as setting and cancelling appointments, maintaining office hours, and managing insurance claims.

(16) Confidential information--Individually identifiable information relating to a client, including the client's identity, demographic information, physical or mental health condition, the services the client received, and payment for past, present, or future services the client received or will receive. Confidentiality is limited in cases where the law requires mandated reporting, where third persons have legal rights to the information, and where clients grant permission to share confidential information.

(17) ~~[(16)]~~ Contested case--A proceeding in accordance with the APA and this chapter, including, but not limited to, rule enforcement and licensing, in which the board determines the party's legal rights, duties, or privileges after the party has an opportunity for a hearing.

(18) ~~[(17)]~~ Counseling, clinical--The use of clinical social work to assist individuals, couples, families or groups in learning to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.

(19) ~~[(18)]~~ Counseling, supportive--The methods used to help individuals create and maintain adaptive patterns. Such methods may include, but are not limited to, building community resources and networks, linking clients with services and resources, educating clients and informing the public, helping clients identify and build strengths, leading community groups, and providing reassurance and support.

(20) ~~[(19)]~~ Consultation--Providing advice, opinions and conferring with other professionals regarding social work practice.

(21) ~~[(20)]~~ Continuing education--Education or training aimed at maintaining, improving, or enhancing social work practice.

(22) ~~[(21)]~~ Council on Social Work Education (CSWE)--The national organization that accredits social work education schools and programs.

~~[(22) Department--Department of State Health Services.]~~

(23) - (39) (No Change).

(40) Investigator--A commission ~~[department]~~ employee or other authorized person whom the board uses to investigate allegations of professional misconduct.

(41) - (62) (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 July 8, 2019.

TRD-201902130

Tim Brown

Chair

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 18, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER C. THE BOARD

22 TAC §§781.310, 781.311, 781.317

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendments will implement Texas Occupations Code, Chapter 505.

§781.310. Executive Director.

(a) The executive director, who serves at the will of the board, is a commission ~~[department]~~ employee who administers board activities, such as keeping board meeting minutes and proceedings and serving as custodian of the board files and records.

(b) - (c) (No change.)

(d) The executive director manages board correspondence and obtains, prepares, and assembles reports and information as directed by the board, or as authorized by the commission ~~[department]~~ or other agency with appropriate statutory authority.

~~[(e) The executive director is responsible for assembling and evaluating materials that applicants submit for licensure and renewal. The executive director's determinations are subject to the approval of the appropriate board committee or the full board.]~~

§781.311. Official Records of the Board.

(a) (No change.)

(b) The requester shall pay the customary commission ~~[department]~~ charge for duplicating costs before or at the time the duplicated records are transferred to the requester.

(c) (No change.)

§781.317. Criminal History Evaluation Letter.

(a) In accordance with Texas Occupations Code, §53.102, a person may request the commission ~~[department]~~ to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) - (2) (No change).

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the commission ~~[department]~~, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The commission ~~[department]~~ has the same authority to investigate a request submitted under this subsection and the requestor's eligibility that the commission ~~[department]~~ has to investigate a person applying for a license.

(d) If the commission ~~[department]~~ determines that a ground for ineligibility does not exist, the commission ~~[department]~~ shall no-

tify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the commission [department] received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the commission [department] determines that the requestor is ineligible for a license, the commission [department] shall issue a letter setting out each basis for potential ineligibility and the commission's [department's] determination as to eligibility. The letter shall be issued not later than the 90th day after the date the commission [department] received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to, but not disclosed by, the requestor or not reasonably available to the commission [department] at the time the letter is issued, the commission's [department's] ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902133

Tim Brown

Chair

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 18, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER D. LICENSES AND LICENSING PROCESS

22 TAC §§781.401, 781.404, 781.405, 781.413, 781.419

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendments will implement Texas Occupations Code, Chapter 505.

§781.401. *Qualifications for Licensure.*

(a) Licensure. The following education and experience is required for licensure as designated. If an applicant for a license has held a substantially equivalent license in good standing in another jurisdiction for one year [at least five years] immediately preceding the date of application, the applicant will be deemed to have met the experience requirement under this chapter. [~~If the applicant has been licensed or certified in another jurisdiction for fewer than five years preceding the date of application, the applicant must meet current Texas licensing requirements.~~]

(1) - (3) (No change.)

(b) - (c) (No change.)

§781.404. *Recognition as a Board-approved Supervisor and the Supervision Process.*

(a) (No change.)

(b) A person who wishes to be a board-approved supervisor must file an application and pay the applicable fees as described in §781.316 of this chapter.

(1) - (10) (No change.)

(11) A board-approved supervisor who wishes to provide any form of board-approved or board-ordered supervision must comply with the following.

(A) - (M) (No change.)

(N) The board may deny, revoke, or suspend board-approved supervisory status following a fair hearing for violation of the Act or rules, according to the commission [department] fair hearing rules. Continuing to supervise after the board has denied, revoked, or suspended board-approved supervisor status, or after the supervisor's supervisory status expires, may be grounds for disciplinary action against the supervisor.

(O) - (Q) (No change.)

(12) - (13) (No change.)

(c) (No change.)

§781.405. *Application for Licensure.*

(a) - (b) (No change.)

(c) The commission [department] will acknowledge in writing receiving the application and fee within 30 working days of receipt. The letter will include the requested licensing or specialty recognition category; any documented deficiencies in qualifications; and any additional documentation, such as transcripts or supervisory references, required for the examination approval.

(d) - (e) (No change.)

(f) When the applicant passes the examination, the commission [department] shall mail an approval notice stating the initial licensure fee.

(g) - (i) (No change.)

§781.413. *Alternate Method of Examining Competency (AMEC) Program.*

(a) - (d) (No change.)

(e) If the participant is deficient 45 days or more from the due date provided by the commission [department] in submitting the professional portfolio and other requirements, the participant is in default of the AMEC program, and the documents will not be accepted toward completion of the AMEC program and the participant will be removed from the AMEC program.

(f) - (j) (No change.)

§781.419. *Licensing of Military Service Members, Military Veterans, and Military Spouses.*

(a) - (b) (No change.)

(c) Upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction. If the applicant has been licensed in the jurisdiction one year immediately preceding the date of application, the applicant will be deemed to have met the experience requirement under this chapter. [~~Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.~~]

(d) - (g) (No change.)

(h) An applicant who is a military service member, military veteran, or military spouse who held a registration in this state within

the [five years] preceding year of the application date, and without restriction, shall complete and submit an application form and a supplemental application form for military service member, veteran, or military spouse. As soon as practicable after a complete application under this subsection is filed, the board will process and issue a registration to an applicant who held such a registration and who satisfies the application and supplemental application requirements, if there are no unresolved allegations against the applicant or criminal background relevant to the registration, or other facts or circumstances providing grounds for denial of the registration. Renewal of the registration shall be in accordance with subsection (i) of this section.

(i) (No change.)

(j) Notwithstanding any other law, the board will waive the license application fees paid to the state for an applicant described in paragraph (1) or (2) of this subsection. An applicant shall provide any proof requested by the board that the applicant is:

(1) (No change.)

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction for one year [that has license requirements that are substantially equivalent to the requirements for the license in this state].

(k) - (l) (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 July 8, 2019.

TRD-201902134

Tim Brown

Chair

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 18, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER E. LICENSE RENEWAL AND CONTINUING EDUCATION

22 TAC §781.505

STATUTORY AUTHORITY

The repeal is proposed under Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

The repeal will implement Texas Occupations Code, Chapter 505.

§781.505. *Inactive Status.*

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902137

Tim Brown

Chair

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 18, 2019

For further information, please call: (512) 776-6972

22 TAC §§781.505, 781.511, 781.512, 781.517

STATUTORY AUTHORITY

The new rule and amendments are proposed under Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

The new rule and amendments will implement Texas Occupations Code, Chapter 505.

§781.505. *Inactive Status.*

(a) A licensee may request his or her active license be placed on inactive status by submitting to the board the designated form and fee.

(b) A licensee cannot practice while the license is inactive.

(c) Board-approved supervisory authority is relinquished upon moving the license to inactive status.

(d) Inactive licenses remain subject to disciplinary action by the board.

(e) No continuing education is required while a license is inactive.

(f) To return an inactive license to active status the licensee must submit:

(1) a reactivation form designated by the board;

(2) a reactivation fee as set forth in this chapter;

(3) proof of completion of jurisprudence exam, no more than six months prior to submitting request for active status; and

(4) proof of completion of continuing education for the licensee's current two-year renewal period.

(g) Neither continuing education nor fees will be prorated.

(h) To regain board-approved supervisory authority the licensee must reapply meeting all current requirements.

§781.511. *Requirements for Continuing Education Providers.*

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

(g) Commission [Department] staff shall review the continuing education provider application and notify the applicant of any deficiencies or grant approval, assigning the continuing education provider approval number which shall be noted on all certificates.

(h) - (p) (No change).

§781.512. *Evaluation of Continuing Education Providers.*

(a) Commission [Department] staff shall audit approved continuing education providers regularly, reporting audit results to the board. During the audit, staff shall request the provider's documentation regarding compliance with §781.511 of this title (relating to Requirements for Continuing Education Providers).

(b) Commission [Department] staff shall notify a continuing education provider of the results of an audit. A continuing education provider who does not comply with these regulations shall implement a correction plan to address deficiencies, and will submit documentation of these corrective measures to the board within 30 days of the board's notice that corrective actions are necessary.

(c) (No change).

(d) If the board receives written complaints about continuing education offered by approved providers, the commission [department]

may audit the provider and refer the matter to the board for appropriate action.

(e) - (g) (No change.)

§781.517. *Evaluation of Supervisor Training Course Providers.*

(a) (No change).

(b) Commission [Department] staff shall audit approved supervisor training course providers regularly, reviewing the supervisor training provider's documentation regarding compliance with §781.516 of this title (relating to Requirements of Supervisor Training Course Providers), and report audit results to the appropriate board committee.

(c) Commission [Department] staff shall notify supervisor training providers of the audit results. If the provider is not compliant, the provider shall implement a correction plan to address audit deficiencies, and will submit documentation verifying corrective action to the board within 30 days of the date of the board's notice that corrective action is necessary.

(d) - (h) (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 July 8, 2019.

TRD-201902138

Tim Brown

Chair

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 18, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER F. COMPLAINTS AND VIOLATIONS

22 TAC §§781.603 - 781.605, 781.610

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendments will implement Texas Occupations Code, Chapter 505.

§781.603. *Complaint Procedures.*

(a) - (b) (No change).

(c) Upon receipt of an eligible complaint, the commission [department] will send acknowledgement to the complainant.

(d) Eligible complaints will [shall] be reviewed by the review team whose members are designated in board policy to determine if the board has jurisdiction over the complaint and to determine the nature of the allegations.

(1) (No change.)

(2) Jurisdictional complaints will be reviewed by the team to determine if the complaint states an allegation, which, if true, constitutes a violation of the Act or board rules in this chapter.

(A) Complaints that do not state a violation of the Act or board rules of this chapter will be dismissed.

(B) Complaints that state a violation of the Act or board rules of this chapter will be investigated by the commission [department].

(3) (No change.)

(e) (No change.)

(f) Following completion of the investigation, the commission [board staff] will draft a report. This report will include a recommendation as to whether the investigation has produced sufficient evidence to establish by a preponderance of the evidence there was a violation of the Act or board rules in this chapter.

(g) The review team and counsel for the board will review the complaint's case file, including the investigation report and all evidence, to determine if there is sufficient evidence to demonstrate by a preponderance of the evidence a violation of the Act or board rules of this chapter occurred.

(1) A complaint for which the team and counsel determines the preponderance of the evidence indicates a violation of the Act or board rules of this chapter occurred will result in the commission [department] issuing a Notice of Violation to the respondent proposing disciplinary action based on the penalty matrix set by board policy and will be given an opportunity to request an Informal Settlement Conference.

(2) A complaint for which the review team determines the preponderance of evidence indicates a violation of the Act or board rules of this chapter did not occur will [shall] be dismissed.

(h) (No change.)

§781.604. *Ethics Committee Meetings and Policy.*

(a) (No change.)

(b) Commission [Department] staff will send an agenda and completed reports of complaint investigations to committee members approximately two weeks prior to each meeting. The agenda will list all items to be considered by the committee. Complaints will be listed on the agenda by the assigned complaint tracking number.

(c) (No change.)

(d) Commission [Department] staff will report on all completed investigations to committee members, including investigation results and a summary of staff recommendations for disposition.

(e) - (f) (No change.)

§781.605. *Informal Conferences.*

(a) (No change.)

(b) The board's legal counsel or an attorney from the commission's [department's] Office of Chief [General] Counsel shall attend each informal conference.

§781.610. *Due Process Following Violation of an Order.*

(a) (No change.)

(b) When it appears that the licensee has violated a term of the Order, the commission [department] will send a Notice of Violation of the Order to the licensee. The Notice shall include:

(1) - (3) (No change.)

(c) When the commission [department] receives the licensee's written response, the executive director and board chair will review the response and decide whether there are sufficient grounds to find that the Order was violated and, if so, whether the disciplinary action provided in the Order should be imposed.

(d) - (e) (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 July 8, 2019.

TRD-201902139

Tim Brown

Chair

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 18, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER G. FORMAL HEARINGS

22 TAC §781.703

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendments will implement Texas Occupations Code, Chapter 505.

§781.703. *Default.*

(a) (No change).

(b) Remedies available upon default in a contested case before the State Office of Administrative Hearings (SOAH). The Administrative Law Judge (ALJ) shall proceed in the party's absence and such failure to appear shall entitle the commission [department] to seek informal disposition as provided by the Texas Government Code, Chapter 2001. The ALJ shall grant any motion by the commission [department] to remove the case from the contested hearing docket and allow for informal disposition by the board.

(c) - (e) (No change.)

(f) This subsection also applies to cases where proof exists that notice of hearing was served at the defaulting party's last known address as shown on the commission's [department's] records, with no evidence that the defaulting party or the defaulting party's agent actually received notice. In that situation, the default procedures described in subsection (c) of this section may be used.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902140

Tim Brown

Chair

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 18, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER H. SANCTION GUIDELINES

22 TAC §781.808

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendments will implement Texas Occupations Code, Chapter 505.

§781.808. *Peer Assistance Program.*

(a) - (d) (No change.)

(e) Any licensee who enters evaluation, treatment, or monitoring by a board-approved peer assistance program is obligated to pay the costs incurred by this intervention directly to the peer assistance program. Neither the board nor the commission [department] will collect such costs from the licensee, nor serve as an intermediary for such payments.

(f) - (g) (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 July 8, 2019.

TRD-201902141

Tim Brown

Chair

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: August 18, 2019

For further information, please call: (512) 776-6972



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 131. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §131.61

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §131.61, concerning Operational Requirements.

BACKGROUND AND PURPOSE

The purpose of the proposal is to update abortion complication reporting procedures for freestanding emergency medical care facilities (FEMCs). The proposal is necessary to comply with House Bill (H.B.) 13, 85th Legislature, Special Session, 2017, related to new requirements for abortion complication reporting. H.B. 13 amended the Texas Health and Safety Code, Chapter 171.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §131.61 deletes the mailing address in subsection (b) and adds new subsection (e) that requires FEMCs to comply with the same abortion complication reporting requirements as abortion facilities. This amendment is necessary to comply with H.B. 13 and reduce confusion or in-

accurate reporting caused by reference to an outdated mailing address.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will expand existing rules;
- (7) the proposed rule will increase the number of individuals subject to the rules; and
- (8) the proposed rule will not affect the state's economy.

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

Greta Rymal has also determined that there may be an adverse economic effect on small businesses or micro-businesses, or rural communities.

The proposed rules require additional reporting requirements related to abortion complications for 216 FEMCs licensed statewide, some of which may qualify as small businesses, micro-businesses, or rural communities. HHSC lacks sufficient data to estimate the number of those facilities designated as a small business, micro-business, or rural community impacted by the proposed rules.

HHSC has also determined that alternative methods to achieve the purpose of the proposed rule for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of patients receiving abortion services.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be an increased conformity with existing statutes. In addition, the public will benefit from greater clarity and consistency in reporting requirements for abortion complications.

Greta Rymal has also determined that for the first five years that the rule is in effect, persons who are required to comply may incur economic costs. The proposed rules add reporting requirements for FEMCs that diagnose or treat an abortion complication. HHSC assumes there will be additional costs to facilities to compile required data and submit the required additional reports.

HHSC lacks sufficient information to estimate additional time for gathering data and reporting the required information. For these reasons, the cost to persons required to comply cannot be determined at this time.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to 19R015comments@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When e-mailing comments, please indicate "Comments on Proposed Rule 19R015" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and the Texas Health and Safety Code, Chapter 171.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 171.

§131.61. Reporting Requirements.

- (a) A facility shall report the following incidents to the department:
 - (1) the death of a patient while under the care of the facility;
 - (2) a patient stay exceeding 23 hours; and
 - (3) 9-1-1 activation.

(b) Reports under subsection (a) of this section shall be on a form provided by the department. The report shall contain a written explanation of the incident and the name of the individual responsible. The report shall be faxed or mailed to the department not later than the 10th business day after the incident. [The mailing address is Department of State Health Services, Facility Licensing Group, Mail Code 1979, P.O. Box 149347 Austin, Texas 78714-9347.]

(c) A facility shall report any abuse, theft, or diversion of controlled drugs in accordance with applicable federal and state laws, and shall report the incident to the chief executive officer of the facility.

(d) A facility shall report occurrences of fires in the facility as specified under §131.121 of this title (relating to Fire Prevention, Protection, and Emergency Contingency Plan) and §131.123 of this title (relating to Handling and Storage of Gases, Anesthetics, and Flammable Liquids).

(e) A facility that diagnoses or treats an abortion complication, as defined in §139.2 of this title (relating to Definitions), shall comply with §139.5 of this title (relating to Additional Reporting Requirements).

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

Filed with the Office of the Secretary of State on July 3, 2019.

TRD-201902111

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: August 18, 2019

For further information, please call: (512) 834-4591



CHAPTER 139. ABORTION FACILITY REPORTING AND LICENSING SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §139.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §139.1, concerning Purpose and Scope.

BACKGROUND AND PURPOSE

The purpose of the proposal is to correct a reference to abortion complication reporting procedures for abortion facilities. The proposal is necessary to comply with House Bill (H.B.) 13, 85th Legislature, 2017, Special Session, related to new requirements for abortion complication reporting. H.B. 13 amended the Texas Health and Safety Code, Chapter 171.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §139.1 corrects a reference to Additional Reporting Requirements for abortion facilities. This amendment is necessary to comply with H.B. 13 and clarify the rules regarding required reporting of abortion complications.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does

not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will not expand existing rules;
- (7) the proposed rule will not increase the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

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

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be greater clarity and consistency in reporting requirements for abortion complications.

Greta Rymal has also determined that for the first five years that the rule is in effect, there are no anticipated economic costs to persons who are required to comply because abortion facilities will not be required to alter their business practices.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to 19R015comments@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or e-mailed before midnight on the following business day to be accepted. When e-mailing comments, please indicate "Comments on Proposed Rule 19R015" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and the Texas Health and Safety Code, Chapter 171.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 171.

§139.1. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to implement the Texas Abortion Facility Reporting and Licensing Act, Health and Safety Code, Chapter 245, which provides the Department of State Health Services with the authority to establish rules governing the licensing and regulation of abortion facilities and to establish annual reporting requirements for each abortion performed. This chapter also implements the Woman's Right to Know Act, Health and Safety Code, Chapter 171.

(b) Scope and applicability.

(1) Licensing requirements.

(A) A person may not establish or operate an abortion facility in Texas without a license issued under this chapter unless the person is exempt from licensing requirements.

(B) The following need not be licensed under this chapter:

(i) a hospital licensed under Health and Safety Code, Chapter 241;

(ii) an ambulatory surgical center licensed under Health and Safety Code, Chapter 243; or

(iii) the office of a physician licensed by the Texas Medical Board and authorized to practice medicine in the State of Texas, unless the office is used for the purpose of performing more than 50 abortions in any 12-month period.

(2) Reporting requirements. All licensed abortion facilities and facilities and persons exempt from licensing shall comply with §139.5 [§139.4] of this title (relating to Additional Reporting Requirements [Annual Reporting Requirements for All Abortions Performed]).

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

Filed with the Office of the Secretary of State on July 3, 2019.

TRD-201902112

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: August 18, 2019

For further information, please call: (512) 834-4591

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.2

The Texas Parks and Wildlife Department (the department) proposes an amendment to §53.2, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules. The proposed amendment would allow for the verification of purchase of a fishing, hunting, or combination fishing and hunting license via a wireless communication device.

Under current rule, a person engaged in a hunting or fishing activity must be in physical possession of the necessary license, except for persons who purchased a license electronically and are awaiting fulfillment by mail. In the most recent session of the Texas Legislature, House Bill 547 was enacted and has become law. The bill requires the department to adopt rules allowing persons to present "for the purpose of verification of possession a hunting, fishing, or combination hunting and fishing license an image displayed on a wireless communication device." The bill provides that the image may be from the department's website or a photograph of the license. The proposed amendment would effect the necessary changes and remove current language providing for exceptions to physical possession of license that are no longer applicable.

The proposed amendment would require images of licenses to be of sufficient resolution, contrast, and image size to allow verification of licensure, which is necessary to prevent misunderstandings, as a photograph taken of a license taken at great distance, out of focus, or under poor lighting would frustrate the department's ability to ascertain legal compliance with licensing requirements.

The proposed amendment also would alter references to "stamps" to "stamp endorsements" to reflect the fact that the department no longer issues physical stamps.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the amendment as proposed is in effect, there will be no fiscal implications to state

or local governments as a result of administering or enforcing the rule.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be additional flexibility for the regulated community to prove licensure.

There will be no adverse economic effect on persons required to comply with the rule as proposed, as the proposed rule would not be mandatory, but at the discretion of the regulated community.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the rule will not result in adverse economic impacts to small businesses, micro-businesses, or rural communities because it creates a voluntary alternative to the current requirements concerning hunting and fishing license possession.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that because the rule as proposed does not impose a cost on regulated persons, it is not necessary to repeal or amend any existing rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; will create a new regulation; expand an existing regulation by creating additional options for proof of licensure, but would not limit or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Robert Macdonald at (512) 389-4775, e-mail: robert.macdonald@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, §§42.006, 46.0085, and 50.004, which require the department by rule to allow for a person to present for the purpose of verification of possession of a hunting, fishing, or combi-

nation hunting and fishing license an image displayed on a wireless communication device.

The proposed amendment affects Parks and Wildlife Code, Chapters 42, 46, and 50.

§53.2. *License Issuance Procedures, Fees, Possession, and Exemption Rules.*

(a) Hunting license possession.

(1) ~~Except as provided by subsection (g) of this section, no~~ [Nø] person may hunt turkey in this state without having a valid hunting license in immediate possession.

(2) (No change.)

(3) ~~Except as provided by subsection (g) of this section, a~~ [A] person may hunt deer in this state without having a valid hunting license in immediate possession only if that person:

(A) has acquired a license electronically (including by telephone) and has a valid confirmation number in his possession; and

(B) is lawfully hunting:

(i) under the provisions of §65.29 [~~§65.26~~] of this title (relating to Managed Lands Deer (MLD) Programs [~~Permits~~]);

~~[(ii) under the provisions of §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));]~~

~~[(ii) [(iii)] by special permit under the provisions of Chapter 65, Subchapter H of this title (relating to Public Lands Proclamation);]~~

~~[(iii) [(iv)] on department-leased lands under the provisions of Parks and Wildlife Code, §11.0271; or]~~

~~[(iv) [(v)] by special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.]~~

(4) (No change.)

(b) Fishing license possession.

(1) A person may fish in this state without having a valid fishing license in immediate possession if that person:

(A) is exempt by rule or statute from holding a fishing license; or

(B) (No change.)

(2) (No change.)

(c) Issuance of licenses and stamp endorsements [~~stamps~~] electronically (on-line or by telephone).

(1) (No change.)

(2) A person may acquire recreational hunting and/or fishing stamp endorsements [~~stamps~~] electronically from the department by agreeing to pay a convenience fee of up to \$5 per stamp order in addition to the normal stamp endorsement fee(s). This fee shall not be charged if a license is acquired during the same transaction.

(d) (No change.)

(e) An administrative fee of \$3 shall be charged for replacement of lost or destroyed licenses, stamp endorsements [~~stamps~~], or permits. This fee shall not be charged for items which have a fee for duplicates otherwise prescribed by rule or statute.

(f) (No change.)

(g) A person who has purchased a valid hunting, fishing, or combination hunting and fishing license but is not in physical possession of that license in any circumstance for which the license is required may use a wireless communications device (laptop, cellphone, smart phone, electronic tablet, phablet, or similar device) to satisfy applicable license possession requirements.

(1) Upon request for proof of licensure by a department employee in the performance of official duties, a person may display one of the following images via a wireless communications device:

(A) an image of information from the Internet website of the department or mobile application verifying issuance of the license valid for the activity or circumstance for which proof of licensure has been requested; or

(B) a display image of a digital photograph of the applicable license issued to the person.

(2) The requirements of paragraph (1)(B) of this subsection are satisfied by separate digital images of the entirety of the front and back of the license. The images must be of a resolution, contrast, and image size sufficient to allow definitive verification of the information on the license.

(3) This subsection applies only to proof of licensure and does not relieve any person from any legal requirement or obligation to be in physical possession of a stamp, stamp endorsement, tag, or permit.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902120

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 18, 2019

For further information, please call: (512) 389-4775



CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

The Texas Parks and Wildlife Department (the department) proposes the repeal of §65.98, concerning Transitional Provisions, and new §65.98, concerning Special Provisions for Facilities Subject to CWD Testing Plans.

Under Parks and Wildlife Code, Chapter 43, Subchapter L, the department regulates the possession of white-tailed and mule deer under deer breeding permits issued by the department.

Chronic wasting disease (CWD) is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant

Creutzfeldt-Jakob Disease (vCJD) in humans. Although CWD remains under study, it is known to be invariably fatal to certain species of cervids (including both species of deer native to Texas), and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant. To that end, the department has engaged in a number of rulemakings since 2012 to address the threat of CWD by implementing a comprehensive management strategy.

In 2016, the department promulgated rules to implement a CWD surveillance strategy intended to reduce the likelihood of transmission of CWD from, among other sources, deer breeding facilities. Those rules (still in effect) allow facility owners to substitute ante-mortem (live animal) test results for post-mortem test results to maintain or regain the ability to receive and transfer deer (referred to in the rules as "Movement Qualified," or "MQ status") in the event that post-mortem sampling intensity falls below the minimum established in the rules. The rules also establish minimum age requirements for deer to be eligible for testing, which is based on veterinary and epidemiological thresholds for test efficacy. Earlier this year, the department promulgated additional rules in an effort to assist those facilities that did not or could not either test the minimum number of eligible-aged mortalities or at least 3.6 percent of the eligible aged population in the breeding facility in order to maintain MQ status, and did not have a sufficient number of eligible-aged animals to ante-mortem test in order to regain MQ status. The department has now been tasked with developing a process for assisting the remaining facilities that cannot meet any of the current disease testing standards because they possess no deer (the department estimates that the number is less than 25, out of over 1,100 breeder facilities), and with developing a process to allow facilities that do not have a sufficient number of eligible-aged animals to be able to obtain limited MQ status in less time than possible under current rule.

The department's containment strategy with respect to breeder deer historically has been to conduct surveillance testing within deer breeding facilities and authorizing releases only after determining that CWD is probably not present. In this manner, all disease testing is done within the confines of the breeding facility, thereby reducing the risk of transmitting CWD out of the facility. The proposed new rule would diverge from that model, however, because after considering recommendations of the department's Breeder User Group and CWD Task Force, the department has concluded that the only option available that offers a means of restoring limited MQ status for the remaining few facilities that either cannot move deer or choose not to test deer according to current rules, and provides some assurance that CWD is not being spread beyond breeding facilities is to custom design a CWD testing plan for each facility to allow for release site testing to substitute for breeding facility testing. This approach would allow for a limited MQ status and increase CWD testing at department-approved release sites with the idea that the disease could be detected early and managed if it is transmitted from the source breeding facility.

For facilities that have no deer, the CWD testing plan would apply to the breeding facility and release sites that have received deer from that facility in the past. For all other facilities, the rules would require a whole-herd ante-mortem test within the facility at least one year after the herd inventory is documented followed by additional subsequent testing as prescribed by a CWD testing plan. The department has determined that the appropriate epi-

demological standard for each plan is the capability of detecting the presence of CWD with 99 percent confidence if it exists at 5 percent prevalence (assuming an infinite population), which offers reasonable assurances of effective disease monitoring on the landscape (i.e., beyond breeding facilities). The rules would require the department to seek review and comment from TAHC on each plan and to consider any comments, which is necessary to provide for a thorough vetting of the epidemiological implications of each plan. Additionally, the proposed rules would require the owner of a participating release site to agree in writing to meet the requirements of the CWD testing plan, which is necessary because the department seeks certainty that testing at release sites will occur. The rules would also provide that failure to abide by a provision of the CWD testing plan at a release site would be an offense.

Proposed new §65.98(a) would establish the predicate conditions for the applicability of the section, which are that a breeding facility must be currently designated non-movement qualified (NMQ) under current rules and, as determined by the department, to be incapable of satisfying the requirements of §95.94(a) to achieve movement qualified (MQ) status.

Proposed new subsection (b) would address the first of two categories of breeding facilities that could be affected by the rule, facilities with no deer. There are deer breeding facilities that contain zero deer and by rule cannot receive deer because they are either epidemiologically connected to a breeding facility where CWD has been found, because the deer breeder has miscalculated and released too many deer to allow for a sufficient number of deer remaining in the facility to be available for testing, or because the facility was destroyed by a hurricane (or some other natural disaster) and all deer either escaped or died and thus are not available for testing. For these facilities, the department would develop a CWD testing plan covering the breeding facility and associated release sites. The proposed new rule would stipulate that a release site affected by a CWD testing plan be designated NMQ except as authorized by the plan, which is necessary because it is epidemiologically important that the department have an exact account of all deer transferred into the release site. Eventually, depending on the rate of testing, the department would be able to establish that CWD was probably not present at the breeding facility, at which time the department would designate the breeding facility MQ and the release site MQ.

The second category of deer breeding facility that could be affected by the proposed new rule is breeding facilities that contain deer and are not interested in meeting the requirements of existing rules to attain MQ status. Proposed new subsection (c) would address such facilities.

Proposed new subsection (c)(1) would establish the conditions under which a breeding facility would be considered by the department for the applicability of the new rules. First, the department must be able to verify that the facility has not received any deer that have been exposed to CWD, which is necessary because if at any time the facility contained exposed deer the probability that CWD might be present is increased to the extent that movement of deer from the facility is contraindicated for disease management purposes. Next, the department must be able to confirm that there are no discrepancies between the deer physically present in the facility (number, sex, age, unique identifier) and the herd inventory reported in the department's database, which is necessary to definitively rule out the presence of deer of unknown provenance. Additionally, it is impor-

tant for epidemiological purposes that at least one year elapse between a department herd inventory inspection and the initiation of testing under the proposed new rule. Since CWD is not detectable in animals soon after exposure, especially by means of ante-mortem testing, the rule must require sufficient time between potential exposure and disease testing, and the department believes 12 months is sufficient as that has been a standard established in herd plans by Texas Animal Health Commission. Therefore, the rule would require a department herd inventory inspection to have been completed at least 12 months prior to the initiation of ante-mortem testing required by the rule. Finally, the rule would stipulate that all eligible-aged deer in the facility be subjected to ante-mortem testing with a test result of "not detected" returned for all tests. Before authorizing the release of breeder deer, the department would like to have at least minimal assurance that deer being released have not tested positive for CWD.

Proposed new subsection (c)(2) would authorize the development of a CWD testing plan for breeding facilities and associated release sites meeting the threshold requirements for the applicability of the proposed new rule. In developing a CWD testing plan, the department will consider all pertinent factors, including but not limited to the characteristics and particulars of all transfers to and from the breeding facilities and the release site(s), which is necessary to develop an epidemiological profile upon which to base a CWD testing plan.

Proposed new paragraph (3) would provide that upon meeting the requirements of paragraphs (1) and (2), specific transfers would be allowed to take place under the provisions of this section and the CWD testing plan, which is necessary to provide a legal exception to provisions elsewhere in the division that prohibit the transfer of deer by a breeding facility designated NMQ.

Proposed new paragraph (4) would require all deer released under the provisions of the proposed new section to be tagged with a button type Radio Frequency Identification (RFID) tag. The provision is necessary to allow the department to definitively identify individual deer released under the provisions of this subchapter, which is necessary because the CWD testing plans will require the testing of most if not all mortalities and for epidemiological purposes there must be a way to discriminate deer released under this section from all other deer on the release site.

Proposed new paragraph (5) would provide that a release site subject to the provisions of the subsection be automatically designated NMQ and prohibited from receiving deer from any source unless specifically authorized to do so by a CWD testing plan and then only from the sources specifically identified in the CWD testing plan. The proposed provision is necessary because the release of deer under the provisions of the proposed new subsection (unlike releases authorized under current rule) would place deer on the landscape before the department has a reasonable assurance that CWD is not present in the source population. Therefore, deer from any other source must be of known provenance and disease history in order to avoid confounding testing at the release site. Similarly, proposed new paragraph (6) would apply the same precaution to breeding facilities.

Eventually, depending on the rate of continuing testing of mortalities within the breeding facility and the rate of mortality testing on the release sites, the department would be able to establish that CWD was probably not present at the breeding facility, at which time the department would designate the breeding facility MQ and the release MQ.

Proposed new subsection (d) would limit the applicability of the section to any breeding facility to one instance of use. The department has determined that the proposed rule is directed to benefit deer breeders who are experiencing difficulties complying with existing rules to obtain MQ status. For that reason, the department believes that a deer breeder should be able to use the provisions of the proposed new rule once and only once, lest the subsection be misused as a default remedy for carelessness.

Proposed new subsection (e) would clarify that the provisions of §65.94(f) cannot be used to achieve MQ status for a deer breeding facility that is subject to a valid CWD testing plan under the proposed new rule. The provision is necessary because the current testing requirements for deer breeders should not be subject to circumvention by the use of the release provisions of the proposed new section to reduce testing obligations within the breeding facility that are made possible by inventory reduction via release under this section.

Finally, proposed subsection (f) would clarify that a violation of any provision of the subsection or a CWD testing plan would be an offense. Such actions are already offenses, as they violate provisions of current statutes and regulatory provisions adopted pursuant to authority granted by those statutes; however, the department thinks it is prudent to stress the fact in order to avoid confusion with respect to compliance.

Mitch Lockwood, Big Game Program Director, has determined that for each of the first five years that the new section is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule, as administration and enforcement duties resulting from the rules will be exercised by existing personnel and resources.

Mr. Lockwood also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be additional regulatory flexibility for the regulated community and a pathway for certain deer breeding facilities that otherwise would not be permitted to transfer deer to gain that ability.

There will be no adverse economic effect on persons required to comply with the rule as proposed, as the proposed rule would not be mandatory, but at the discretion of the regulated community.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the rule will not result in adverse economic impacts to small businesses, micro-businesses, or rural communities because it creates a voluntary pathway for deer breeders who are otherwise prohibited from transferring

deer to gain the status to do so. A member of the regulated community who does not wish to utilize that pathway would not be required to do so and would be able to pursue other options. On that basis, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that because the rule as proposed does not impose a cost on regulated persons, it is not necessary to repeal or amend any existing rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; will not result in an increase or decrease in the number of full-time equivalent employee needs; will not result in a need for additional General Revenue funding; will not affect the amount of any fee; will create a new regulation (by creating an additional testing option that could allow certain deer breeders to achieve MQ status); will expand an existing regulation by creating additional testing options, but would not limit, or repeal an existing regulation; will neither increase nor decrease the number of individuals subject to regulation; and will not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Mitch Lockwood at (512) 389-4363, e-mail: mitch.lockwood@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

31 TAC §65.98

The repeal is proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter.

The proposed repeal affects Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.98. *Transition Provisions.*

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902135

Todd S. George

Assistant General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 18, 2019

For further information, please call: (512) 389-4775



31 TAC §65.98

The new section is proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession,

transfer, purchase, sale, of breeder deer held under the authority of the subchapter.

The proposed new rule affects Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.98. Special Provisions for Facilities Subject to CWD Testing Plans.

(a) This section applies only to a breeding facility that is:

(1) designated as NMQ; and

(2) unable to satisfy the requirements of §65.94(a) of this title (relating to Breeding Facility Minimum Movement Qualification) to achieve MQ status, as determined by the department.

(b) Facilities with no deer.

(1) The department may develop a CWD testing plan for the breeding facility and release sites that have received deer from the facility.

(2) The CWD testing plan shall, at a minimum, be designed to detect CWD with 99 percent confidence if the disease exists at 5 percent prevalence, assuming an infinite population.

(3) A CWD testing plan developed under this subsection shall be submitted to TAHC for review and comment and the department shall consider any comments made by TAHC.

(4) A CWD testing plan is not valid for the purposes of this section if it is not agreed to in writing by the permit holder for the facility and the owner of each participating release site.

(5) A release site subject to the provisions of this subsection is automatically designated NMQ and is prohibited from receiving deer from any source unless specifically authorized to do so by a CWD testing plan and then only from the sources specifically identified in the CWD testing plan.

(6) A breeding facility subject to the provisions of this subsection remains NMQ and is prohibited from receiving deer from any source or sending deer to any destination unless specifically authorized to do so by a CWD testing plan and then only from the sources and to destinations specifically identified in the CWD testing plan.

(7) Upon completion of a CWD testing plan and a determination by the department that CWD has not been detected, the breeding facility will be designated MQ.

(8) Upon completion of the requirements of a CWD testing plan and a determination by the department that CWD has not been detected at a release site, the release site will be designated MQ.

(c) All other breeding facilities meeting the requirements of subsection (a) of this section.

(1) A breeding facility is eligible to transfer breeder deer to department-approved release sites under this subsection, provided:

(A) the facility has not received any exposed deer;

(B) there are no discrepancies between the deer physically present in the facility (number, sex, age, unique identifier) and the herd inventory reported in TWIMS;

(C) a department herd inventory inspection has been completed at least 12 months prior to the initiation of any ante-mortem testing under paragraph (4) of this subsection;

(D) all eligible-aged deer in the facility are subjected to ante-mortem testing; and

(E) a test result of "not detected" for all tests required under subparagraph (E) of this subsection is obtained and submitted for each eligible-aged deer in the facility.

(2) For a breeding facility meeting the requirements of paragraph (1) of this subsection:

(A) The department may develop a CWD testing plan for the deer breeding facility and release sites approved by the department. Factors to be considered by the department in assessing a release site for approval shall include but are not limited to:

(i) the characteristics and particulars of any transfers from the breeding facility to the release site in the past; and

(ii) the characteristics and particulars of any transfers from other breeding facilities to the release site in the past.

(B) The CWD testing plan shall, at a minimum, be designed to detect CWD with 99 percent confidence if the disease exists at 5 percent prevalence, assuming an infinite population.

(C) A CWD testing plan developed under this subsection shall be submitted to TAHC for review and comment and the department shall consider any comments made by TAHC.

(D) A CWD testing plan is not valid for the purposes of this section if it is not agreed to in writing by the permit holder for the breeding facility and the owner of each participating release site.

(3) Upon satisfaction of the requirements of paragraphs (1) and (2) of this subsection, a breeding facility will remain NMQ but may receive deer from department-approved breeding facilities and transfer deer to department-approved breeding facilities and release sites only as specified in the approved CWD testing plan.

(4) All deer transferred to a release site under this subsection shall be tagged with a button type RFID tag approved by the department.

(5) Upon completion of the requirements of a CWD testing plan and a determination by the department that CWD has not been detected, the breeding facility will be designated MQ.

(6) Upon completion of the requirements of a CWD testing plan and a determination by the department that CWD has not been detected at a release site, the release site will be designated MQ.

(d) No breeding facility shall be allowed to utilize the provisions of this section more than once.

(e) The provisions of §65.94(f) of this title cannot be used to achieve MQ status for a deer breeding facility that is subject to a valid CWD testing plan under this section.

(f) It is an offense for any person to:

(1) violate any provision of this section; or

(2) fail to abide by a requirement of a CWD testing plan.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902136

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Earliest possible date of adoption: August 18, 2019

For further information, please call: (512) 389-4775

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CHAPTER 69. RESOURCE PROTECTION
SUBCHAPTER H. ISSUANCE OF MARL,
SAND, AND GRAVEL PERMITS

**31 TAC §§69.101, 69.102, 69.105, 69.108, 69.110, 69.111,
69.114, 69.117 - 69.120**

The Texas Parks and Wildlife Department proposes amendments to §§69.101, 69.102, 69.105, 69.108, 69.110, 69.111, 69.114, and 69.117 - 69.120, concerning Issuance of Marl, Sand, and Gravel Permits. The amendments are necessitated by the enactment of House Bill 2805 by the most recent session of the Texas Legislature. Additional nonsubstantive changes are also proposed to improve grammatical sense and comport the rule with current nomenclature.

House Bill 2805 requires the commission to prescribe one application form for individual and general permits and specifies that the form must require publication of notice of the application in the daily or weekly newspaper with the largest circulation in the county or counties affected by the issuance of the permit for three consecutive days, if daily, and in one newspaper published in the community closest to the proposed area of disturbance. The bill also requires an applicant for a permit to provide proof to the department that the notice was sent by certified mail to alongshore property owners at least one river mile upstream and downstream of the proposed area of disturbance, submit a sedimentation impact assessment approved by the department, and, in the case of application for permit renewal, any amendments to the permit. Additionally, the provisions of H.B. 2805 limit the term of a general permit to one year and require a person holding a permit to deliver a report to the department specifying the volume of sedimentary material removed during the term of the permit, and require the commission to adopt rules regarding delivery and format of the report.

The proposed amendments would implement the regulatory changes necessitated by House Bill 2805.

Tom Heger, Sand and Gravel Permit Program Administrator, has determined that for each of the first five years that the rules as proposed are in effect, fiscal implications to the department, if any, will be positive. There will be no fiscal implications for other units of state or local government.

Mr. Heger also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be rules that execute the directives of the legislature.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any

further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the rules will not result in adverse economic impacts to small businesses, micro-businesses, or rural communities.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that because the rules as proposed do not impose a cost on regulated persons, it is not necessary to repeal or amend any existing rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; will not create a new regulation; will not expand, limit, or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Tom Heger, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4583 (e-mail: tom.heger@tpwd.texas.gov).

The amendments are proposed under authority of Parks and Wildlife Code, Chapter 86, which authorizes the commission to adopt rules to govern consideration of applications; setting and collection of application fees; permit conditions; issuance of permits by rule; pricing of and terms for payment for substrate materials; and any other matter necessary for the administration of the chapter.

The proposed amendments affect Parks and Wildlife Code, Chapter 86.

§69.101. Management and Protection.

(a) - (b) (No change.)

(c) Prior to issuing a permit under this section for the disturbance of marl sand and gravel within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary) the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Threshold for Referral) and §505.30 of this title (relating to Agency Consistency Determination). Grant or denial of an application for a permit under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council has lapsed.

§69.102. Definitions.

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

(1) - (4) (No change.)

(5) General permit--An authorization to disturb or remove sedimentary materials from the public waters of the state under conditions that meet the criteria set forth in §69.115 of this title (relating to General Permits) [qualify such activity as insignificant].

(6) - (10) (No change).

§69.105. *Application Procedures* [~~Individual Permit~~].

(a) The application for a [an individual] permit (either individual or general) shall set forth the proposed location, quantities, kinds of materials to be removed, equipment to be used, period of time, names of alongshore property owners on both sides of the waterway for one [one-half] mile both upstream and downstream of the proposed operation, and other information as may be required.

(b) All applications shall include:

(1) a completed sand and gravel permit application on a form provided by the department;

(2) a completed publisher's affidavit for notice approved by the department published in:

(A) the daily or weekly newspaper with the greatest circulation in the county or counties affected by the issuance of the permit for three consecutive days, if daily, and if weekly, in three consecutive weeks; and

(B) one newspaper published for the community closest to the proposed area of disturbance, if any;

(3) proof that notice approved by the department was sent by certified mail to all alongshore property owners within one river mile upstream and downstream of the proposed area of disturbance described in the application;

(4) a sedimentation impact assessment approved by the department; and

(5) any requested amendments to the permit, if the application is for the renewal of a permit.

(c) The public notice shall set forth a time and place for a public comment hearing to receive public comment on the application.

(d) [(b)] Within 30 days of receipt of an administratively complete application, the department shall:

[(1) set a time and place for a public comment hearing to receive public comment on the application;]

(1) [(2)] publish notice of the public comment hearing in the *Texas Register* at least 20 days prior to the hearing date; and

(2) [(3)] mail a copy of the notice to [all alongshore property owners as listed in the application and to] any person who has made a written request for forwarding of this information, and shall notify the applicant. [;]

[(4) send a copy of the notice to the daily newspaper of greatest circulation in the county or counties to be affected by the issuance of the permit, with a request that the notice be published for three consecutive days; and]

[(5) send a copy of the notice to the daily or weekly local newspaper, where available, in the community nearest the proposed location, with a request that the notice be published for one day.]

(e) [(e)] The public notice shall set forth in full any trade or corporate name used by the applicant. The applicant shall be responsible for prompt and full payment for all newspaper notice required.

(f) [(d)] A completed publisher's affidavit for all required newspaper notice shall be required prior to commencement of a contested case hearing.

(g) [(e)] The department shall set a 30-day public comment period to begin on the date of publication in the *Texas Register* or the newspaper(s), whichever is later. All relevant public comment shall be presented to the executive director or the commission at the time the permit application is presented for decision.

§69.108. *Criteria*.

(a) - (b) (No change.)

(c) No permit for a site previously unpermitted for the past five years may be issued for the disturbance or removal of 1,000 cubic yards or more of sedimentary materials from any waters[~~state-owned streambed~~] unless a department-approved[~~commission approved~~] study evaluating sediment budget, erosion rates of the river segment to be mined, and the effect on coastal and receiving waters has been completed within the immediately preceding five year period.

§69.110. *Period of Validity*.

(a) No individual permit shall be granted for a period longer than three years.

(b) No general permit shall be granted for a period longer than one year.

§69.111. *Requirements*.

(a) (No change.)

(b) For individual permits the[~~The~~] director shall require the permittee to make a good and sufficient bond payable to the department, and conditioned upon the prompt payment of charges for sedimentary materials and any damage done to property under the ownership or trusteeship of the state.

(c) The director shall require the permittee to:

(1) for individual permits, make a sworn report no later than the tenth of each month on all materials removed from public waters during the preceding month at the approved location or locations;

(2) - (4) (No change.)

(d) All permittees shall submit a report no later than the 30th day after the permit expiration date. The report shall:

(1) be made by certified mail to: Texas Parks and Wildlife Department, Sand and Gravel Program, 4200 Smith School Rd., Austin, TX 78744;

(2) contain a sworn, notarized verification that the contents of the report are true and correct;

(3) be mailed no later than 30 days from the date of permit expiration; and

(4) state the total volume of marl, sand, gravel, shell, or mudshell removed during the term of the permit.

(e) [(d)] The director shall require the permittee to remit to the department the established price on sedimentary materials removed during the month for which each monthly report is made. These prices are subject to change by the commission with the approval of the Governor of the State of Texas.

(f) [(e)] The director shall require that the permittee not interfere with state or federal improvements, navigation, fish life, or riparian rights of landowners in or along any navigable stream or public body of water.

§69.114. Individual [Sedimentary] Material Permit Application Fees.

(a) (No change.)

(b) Applications seeking authorization under an individual permit to take or disturb sedimentary material from more than one location shall be subject to an additional nonrefundable fee of \$100 for each additional location after the first.

(c) (No change.)

§69.117. Emergency Situations [Notification and Reporting for General Permits].

~~[(a) Notification to the department.]~~

~~[(1) At least 30 days prior to the commencement of the proposed activity, the applicant shall notify the department at its headquarters address of 4200 Smith School Road, Austin, Texas 78744, of the proposed activity by certified mail, return receipt requested. The letter shall, at a minimum, include:]~~

~~[(A) the name, address, and telephone number of the applicant;]~~

~~[(B) a description of the proposed activity or a plan of the proposed project;]~~

~~[(C) the size of the pipeline or cable, the width of the proposed trench, and the width of the right-of-way to be disturbed;]~~

~~[(D) a vicinity map showing the location of the proposed activity;]~~

~~[(E) the estimated amount of sedimentary material to be disturbed or removed and a description of its intended final disposal area; and]~~

~~[(F) the date that the proposed activity will begin;]~~

~~[(G) a statement disclosing whether or not any species listed as state or federal threatened or endangered species might be affected by, or found in the vicinity of, the proposed project; and]~~

~~[(H) maps, drawings and/or photographs depicting property of adjacent landowners and other resources including trees, wetlands, aquatic habitats such as channels or shallows.]~~

~~[(2) An activity is authorized if there is no response from the department within 30 days from the date of notification. A written confirmation of authorization may be obtained from the department, if requested.]~~

~~[(b) Public notice. Simultaneous with the notification to the department required by subsection (a) of this section, the applicant must give public notice by publication for one day in the daily newspaper of greatest circulation in the county or counties to be affected by the issuance of the permit, and a copy of the notice shall be posted at the county courthouse(s) in the affected county or counties. Such notice shall describe the proposed activity, specify the location of the proposed activity, specify the date that operations are to begin, and contain language informing the public that written comments may be sent to the executive director at 4200 Smith School Road, Austin, Texas 78744 or by calling 1-800-792-1112.]~~

~~[(a) [(e)] In the event [Waiver of notice requirement. The notification requirements of subsection (b) of this section shall not apply in the case] of an emergency that requires immediate action to prevent a threat to human health and safety or the environment, a person who seeks to remove or disturb less than 1,000 cubic yards of sedimentary material [. In such instances the applicant] shall promptly notify the~~

department that an emergency exists, and within ten days of completing an emergency activity, submit a written report to the department. Such report shall include:

~~(1) - (5) (No change.)~~

~~[(b) [(4)] Additional requirements. The department may, at its discretion, require a permittee to furnish reports during and after any activity authorized under the provisions of this subchapter [undesigned head].~~

§69.118. Best Management Practices.

~~(a) In issuing a [general] permit, the department relies in part on the information provided by the permittee with the application [notification]. If such information proves to be false, incomplete, or inaccurate, a permit may be modified, suspended, or revoked, in whole or in part following the administrative proceedings required by law.~~

~~(b) Structures and activities authorized under a general permit shall be in compliance with all applicable terms and conditions of §69.115 of this title (relating to General Permits) [; §69.117 of this title (relating to Notification and Reporting for General Permits);] and this section. Failure to abide by such conditions invalidates the permit[authorization] and may constitute operation without a permit.~~

~~(c) - (e) (No change.)~~

~~(f) Permittee shall allow authorized department representatives access to the project site as needed for periodic inspections to ensure that the activity being performed under the permit [this authorization] is consistent with the terms and conditions herein.~~

~~(g) - (n) (No change.)~~

§69.119. Fees.

The department shall charge a nonrefundable [processing] fee of \$250 for general permit applications [permits authorized under this undesignated head, payable at the time of the notification required by §69.117 of this title (relating to Notification and Reporting for General Permits)]. If the department determines that a general permit is not authorized for an activity, the application [processing] fee shall be applied to the application fee for an individual permit.

§69.120. Exemptions.

The commission finds that the state will not be deprived of significant revenue and there will be no significant adverse effects on navigation, the coastal sediment budget, riverine hydrology, erosion, or fish and wildlife resources or their habitat, and the following activities are therefore exempt from any permit requirement of the department or payment to the department for sedimentary material removed from the public waters of this state:

~~(1) (No change.)~~

~~(2) maintenance projects carried out by public utilities for noncommercial purposes; [and]~~

~~(3) public road projects of the Texas Department of Transportation; and~~

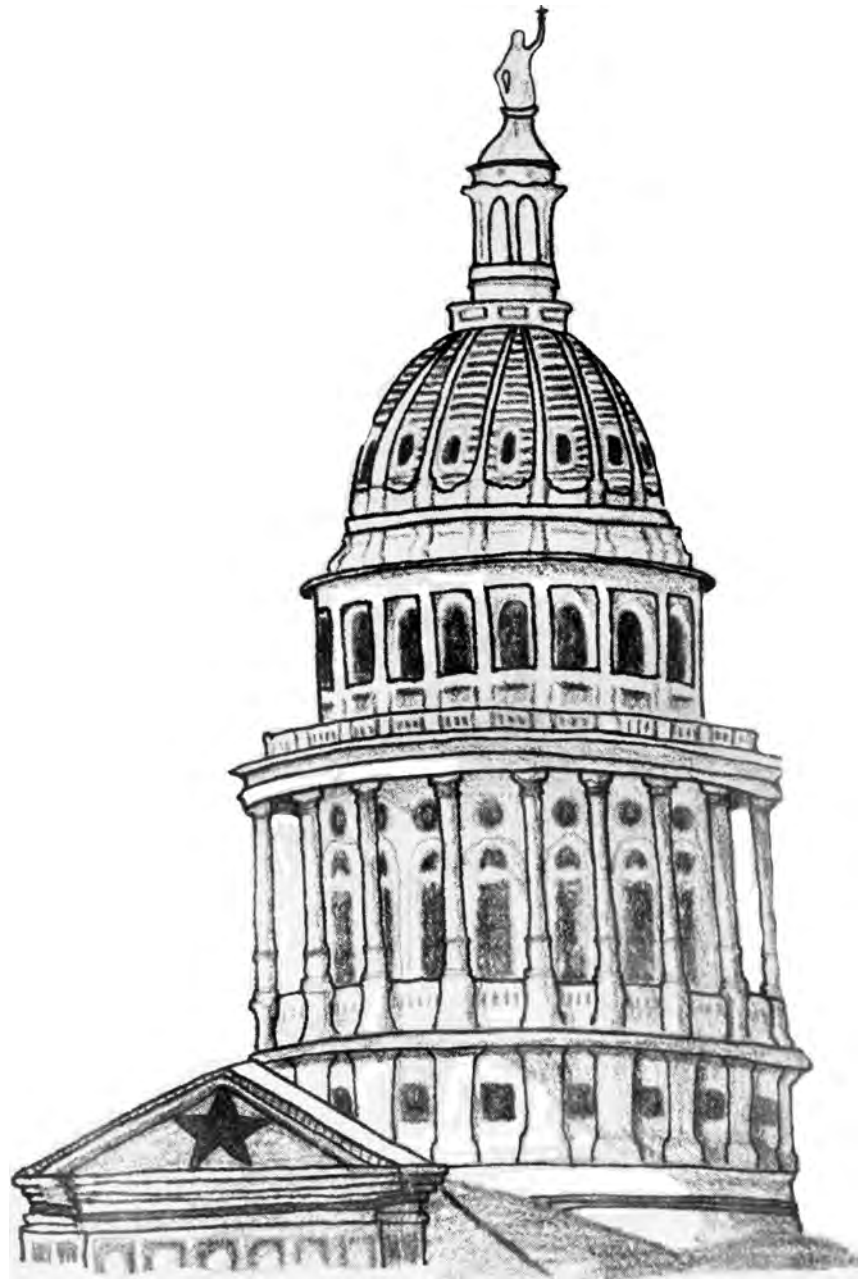
~~(4) projects resulting in insignificant takings or disturbances of marl, sand, grave, shell or mudshell as defined in Parks and Wildlife Code, §86.021(b-1).~~

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902119
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: August 18, 2019
For further information, please call: (512) 389-4775





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 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8058

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amended §355.8058, concerning Inpatient Direct Graduate Medical Education (GME) Reimbursement, with changes to the proposed text published in the May 10, 2019, issue of the *Texas Register* (44 TexReg 2333).

BACKGROUND AND JUSTIFICATION

Currently, HHSC makes Medicaid GME supplemental payments to two classes of hospitals: state-owned hospitals and non-state government-owned and operated hospitals. First, five state-owned teaching hospitals are eligible: University of Texas (UT) Medical Branch at Galveston, UT Health Science Center at Tyler, UT MD Anderson, UT Southwestern - Zale Lipshy, and UT Southwestern - Clements. The non-federal share for these GME payments comes from appropriations or patient revenues belonging to the state-owned teaching hospitals that are transferred to HHSC. HHSC draws down the federal match and makes quarterly interim Medicaid GME payments directly to the hospitals based on resident full-time equivalents (FTEs) and inpatient days reported by the hospital. Second, effective October 1, 2018, HHSC also makes Medicaid GME supplemental payments to nine non-state government-owned and operated teaching hospitals. The source of the non-federal share of these GME payments are intergovernmental transfers (IGTs) from the local governmental entities that own and operate the hospitals.

The purpose of the amendment is to allow teaching hospitals owned or operated by non-governmental entities to receive Medicaid GME supplemental payments, provided that the non-federal share is provided by a local governmental entity. This amendment allows all teaching hospitals in the state to participate in the program. As is the case for non-state government-owned and operated teaching hospitals, the payment will be based on the number of full-time equivalent medical residents and the Medicare per resident amount (PRA) reported on CMS Form 2552-10 and the Medicaid inpatient utilization percentage.

An annual Medicaid GME supplemental payment amount will be calculated for each eligible hospital using data from the hospital cost report most recently submitted to HHSC on October 1 of each year. HHSC will split the annual amount into two payments. HHSC is not requiring cost settlement of Medicaid GME supplemental payments for the new class of hospitals covered by this expansion.

COMMENTS

The 31-day comment period ended June 10, 2019.

During this period, HHSC received comments regarding the proposed rule from eleven commenters, including the Texas Hospital Association, the Children's Hospital Association of Texas, the Teaching Hospitals of Texas, Texas Children's Hospital, Doctors Hospital at Renaissance, Adelanto Healthcare Ventures, Community Health Systems, Texas Health Resources, Baylor Scott and White Health, Christus Health, and the Texas Medical Association. A summary of comments relating to the Inpatient Direct GME Reimbursement rule amendment and HHSC's responses follows.

Comment: One commenter recommended that HHSC add a one-time statewide per resident amount adjustment to more accurately capture the actual costs of residencies.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The per resident amount specified in the current rule amendment language is supported and recognized by CMS, as it appears on the Hospital Cost Report (CMS Form 2552-10). It is regularly inflated with an inflation factor approved by CMS.

Comment: Multiple commenters suggested that HHSC revise subparagraph (c)(2)(B) of the proposed rule to allow hospitals that are excluded from the Prospective Payment System (PPS) for Medicare to report full-time equivalent (FTE) residents from Worksheet E-4; Column 1, Line 6 and Column 2, Line 10.01.

Response: HHSC agrees and has revised the rule as suggested.

Comment: Multiple commenters suggested that HHSC allow hospitals to report current resident counts and supporting documentation to HHSC and allow these amounts to be used in lieu of the FTE residents reported on the cost report most recently submitted by the hospital to HHSC.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The resident FTEs amount specified in the current rule amendment language is supported and recognized by CMS, as it appears on the Hospital Cost Report (CMS Form 2552-10). As currently written, the rule specifies that on October 1 of each year, the cost report most recently submitted to HHSC or its designee, will be used for the annual GME payment calculation. If a hospital's number of resident FTEs increases during the GME payment year, the additional residents

will be reflected in the GME calculation for the next GME payment year.

Comment: Multiple commenters requested that HHSC further clarify the definition of "Medicaid inpatient utilization percentage." Commenters requested that HHSC edit the proposed definition to identify the specific lines from the Medicare cost report on Worksheet S-3, Part I, that should be used to calculate a hospital's GME Medicaid inpatient utilization percentage and clarify if observation days are included in both the Medicaid days and total days component of the calculation.

Response: HHSC agrees and has revised subparagraph (c)(2)(D) as suggested.

Comment: Multiple commenters suggested that HHSC remove "paid" from the term "paid Medicaid inpatient days" in the definition of GME Medicaid inpatient utilization percentage, since Worksheet S-3, Part I is not limited to paid days.

Response: HHSC agrees and has revised subparagraph (b)(2)(D) and subparagraph (c)(2)(D) as suggested.

Comment: Multiple commenters pointed out that hospitals that are operating a fairly new GME program may not have been assigned a base year or interim PRA by CMS; therefore, Line 18 of Worksheet E-4 may be blank. The suggested alternative is for HHSC to establish a geographic-based interim PRA.

Response: HHSC agrees that an alternative is necessary in this situation. HHSC will establish an interim Medicare PRA for hospitals not assigned a base year or interim PRA from CMS. HHSC will calculate this interim PRA by using the interns and residents cost from Worksheet B, Part I, Column 25, Line 118, divided by total interns and residents as determined in subparagraph (c)(2)(B) of the rule. Subparagraph (c)(2)(C) has been revised accordingly. Subparagraph (c)(3)(A) has also been revised to reference the interim Medicare PRA.

Comment: One commenter suggested that HHSC add the word "Medicaid" in paragraphs (b)(1) and (c)(1) to clarify that the program reimburses the hospital's estimated Medicaid inpatient direct GME cost.

Response: HHSC agrees and revised the rule as suggested.

Comment: One commenter suggested that subparagraph (c)(4) should be edited to read "On October 1 of each year, the annual cost report most recently submitted to HHSC or its designee, will be used for the semi-annual GME payment calculations."

Response: HHSC disagrees and declines to revise the rule in response to this comment. HHSC uses the data specified in the rule from the hospital's cost report to calculate an annual GME payment amount. That amount is then divided by two to determine the amount of each semi-annual payment.

Comment: One commenter recommended adding new language to the rule to describe the impact to participating hospitals in the event a governmental entity does not fully fund the non-federal share. The commenter specifically requests language stipulating that if the governmental entity transfers less than the full non-federal share of a hospital's annual calculated payment amount, HHSC will recalculate that specific hospital's payment based on the amount of the non-federal share actually transferred.

Response: HHSC agrees with the concept of this request and has revised subparagraph (c)(5)(C) by adding language that stipulates that if the governmental entity transfers less than

the full non-federal share of a hospital's annual calculated payment amount, HHSC will recalculate that specific hospital's payment based on the amount of the non-federal share actually transferred.

Comment: One commenter suggested that, in the case of hospital mergers, HHSC should calculate each pre-merged or pre-consolidated hospital's GME payment independently and, upon receipt of a CMS tie-in notice, aggregate the results to determine the surviving hospital's GME payment entitlement.

Response: HHSC has not revised the rule text in response to this comment, as each situation described by the commenter will be evaluated individually. The potential variance of circumstances involved in any future hospital mergers precludes HHSC from specifying one methodology that would apply to all possibilities.

Comment: One commenter suggested that if HHSC includes Medicaid observation bed days in the calculation of the Medicaid Inpatient Utilization Percentage, they should also include observation bed days in the total inpatient days component of the Medicaid Inpatient Utilization Percentage.

Response: No revision to the rule text is necessary, as HHSC already includes observation bed days in both Medicaid Inpatient Days and Total Inpatient Days.

STATUTORY AUTHORITY

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

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this adoption.

§355.8058. *Inpatient Direct Graduate Medical Education (GME) Reimbursement.*

(a) The Texas Health and Human Services Commission (HHSC) uses the methodology in this subsection to calculate Inpatient Direct Graduate Medical Education (GME) cost reimbursement for state-owned or state-operated teaching hospitals.

(1) Effective September 1, 2008, HHSC or its designee may reimburse a state-owned or state-operated teaching hospital with an approved medical residency program the hospital's inpatient direct GME cost for hospital cost reports beginning with state fiscal year 2009.

(2) Reimbursement of inpatient direct GME cost for state-owned or state-operated teaching hospitals:

(A) Inpatient direct GME cost, as specified under methods and procedures set out in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248 is calculated under similar methods for each hospital having inpatient direct GME costs on its tentative or final audited cost report.

(B) Definitions.

(i) Base year average per resident amount--the hospital's Medicaid allowable inpatient direct GME cost as reported on

CMS Form 2552-96, Hospital Cost Report ending in state fiscal year 2007; Worksheet B; Part I; Column 26; Line 95, divided by the unweighted FTE residents from Worksheet S-3; Part I; Line 25.

(ii) Current FTE residents--the hospital's number of full time equivalent (FTE) interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board, as reported on CMS Form 2552-96, Hospital Cost Report; Worksheet S-3; Part I; Line 25.

(iii) GME Medicaid inpatient utilization percentage--the hospital's proportion of paid Medicaid inpatient days, including managed care days, as reported on CMS Form 2552-96, Hospital Cost Report adjusted to Medicaid Claim Summary Report; Worksheet S-3; Part 1; Line 12; Column 5, divided by the hospital's total inpatient days, as reported on Worksheet S-3; Part 1; Column 6, Lines 12, 14 (subprovider days), and 26 (observation days). Medicaid inpatient days and total inpatient days will include inpatient nursery days.

(C) HHSC calculates the total GME payments for each hospital as follows:

(i) multiplies the base year average per resident amount by the applicable Centers for Medicare and Medicaid Services (CMS) Prospective Payment System Hospital Market Basket index;

(ii) multiplies the results in clause (i) of this subparagraph by the number of current full-time equivalent (FTE) residents; and

(iii) multiplies the results in clause (ii) of this subparagraph by the GME Medicaid inpatient utilization percentage, which results in the total GME payments.

(D) Inpatient direct GME costs are removed from the reimbursement methodology and not used in the calculation of the provider's inpatient cost settlement.

(E) The GME interim payments will be reimbursed on a quarterly basis only after hospital services have been rendered. The interim payments are payable within 90 days of the receipt of the hospital's quarterly resident FTE data. Each hospital's quarterly resident FTE data will be divided by 4 to determine the average resident FTEs for each quarter. The interim payments will be reconciled and settled based on audited final cost report data.

(F) To receive GME payments from HHSC, a state-owned or state-operated teaching hospital must be enrolled as a Medicaid provider with HHSC and provide intergovernmental transfers to HHSC to fund the non-federal portion of reimbursement for GME costs.

(b) HHSC uses the methodology in this subsection to calculate reimbursement for GME cost reimbursement for non-state government-owned and operated teaching hospitals.

(1) Effective October 1, 2018, HHSC or its designee may reimburse a non-state government-owned and operated teaching hospital with an approved medical residency program the hospital's estimated Medicaid inpatient direct GME cost.

(2) Definitions.

(A) Non-state government-owned and operated teaching hospital--a hospital with a properly approved medical residency program that is owned and operated by a local government entity, including but not limited to, a city, county, or hospital district.

(B) FTE residents--the hospital's number of unweighted full time equivalent (FTE) interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; Column 9; Line 27.

(C) Medicare per resident amount (PRA)--average direct cost per medical resident, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet E-4; Line 18.

(D) GME Medicaid inpatient utilization percentage--the hospital's proportion of Medicaid inpatient days, including managed care days, divided by the hospital's total inpatient days, as reported on Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; columns 7 and 8.

(3) HHSC calculates the total annual GME payment for each hospital as follows:

(A) multiplies the FTE residents by the Medicare per resident amount;

(B) multiplies the results in subparagraph (A) of this paragraph by the GME Medicaid inpatient utilization percentage.

(4) On October 1 of each year, the cost report most recently submitted to HHSC or its designee, will be used for the annual GME payment calculation.

(5) To receive GME payments from HHSC, a non-state government-owned and operated teaching hospital must be enrolled as a Medicaid provider with HHSC and provide intergovernmental transfers to HHSC to fund the non-federal portion of reimbursement for GME costs.

(6) Payments under this subchapter will be made on a semi-annual basis.

(c) HHSC uses the methodology in this subsection to calculate reimbursement for GME cost reimbursement for teaching hospitals not described in subsections (a) or (b) of this section.

(1) Effective April 1, 2019, HHSC or its designee may reimburse a non-government owned or operated teaching hospital with an approved medical residency program the hospital's estimated Medicaid inpatient direct GME cost.

(2) Definitions.

(A) Teaching hospital--a hospital with a properly approved medical residency program.

(B) FTE residents--the hospital's number of unweighted full time equivalent (FTE) interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board:

(i) as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; Column 9; Line 27, or

(ii) for hospitals excluded from the Prospective Payment System (PPS) for Medicare, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet E-4; the sum of Column 1, Line 6 and Column 2, Line 10.01.

(C) Interim Medicare per resident amount (PRA)--If a hospital does not have a Medicare PRA reported on the Hospital Cost

Report; CMS Form 2552-10; Worksheet E-4; Line 18, then HHSC shall establish an interim Medicare PRA as follows:

(i) The annual estimated cost of FTE residents will be the amount on Hospital Cost Report; CMS Form 2552-10; Worksheet B, Part I, Column 25, Line 118.

(ii) Divided by the FTE residents as determined in subparagraph (B) of this paragraph.

(D) Medicare per resident amount (PRA)--average direct cost per medical resident, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet E-4; Line 18.

(E) GME Medicaid inpatient utilization percentage--the hospital's proportion of Medicaid inpatient days, including managed care days, divided by the hospital's total inpatient days, as reported on Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part I; columns 7 and 8.

(i) The numerator (total Medicaid inpatient days including managed care days) is the sum of Worksheet S-3, Part I, column 7, Lines 1 through 4, 8 through 13, 16 through 18, 28, and 30 through 32 and all subscripts of these lines.

(ii) The denominator (total inpatient days) is the sum of Worksheet S-3, Part I, column 8, Lines 1 through 4, 8 through 13, 16 through 18, 28, and 30 through 32 and all subscripts of these lines.

(3) HHSC calculates the total annual GME payment for each hospital as follows:

(A) multiplies the FTE residents by the Medicare PRA or the interim Medicare PRA;

(B) multiplies the results in subparagraph (A) of this paragraph by the GME Medicaid inpatient utilization percentage.

(4) On October 1 of each year, the cost report most recently submitted to HHSC or its designee, will be used for the annual GME payment calculation.

(5) To receive GME payments from HHSC:

(A) a hospital under this subsection must be enrolled as a Medicaid provider with HHSC;

(B) HHSC must receive the non-federal portion of reimbursement for GME costs through a method approved by HHSC and CMS for reimbursement through this program; and

(C) a hospital under this subsection must designate a single local governmental entity to provide the non-federal share of the payment through a method determined by HHSC. If the single local governmental entity transfers less than the full non-federal share of a hospital's payment amount calculated in paragraph (3) of this subsection, HHSC will recalculate that specific hospital's payment based on the amount of the non-federal share actually transferred.

(6) Payments under this subchapter will be made on a semi-annual basis.

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

Filed with the Office of the Secretary of State on July 3, 2019.

TRD-201902113

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: August 1, 2019

Proposal publication date: May 10, 2019

For further information, please call: (512) 730-7445



CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

SUBCHAPTER F. INVESTIGATIONS

1 TAC §§371.1305, 371.1307, 371.1312

The Texas Health and Human Services Commission (HHSC) adopts amendments to §371.1305, concerning Preliminary Investigation, and §371.1307, concerning Full Investigation. HHSC also adopts new §371.1312, concerning Recipient Investigations.

The amendments to §371.1305 and §371.1307, and new §371.1312, are adopted without changes to the proposed text as published in the March 22, 2019, issue of the *Texas Register* (44 TexReg 1494) and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The Texas Government Code §531.102(p) was added by Senate Bill (S.B.) 207, 84th Legislature, 2015 to require HHSC and the Office of Inspector General (OIG) to adopt rules establishing criteria for opening, prioritizing, and closing cases. Accordingly, HHSC and OIG adopted rule §371.1305 which established the criteria mandated by the statute. In its report to the 85th Legislature in February 2017, the Sunset Commission noted agency implementation as partially complete and recommended that OIG adopt rules relating to prioritizing recipient cases and guiding field investigators in closing cases.

As recommended by the Sunset Commission, the amendments and the new rule formalize criteria for prioritizing and closing cases. The amendments and the new rule delineate inclusive lists of specific criteria that will be considered by investigators when they consider whether a preliminary, full-scale, or recipient investigation should be closed. In the case of preliminary investigations, investigators also consider these criteria when deciding whether a case should be pursued as a full-scale investigation. In addition, the new rule requires that recipient cases be prioritized according to the highest potential for recovery and federal timeliness requirements.

The amendments and new rule do not change OIG's approach to opening, closing, and prioritizing investigations, they only provide more detail as to the criteria that the agency's investigators apply when they evaluate a recipient case or whether a case should be closed.

COMMENTS

The 30-day comment period ended April 21, 2019. During this period, HHSC received comments regarding the rules from the Texas Dental Association. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Commenter requests clarification concerning the types of "relevant information or analysis", as listed in amended

§371.1305(e)(7), OIG will consider when determining whether to close a preliminary investigation.

Response: HHSC included this factor to clarify that any type of information or analysis pertinent to the decision to close a case will be considered. No change was made in response to this comment.

Comment: Commenter noted a factor that the OIG can consider when determining whether to close a full investigation is when the identified overpayment is not "cost-effective to pursue" as provided in amended §371.1307(b)(4). Commenter cautions against deciding to close a full investigation on this basis, especially if the potential violation is endangering recipients' lives or constituting waste, abuse, and fraud of taxpayer dollars.

Response: HHSC agrees with this comment. Section 531.102(p)(2)(A), Government Code, requires OIG to prioritize cases according to the highest potential for recovery, among other factors. OIG will consider the cost-effectiveness of recovering any potential overpayment but that is not its sole consideration. No change was made in response to this comment.

Comment: Commenter cautions OIG that closing a full investigation because a provider needs only education, as provided in amended §371.1307(b)(8), may create an avenue that providers may exploit in order to repeatedly commit violations. Commenter also cautions OIG against closing a full investigation before ensuring patient safety and halting waste, abuse, and fraud.

Response: HHSC agrees with this comment. OIG takes into consideration a provider's history as well as any prior education efforts before determining an appropriate course of action. No change was made in response to these comments.

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.102 (a), which provides HHSC-OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of the Inspector General 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; 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; and Texas Government Code §531.102(p), which requires the Executive Commissioner to work in consultation with the Office of the Inspector General to adopt rules necessary to provide guidelines for opening and closing provider and recipient cases.

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

Filed with the Office of the Secretary of State on July 3, 2019.

TRD-201902096

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 23, 2019
Proposal publication date: March 22, 2019
For further information, please call: (512) 491-4052

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1010

The Texas Education Agency (TEA) adopts an amendment to §100.1010, concerning charter school performance frameworks. The amendment is adopted with changes to the proposed text as published in the April 5, 2019 issue of the *Texas Register* (44 TexReg 1634). The adopted amendment modifies the existing rule to comply with statutory requirements; track agency policy, including academic accountability and the Financial Integrity Rating System of Texas (FIRST); and more fully utilize available school data.

REASONED JUSTIFICATION. The existing commissioner's rules in 19 TAC Chapter 100, Subchapter AA, cover a wide range of issues related to open-enrollment charter schools. The rules are organized in divisions addressing related subject matter, as follows: Division 1, General Provisions; Division 2, Commissioner Action and Intervention; Division 3, Charter School Funding and Financial Operations; Division 4, Property of Open-Enrollment Charter Schools; Division 5, Charter School Governance; and Division 6, Charter School Operations.

Section §100.1010 was adopted effective September 18, 2014, and was last amended effective August 2, 2018. The rule is issued under TEC, §12.1181, which requires the commissioner to develop and adopt frameworks by which the performance of open-enrollment charter schools is measured. The performance frameworks consist of several indices within academic, financial, and operational categories with data drawn from various sources, reflected in the Charter School Performance Framework (CSPF) Manual, which is included as a figure in the rule and updated every year pursuant to statutory requirement.

The adopted amendment replaces the 2017 CSPF Manual with the 2018 CSPF Manual as Figure: 19 TAC §100.1010(c). The 2018 version of the manual includes the following significant changes from the 2017 version.

The 2018 CSPF Manual revises the manual's academic indicators to track agency policy pertaining to academic accountability, with indicators for overall academic performance, achievement status for subgroups, English language proficiency for English learners, and campus ratings status. The new manual also revises financial frameworks to draw from FIRST for charter schools (Charter FIRST) as it relates to a school's short-term and long-term solvency. In addition, the new manual would add

operational indicators addressing the requirement that a school have at least 50% of its students in tested grades, its eligibility to participate in the Child Nutrition Program, its appropriate handling of secure testing materials, and its administrative cost ratio as reported in Charter FIRST. Finally, the 2018 CSPF Manual revises indicators for adult high school diploma and industry certification charter schools to more fully utilize available school data.

In response to public comment, the following changes were made to the CSPF Manual since published as proposed.

The overview section of the CSPF Manual was revised to clarify the purpose of the CSPF.

Indicator 1d of the CSPF Manual's non-alternative education accountability (AEA) indicators was revised to make available more points for charters that operate high-performing campuses and fewer points for charters that operate low-performing campuses.

Indicator 1c of the CSPF Manual's AEA indicators was revised to make available more points for charters that operate high-performing campuses and fewer points for charters that operate low-performing campuses.

Indicator 3f of the CSPF Manual was revised to clarify the procedure by which a governing board member would report his or her training status.

Indicator 3i of the CSPF Manual was revised to clarify the standards by which schools would be rated for Texas Records Exchange (TREx) system usage.

Indicator 3m of the CSPF Manual was revised to clarify rule authority and language regarding the indicator's applicability.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began April 5, 2019, and ended May 6, 2019. Following is a summary of the public comments received and corresponding responses.

Comment: Texas Charter Schools Association (TCSA) commented that the overview section of the CSPF Manual did not explain whether the overall ratings on the CSPF will be used in any way other than to inform the public. TCSA requested clarity be added to the introduction to describe any way in which the CSPF could be used.

Response: The agency agrees and has amended the language in the overview section at adoption to provide additional clarity about the purpose of the manual.

Comment: TCSA commented that by double counting the academic accountability ratings and the Charter FIRST ratings, schools that are already negatively impacted by a poor rating in those systems are affected again when the performance framework reuses those ratings.

Response: The agency disagrees. The central principle that guides the charter school movement is that charter schools receive more autonomy in exchange for more accountability, and the agency expects all charter schools to effectively manage public funds and provide students with high-quality learning opportunities. The National Association for Charter School Authorizers encourages authorizers to hold charter schools accountable for their academic, financial, and operational performance by using measures that are aligned with federal and state accountability systems. Therefore, the agency draws upon both Charter FIRST and the A-F accountability system to provide dis-

tinct sets of critical information about the degree to which charter schools are meeting the authorizer's high expectations.

Comment: TCSA commented that it was unclear if the overall ranking from the Closing the Gaps data will be used for Indicator 1b or only the student achievement portion of the data set. TCSA encouraged the agency to use only the student achievement section for 1b because English language proficiency is used in Indicator 1c. If the overall Closing the Gaps data were used in Indicator 1b, that would lead to a double counting with Indicator 1c.

Response: The agency offers the following clarification. Within the Closing the Gaps Status Table, which is available through the 2017-2018 Texas Academic Performance Report System (web version), the section titled "English Language Proficiency Status" is the data source for Indicator 1c. This indicator focuses on the performance of English learners on the Texas English Language Proficiency Assessment System (TELPAS). The section titled "Academic Achievement Status" is the data source for Indicator 1b. This data reflects the performance of subpopulations on the State of Texas Assessments of Academic Readiness (STAAR®).

Comment: Responsive Education Solutions (RES) commented that AEA Indicator 1b does not reflect the success of students in dropout recovery schools. RES recommended removing the indicator, reducing the weight of the indicator in the AEA accountability framework, or using the student academic achievement status component in the Closing the Gaps domain 3.

Response: The agency disagrees. The agency expects all charter schools to provide all students with high-quality learning opportunities. It is important to incorporate Indicator 1b because this is the only indicator that focuses on the academic performance of subgroups. The indicator is different from that for non-AEA schools because AEA scaling is available only at the domain level and not within components of the domain. Consequently, it would not be fair to AEA schools to use data from components that are not appropriately scaled for AEA schools.

Comment: RES and an individual commented that with regard to Indicator 1c for AEA schools and Indicator 1d for non-AEA schools, the commissioner should consider the distribution of campus ratings under the charter district because the performance of a district in which 90% or more of its campuses are rated at the two highest performance levels is different than that of a charter district in which its campuses are meeting state standards but are not high performing. RES characterized this as an "all or nothing" score that does not accurately reflect a charter district's overall success and unfairly disadvantages large operators.

Response: The agency partially agrees and has revised the scoring at adoption to make available more points for charters that operate high-performing campuses and fewer points for charters that operate low-performing campuses. However, the agency emphasizes that it expects all charter schools to provide students with high-quality educational options. In order to meet this expectation, a charter district must take responsibility for the quality of all of the campuses that it operates and close those campuses that are low-performing or that fail to meet state standards.

Comment: TCSA commented that Indicator 3a fails to account for cases when the school has a long-term substitute supporting a teacher on medical or family leave. TCSA recommended that the term "teachers" be changed to "full-time teachers of record"

and that the language in the "does not meet" description be updated to parallel that in the "meets expectations" description.

Response: The agency disagrees. The law pertaining to charter school teacher qualification is straightforward: with one narrow exception, a person employed as a principal or a teacher must hold a baccalaureate degree. A substitute in a classroom supporting a teacher on medical or family leave is not to be reported as the teacher in that classroom.

Comment: TCSA commented that Indicator 3a inappropriately penalizes a charter school if its board members and school officers hired or appointed prior to December 3, 2018, have not completed their training. In addition, TCSA noted that schools that do not submit their governance forms by the required date are automatically assigned a "does not meet expectations" rating on this indicator.

Response: The agency partially agrees and offers the following clarification. The compliance section on the Annual Governance Reporting Form asks individuals whether they have completed the annually required training. If they select "no," they are prompted to select a reason for not completing that training by the December 1 submission date of the form. One explanation option states, "I am a new official at an existing charter school. I have one calendar year from taking office to complete the training." Individuals who select this explanation option are categorized as meeting expectations because they met the criteria for exceptions listed on the TEA Governance Form, which is part of the existing "meets" description for Indicator 3i. The language of Indicator 3i has been revised at adoption to reflect this procedure. A failure to submit the governance form by the submission deadline necessarily results in a "does not meet expectations" rating, because such a failure would deny the agency a required data point for these performance frameworks. However, the agency has clarified this point at adoption by incorporating submission failure language in the "does not meet expectations" description itself.

Comment: TCSA commented that the terms "timely" and "consistently" were not defined in Indicator 3i. They recommended either defining those terms or removing the indicator.

Response: The agency agrees that Indicator 3i needed clarification and has revised the language in the indicator accordingly at adoption. TEC, §7.010, requires charter schools to use an electronic student records system. Section 129.1025, Adoption by Reference: Student Attendance Accounting Handbook, explicitly states that charter schools must follow the student attendance guidelines outlined in the *2018-2019 Student Attendance Accounting Handbook*. Consistent with TEC, §25.002(a-1), the handbook requires public schools to use the TREx system to request, send, and receive student records. The language of Indicator 3i has been revised at adoption to clarify that charter schools must respond to requests for information in TREx within 10 working days and must follow the TREx data standards.

Comment: TCSA and RES commented that Indicator 3m is not an absolute requirement for charter schools because the rules that are cited refer specifically to renewals and amendments.

Response: The agency agrees that Indicator 3m needed clarification and has revised the language in the indicator accordingly at adoption. The requirement that at least 50% of a charter school's student population is in tested grades can be found not only in the renewal and amendment standards of 19 TAC §100.1032 and §100.1033 but also the application standards of 19 TAC §100.1015, which applies to all open-enrollment char-

ter schools. Section 100.1015(b)(3)(G) provides that charter schools must commit to serving, by their fifth year of operation, at least as many students in grades assessed for state accountability purposes as those served in grades not assessed for state accountability purposes. The language of Indicator 3m has been revised at adoption to reflect this rule.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §12.1181, which directs the commissioner of education to develop and adopt open-enrollment charter school performance frameworks; and TEC, §29.259, which directs the commissioner of education to establish an adult high school diploma and industry certification charter school pilot program, including adoption of frameworks to measure the performance of such a school.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12.1181 and §29.259.

§100.1010. Performance Frameworks.

(a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Framework (CSPF) Manual established under Texas Education Code (TEC), §12.1181. The CSPF Manual will include measures for charters registered under the standard system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).

(b) The performance of an adult high school diploma and industry certification charter school will be measured annually in the CSPF against a set of criteria established under TEC, §29.259.

(c) The assignment of performance levels for charter schools on the 2018 CSPF report is based on specific criteria, which are described in the *2018 Charter School Performance Framework Manual* provided in this subsection.

Figure: 19 TAC §100.1010(c)

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

Filed with the Office of the Secretary of State on July 2, 2019.

TRD-201902088

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: July 22, 2019

Proposal publication date: April 5, 2019

For further information, please call: (512) 475-1497



CHAPTER 101. ASSESSMENT
SUBCHAPTER FF. COMMISSIONER'S RULES
CONCERNING DIAGNOSTIC ASSESSMENT

19 TAC §101.6003

The Texas Education Agency (TEA) adopts new §101.6003, concerning local assessments. The new section is adopted without changes to the proposed text as published in the April 19, 2019 issue of the *Texas Register* (44 TexReg 1956) and will not be republished. The adopted new section clarifies statutory provisions in Texas Education Code (TEC), Chapter 39, regarding administration of district-required assessment instruments.

REASONED JUSTIFICATION: TEC, §39.0262 and §39.0263, institute prohibitions on district-required testing when those tests were designed specifically around preparation for a state assessment. These prohibitions address the concern that instructional time should not be spent practicing how to take a test rather than learning the knowledge and skills necessary to master a subject. The statutory language, however, could be construed as prohibiting diagnostics designed to improve mastery and inform instructional practice. The proposed new rule would exercise the commissioner's rulemaking authority to provide clarity to school districts that assessments focused on student subject mastery and student learning do not fall within the definition of assessments designed to prepare students for a state-administered assessment.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began April 19, 2019, and ended May 28, 2019. Following is a summary of public comments received and corresponding agency responses.

Comment: A school district employee appreciated the clarification of the rule.

Response: The agency agrees. The purpose of the rule is to clarify which types of assessments are not considered benchmarks and which types of assessments are considered benchmarks and are limited by statute.

Comment: The Texas Classroom Teachers Association (TCTA) and the Texans Advocating for Meaningful Student Assessment (TAMSA) had concerns that the new rule conflicts with the provisions in TEC, §39.0262 and §39.0263, and inappropriately narrows the definition.

Response: The agency disagrees. Authority for this rule is provided by TEC, §39.001. The new rule does not conflict with TEC, §39.0262 and §39.0263. It provides clarification regarding which types of assessments are not considered benchmarks and which types of assessments are considered benchmarks and are limited by statute. Assessments focused on student subject mastery and student learning do not fall within the definition of assessments designed to prepare students for a state-administered assessment as indicated in §101.6003(b). These types of classroom assessments are part of the routine instructional cycle--teach a concept, evaluate students' learning, then adjust instruction as needed. Assessments designed to "teach to the test" or that are "practice tests" are still limited under statute and §101.6003(a).

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §39.001, which authorizes the commissioner to adopt rules regarding assessments; TEC, §39.0262, which prohibits districts from requiring locally required assessments for more than ten percent of the instructional days if the local assessment was designed to prepare students for state-administered assessment instruments; and TEC, §39.0263, which prohibits districts from administering more than two benchmark assessments if the benchmark assessment was designed to prepare students for state-administered assessment instruments.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§39.001, 39.0262, and 39.0263.

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

Filed with the Office of the Secretary of State on July 2, 2019.

TRD-201902089

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: July 22, 2019

Proposal publication date: April 19, 2019

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CHAPTER 151. COMMISSIONER'S RULES CONCERNING PASSING STANDARDS FOR EDUCATOR CERTIFICATION EXAMINATIONS

19 TAC §151.1001

The Texas Education Agency (TEA) adopts an amendment to §151.1001, concerning passing standards for educator certification examinations. The amendment is adopted without changes to the proposed text as published in the May 17, 2019 issue of the *Texas Register* (44 TexReg 2445) and will not be republished. The adopted amendment specifies the satisfactory scores for the new Principal as Instructional Leader examination and the new Performance Assessment for School Leaders and updates the passing standards for several other examinations.

REASONED JUSTIFICATION: Texas Education Code, §21.048(a), requires the commissioner of education to establish the satisfactory levels of performance required on educator certification examinations and require a satisfactory level of performance on each core subject covered by an examination.

The amendment adopts passing standards for the new Principal as Instructional Leader certification examination and the new Performance Assessment for School Leaders. Most of the passing standards previously set by the commissioner have been maintained, but others have changed as follows.

Beginning July 29, 2019, passing standards will be updated for the following Texas Examinations of Educator Standards (TExES) to reflect the average raw cut score based on all active forms of a test as changed by new test forms being introduced and/or some test forms being discontinued or revised:

- 801 Core Subjects EC-6 English Language Arts and Reading and the Science of Teaching Reading
- 802 Core Subjects EC-6 Mathematics
- 803 Core Subjects EC-6 Social Studies
- 804 Core Subjects EC-6 Science
- 113 English Language Arts and Reading/Social Studies 4-8
- 114 Mathematics/Science 4-8
- 115 Mathematics 4-8
- 806 Core Subjects 4-8: English Language Arts and Reading
- 808 Core Subjects 4-8: Social Studies
- 235 Mathematics 7-12
- 238 Life Science 7-12
- 231 English Language Arts and Reading 7-12
- 256 Journalism 7-12

- 177 Music EC-12
- 158 Physical Education EC-12
- 242 Technology Applications EC-12
- 272 Agriculture, Food, and Natural Resources 6-12
- 273 Health Science 6-12
- 276 Business and Finance 6-12
- 184 American Sign Language EC-12
- 610 LOTE: French EC-12
- 611 LOTE: German EC-12
- 613 LOTE: Spanish EC-12
- 161 Special Education EC-12
- 182 Visually Impaired
- 283 Braille
- 154 English as a Second Language Supplemental
- 163 Special Education Supplemental
- 160 Pedagogy and Professional Responsibilities EC-12
- 270 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12
- 153 Educational Diagnostician
- 068 Principal

The average passing standard is expressed as an average raw cut score of all active forms of a test or the minimum proficiency level. It is critical to note that the actual raw cut scores may vary slightly from form to form to account for differences in test item difficulty across forms and to ensure equitability.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began May 17, 2019, and ended June 17, 2019. Following is a summary of the public comment received and corresponding agency response.

Comment: Texas Woman's University commented that the standard for the Bilingual Target Language Proficiency Test (BTLPT) should remain constant or be lowered. The commenter cited as rationale decreases in the number of teacher candidates attempting the assessment, the number of candidates receiving initial bilingual certifications, and the current educator candidate performance on domain four (written expression) of the current test.

Response: The agency disagrees. The amendment maintains the standard for the BTLPT examination constant. The bilingual certification is currently offered only as a supplemental, and certifications have increased over the past five years (from 1,223 certifications issued in 2014-2015 to 1,648 certifications issued in 2017-2018) in addition to the number of candidates taking the examination (from 2,886 test-takers in 2014-2015 to 3,116 test-takers in 2017-2018). The agency plans to convene stakeholder groups to consider alternative measures of language written expression for potential future implementation.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §21.048(a), which requires the commissioner to determine the level of performance considered to be satisfactory on educator certification examinations and further authorizes the commissioner to require a satisfactory level of performance on each core subject covered by an examination.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.048(a).

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902118

Cristina De La Fuente-Valadez

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Texas Education Agency

Effective date: July 28, 2019

Proposal publication date: May 17, 2019

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER D. DISASTER EMERGENCY RULE

22 TAC §172.20, §172.21

The Texas Medical Board approves the adoption of new rules §172.20 and §172.21, concerning a process to provide a rapid and safe response to health care and medical needs as a result of disasters and emergencies through an emergency licensing process. The new rules are being adopted with minor non-substantive changes to the proposed text as published in the April 26, 2019, issue of the *Texas Register* (44 TexReg 2152). The adopted rules are being republished.

The new rules are set forth to implement procedures in the event of an occurrence for which the Governor of the State of Texas has declared a state of emergency. This rule allows physicians to practice medicine and other health care providers to practice the scope of their appropriate licensure, permit, or certification in Texas to assist with disaster response operations.

Written comments were received regarding the new rules from the Texas Medical Association. No one appeared in person to testify regarding the rules at the public hearing on June 14, 2019.

SUMMARY OF TMA'S COMMENTS AND BOARD RESPONSES

Comment No. 1

TMA supported most of the rule generally. However, there were certain provisions that they opposed or thought several substantive modifications should be made. Several changes were grammatical. TMA sought to add the word "and emergencies" to the phrase disaster.

Board Response:

The Board made the corrections and added "and emergencies" where necessary throughout the rules.

Comment No. 2

TMA recommended that the Board verify hospital-to-hospital credentialing under the proposed rules.

Board Response:

The Board declined to accept this recommendation. There was no issue noted during Hurricane Harvey. If there is an issue this would be flagged during credentialing at the facility where the physician practices. The purpose and utility of using the facility-to-facility process is to have a check on a physician's status, while allowing rapid response of placement to provide medical care in the affected area. In addition, the Texas hospital has to keep a roster of incoming physicians under these rules, so if there is a complaint the Board can readily identify the physician and conduct an investigation.

Comment No. 3

TMA urged that a sponsoring physician arrangement, as distinguished from a hospital-to-hospital arrangement, should hold a valid, unlimited, and unrestricted license to practice medicine in Texas. TMA also recommended that the incoming sponsored physician not have any discipline related to felonies or sexual boundaries.

Board Response:

The Board is not aware of any widespread problems during Hurricane Harvey. Additionally, the Board's experience has shown that most physicians coming in response to a disaster or emergency do so through a hospital-to-hospital arrangement, rather than being sponsored by individual practitioners. Further, the sponsoring physician is required to provide an application and other documentation in a sponsoring arrangement. The documentation requirements provide the Board the ability to verify the status of both the sponsoring physician and the incoming sponsored physician. The Board will monitor and review the sponsored physicians providing medical services, outcomes, and complaints arising from such events and will evaluate the need for added precautions and standards.

Comment No. 4

TMA had a series of comments related to the health care providers other than physicians that might assist in a disaster. The comments primarily focused on the supervision of these practitioners and delegation of prescriptive authority to physician assistants and advanced nurse practitioners.

Board Response:

The Board declined to change the rules, as the rules specifically require these providers to comply with all Texas law, and only practice within the scope allowed under Texas law.

The Board does agree to clarify that the supervising physician must be Texas licensed and that license must have been valid prior to the declaration of the disaster. In addition, the physician can only supervise and delegate if they have an unrestricted license under Texas law, unless they are otherwise specifically authorized by the Board to have supervisory and delegation authority.

Also, the Board agrees that an out-of-state physician should not come into Texas to obtain an emergency license and then be able to supervise other out-of-state practitioners.

Consistent with the reasoning stated above, the Board did make non-substantive changes and clarifications to the rules and submits the revised rules herein and proceeds with the adoption of §172.20 and §172.21.

The new rules are adopted under the authority of the Texas Occupations Code Annotated, §153.001.

§172.20. Physician Practice and Limited License for Disasters and Emergencies.

(a) The purpose of this rule is to allow the Texas Medical Board, its advisory boards and committees (collectively "Board") to provide a rapid and safe response to health care and medical needs as a result of natural disasters and emergencies through an emergency licensing process. In the event of an occurrence for which the Governor of the State of Texas has declared a state of emergency, in accordance with the Texas Government Code, the Office of the Governor may temporarily suspend all necessary statutes and rules to allow health care providers to practice medicine, or within the scope of their appropriate licensure, permit, or certification in Texas to assist with disaster response operations.

(b) The Board shall, pursuant to a lawful emergency declaration, waive requirements for licensure except to the extent set forth below and after the Governor of the State of Texas has declared a disaster or state of emergency, or in the event of an occurrence for which a county or municipality has declared a disaster or state of emergency, or to protect the public health, safety or welfare of its citizens. There are two ways for physicians to practice medicine under this rule:

(1) Hospital-to-Hospital Credentialing: A physician who holds a full, unlimited and unrestricted license to practice medicine in another U.S. state, territory or district and has unrestricted hospital credentials and privileges in any U.S. state, territory or district may practice medicine at a hospital that is licensed by the Texas Health and Human Services Commission upon the following terms and conditions being met:

(A) the licensed Texas hospital shall verify all physician credentials and privileges;

(B) the licensed Texas hospital shall keep a list of all physicians coming to practice and shall provide this list to the Board within ten (10) days of each physician starting practice at the licensed Texas hospital; and

(C) the licensed Texas hospital shall also provide the Board a list of when each physician has stopped practicing medicine in Texas under this section within ten (10) days after each physician has stopped practicing medicine under this section.

(2) Limited Emergency License: A physician who holds a full, unlimited and unrestricted license to practice medicine in another U.S. state, territory or district may qualify for a limited emergency license upon the following conditions being met:

(A) the applicant must complete a limited emergency license application;

(B) the Board shall verify that the physician holds a full, unlimited and unrestricted license to practice medicine in another U.S. state, territory or district; and

(C) the applicant must present written verification from a Texas sponsoring physician who is requesting the physician to assist in the disaster or emergency.

(c) The Board may limit the sponsored physician's practice locale and scope of practice.

(d) The Texas sponsoring physician shall be considered the supervising physician for the sponsored physician.

(e) The Board shall have jurisdiction over all physicians practicing under this subchapter for all purposes set forth in or related to Texas Occupations Code, and all other applicable state and federal

laws, and such jurisdiction shall continue in effect even after any and all physicians have stopped practicing medicine under this section related to providing medical services in Texas during the disaster or emergency.

(f) A physician license issued under this subchapter shall be valid for no more than thirty (30) days from the date the physician is licensed or until the emergency or disaster declaration has been withdrawn or ended, whichever is longer.

(g) Physicians holding limited emergency licenses under this subchapter shall not receive any compensation outside of their usual compensation for the provision of medical services during a disaster or emergency.

§172.21. Other Health Care Providers Practice and Limited License for Disasters and Emergencies.

(a) For out of state licensees, permit holders, and certificate holders, other than physicians, who practice in health care areas subject to regulation by the Board, the process for obtaining authority to practice in Texas during a disaster or emergency is set out in §172.20(b)(1) and (2), relating to Physician Practice and Limited License for Disasters and Emergencies, including all verification and reporting requirements.

(b) In addition, the following is applicable to these health care providers:

(1) the health care provider must practice under the supervision and delegation of a physician and the supervising physician must be licensed and practicing in Texas prior to the date of the disaster or emergency declaration and without restrictions on ability to supervise or delegate;

(2) except as specified in (c) below, the provisions related to supervision and delegation under §157.001, Texas Occupations Code, apply to both the health care provider and supervising physician; and

(3) the health care provider must also comply with all provisions of the applicable Texas Occupations Code for that occupation.

(c) Physician assistants and Texas supervising physicians practicing under this section are not required to maintain onsite documentation describing supervisory arrangements and instructions for prescriptive authority as otherwise required by Chapter 157, Texas Occupations Code.

(d) The Board shall have jurisdiction over licensees, permit holders, and certificate holders practicing under this subchapter for all purposes set forth in or related to the Texas Occupations Code, and all other applicable state and federal laws, and such jurisdiction shall continue in effect even after the licensee, permit holder, or certificate holder have stopped practicing under this section related to providing medical services in Texas during the disaster.

(e) The authority to practice issued to a licensee, permit holder, or certificate holder under this subchapter shall be valid for no more than thirty (30) days from the date the licensee, permit holder, or certificate holder is authorized to practice or until the emergency or disaster declaration has been withdrawn or ended, whichever is longer.

(f) A licensee, permit holder, and certificate holder holding limited emergency authority under this subchapter shall not receive any compensation outside of their usual compensation for the provision of medical services during a disaster or emergency.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902132

Scott Freshour

General Counsel

Texas Medical Board

Effective date: July 28, 2019

Proposal publication date: April 26, 2019

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TITLE 25. HEALTH SERVICES

**PART 1. DEPARTMENT OF STATE
HEALTH SERVICES**

**CHAPTER 133. HOSPITAL LICENSING
SUBCHAPTER C. OPERATIONAL
REQUIREMENTS**

25 TAC §133.50

The Texas Health and Human Services Commission (HHSC) adopts new §133.50, concerning Caregiver Designation, in Texas Administrative Code Title 25, Part 1, Chapter 133, Subchapter C.

New §133.50 is adopted with changes to the proposed text as published in the April 12, 2019, issue of the *Texas Register* (44 TexReg 1812).

BACKGROUND AND JUSTIFICATION

The new section is necessary to implement House Bill (H.B.) 2425, 85th Legislature, Regular Session, 2017, which amended the Texas Health and Safety Code by adding new Chapter 317, regarding Designation of Caregiver for Receipt of Aftercare Instructions.

COMMENTS

The 31-day comment period ended on May 13, 2019. During this period, HHSC received one comment regarding the proposed rule from AARP Texas. A summary of the comment and HHSC's response follows.

Comment: AARP Texas expressed their support of the new proposed §133.50 and suggested the following language be added to §133.50(f)(4): "...for the caregiver to perform aftercare tasks, including the opportunity to have any questions answered" in order to further instruct and empower caregivers on aftercare tasks, especially regarding managing medications.

Response: HHSC acknowledges the commenter's concerns regarding aftercare instruction and amended the language to require the opportunity to ask follow-up questions.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the Health and Human Services agencies, and under Texas Health and Safety Code §317.005, which requires HHSC to adopt rules necessary to implement Chapter 317.

§133.50. Caregiver Designation.

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

(1) Aftercare--Assistance provided by a designated caregiver to a person after that person's discharge from a hospital, as described by Health and Safety Code, chapter 317, and this section.

(2) Designated caregiver--An individual designated by a patient, including a relative, partner, friend, or neighbor, who:

- (A) is at least 18 years of age;
- (B) has a significant relationship with the patient; and
- (C) will provide aftercare to the patient.

(3) Surrogate decision-maker--An individual with decision-making capacity who is identified as the person who has authority to consent to medical treatment on behalf of an incapacitated patient in need of medical treatment.

(b) The hospital shall provide a patient who is at least 18 years of age, a patient who is younger than 18 years of age who has had the disabilities of minority removed, the patient's legal guardian, or the patient's surrogate decision-maker the opportunity to designate a caregiver for receipt of aftercare instructions.

(c) The hospital shall provide the opportunity to designate a caregiver on admission of the patient or before the patient is discharged or transferred to another facility.

(d) If the patient, the patient's legal guardian, or the patient's surrogate decision-maker declines to designate a caregiver, the hospital shall note the fact in the patient's medical record.

(e) If the patient, the patient's legal guardian, or the patient's surrogate decision-maker designates a caregiver, the hospital shall:

(1) document in the patient's medical record the designated caregiver's name, telephone number, address, and relationship to the patient; and

(2) request written authorization to disclose health care information to the designated caregiver.

(f) If written authorization to disclose health care information to the designated caregiver is obtained, the hospital shall:

(1) as soon as possible before the patient's discharge or transfer, notify the designated caregiver of this fact;

(2) if the hospital is unable to contact the designated caregiver before the patient's discharge or transfer, note this in the patient's medical record;

(3) before the patient's discharge, provide the designated caregiver a written discharge plan that describes the patient's aftercare needs that includes:

(A) the designated caregiver's name, contact information, and relationship to the patient;

(B) a description of the aftercare tasks that the patient requires, written in a culturally competent manner; and

(C) the contact information for any health care resources necessary to meet the patient's aftercare needs;

(4) before the patient's discharge to any setting in which health care services are not regularly provided to others, provide the designated caregiver instruction and training as necessary for the caregiver to perform aftercare tasks, including the opportunity to ask follow-up questions.

(g) The patient, the patient's legal guardian, or the patient's surrogate decision-maker may change the designated caregiver at any time and the hospital shall note the change in the patient's medical record.

(h) This section may not be construed to interfere with, delay, or otherwise affect any medical care provided to the patient or the discharge or transfer of the patient.

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

Filed with the Office of the Secretary of State on July 3, 2019.

TRD-201902101

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Effective date: July 23, 2019

Proposal publication date: April 12, 2019

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CHAPTER 416. MENTAL HEALTH COMMUNITY-BASED SERVICES SUBCHAPTER B. HOME AND COMMUNITY- BASED SERVICES--ADULT MENTAL HEALTH PROGRAM

25 TAC §§416.51 - 416.58

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §§416.51 - 416.58 in Chapter 416, Home and Community-Based Services--Adult Mental Health Program, of Texas Administrative Code (TAC), Title 25, Part 1. The repeal is adopted without changes to the proposed text as published in the March 15, 2019, issue of the *Texas Register* (44 TexReg 1426), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The Texas Secretary of State created Title 26, Part 1, of the TAC to consolidate rules that govern functions of HHSC. Rules related to the client services functions previously performed by the Department of State Health Services are currently in TAC, Title 25, Part 1, Chapter 416, Subchapter B. As part of the consolidation into Title 26, HHSC adopts the repeal of the rules in Title 25, Part 1, Chapter 416, Subchapter B, §§416.51 - 416.58. The new rules in Title 26, Part 1, Chapter 307, Subchapter B, concerning the Home and Community-Based Services - Adult Mental Health Program are adopted elsewhere in this issue of the *Texas Register*.

The purpose of repealing and replacing these rules is to ensure continued operation of the HCBS-AMH program in accordance with applicable state legislative direction in the 2016-2017 General Appropriations Act, H.B. 1, 84th Legislature, Regular Session, 2015 (Article II, Department of State Health Services, Rider 61). The state legislative direction ensures access to services for individuals meeting established eligibility criteria who are eligible for or currently receiving Medicaid to incorporate legislatively directed expanded populations of individuals served by the program. The proposed new rules also define and designate HHSC as the agency responsible for administering the HCBS-AMH program.

COMMENTS

The 30-day comment period ended April 14, 2019. During this period, HHSC did not receive any comments regarding the proposed repeal.

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, 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.

- §416.51. *Purpose and Application.*
- §416.52. *Definitions.*
- §416.53. *Eligibility Criteria.*
- §416.54. *Co-payments.*
- §416.55. *Uniform Assessment.*
- §416.56. *Individual Recovery Plan.*
- §416.57. *Provider Qualifications and Contracting.*
- §416.58. *Fair Hearings and Appeal Processes.*

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

Filed with the Office of the Secretary of State on July 3, 2019.

TRD-201902097

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Chief Counsel

Department of State Health Services

Effective date: July 23, 2019

Proposal publication date: March 15, 2019

For further information, please call: (512) 838-4355



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 307. MENTAL HEALTH COMMUNITY-BASED SERVICES

SUBCHAPTER B. HOME AND COMMUNITY-BASED SERVICES--ADULT MENTAL HEALTH PROGRAM

26 TAC §§307.51 - 307.57

The Texas Health and Human Services Commission (HHSC) adopts rules concerning the Home and Community-Based Services--Adult Mental Health Program (HCBS-AMH) in the Texas Administrative Code (TAC), Title 26, Part 1, Chapter 307, Subchapter B. HHSC adopts new §307.51, concerning Purpose and Application; §307.52, concerning Definitions; §307.53, concerning Eligibility Criteria and HCBS-AMH Assessment; §307.54, concerning Individual Recovery Plan; §307.55,

concerning Co-payments; §307.56, concerning Provider Qualifications and Contracting; and §307.57, concerning Fair Hearings Process. New §307.55 is adopted with changes to the proposed text as published in the March 15, 2019, issue of the *Texas Register* (44 TexReg 1427). This section will be republished. Sections 307.51 - 307.54, 307.56 and 307.57 are adopted without changes to the proposed text as published in the March 15, 2019, issue of the *Texas Register* (44 TexReg 1427), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The Texas Secretary of State created Title 26, Part 1, of the TAC to consolidate rules that govern functions of HHSC. Rules related to the client services functions previously performed by the Department of State Health Services, are currently in TAC, Title 25, Part 1, Chapter 416, Subchapter B. As part of the consolidation into Title 26, HHSC adopts new rules in Chapter 307, Subchapter B, §§307.51 - 307.57. The rules in Chapter 416, Subchapter B are repealed elsewhere in this issue of the *Texas Register*.

The purpose of repealing and replacing these rules is to ensure continued operation of the HCBS-AMH program in accordance with applicable state legislative direction in the 2016-2017 General Appropriations Act, H.B. 1, 84th Legislature, Regular Session, 2015 (Article II, Department of State Health Services, Rider 61). The state legislative direction ensures access to services for individuals meeting established eligibility criteria who are eligible for or currently receiving Medicaid to incorporate legislatively directed expanded populations of individuals served by the program. The new rules also define and designate HHSC as the agency responsible for administering the HCBS-AMH program.

COMMENTS

The 30-day comment period ended April 14, 2019.

During this period, HHSC received comments regarding the proposed rules from one commenter, Disability Rights Texas. A summary of comments and HHSC's responses follows.

Comment: The commenter recommended implementing the HCBS-AMH program, "to Medicaid and non-Medicaid individuals with serious mental illness" in §307.51. The commenter indicated that LMHAs currently expend General Revenue (GR) to access HHSC's HCBS-AMH services for individuals who may not qualify for Medicaid services.

Response: HHSC declines to modify the rule in response to this comment. Services available through the HCBS-AMH program are offered in accordance with the 1915(i) State Plan Amendment approved by the Center for Medicare and Medicaid Services. The HCBS-AMH program is only available to individuals meeting eligibility criteria and who are enrolled in Medicaid or are Medicaid eligible. The rule as proposed does not change the current requirement or operations. The rule as proposed does not affect the LMHA's or LBHA's expenditure of GR funds authorized or required under other law to provide services for those individuals who are not eligible for Medicaid.

Comment: The commenter recommended that the cross reference in §307.55, Co-payments, be changed to reference Chapter 412, Subchapter C in its entirety rather than a specific rule in Chapter 412, Subchapter C.

Response: HHSC agrees with the commenter and incorporated the recommendation in §307.55 as adopted.

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, 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.

§307.55. *Co-payments.*

A co-payment for HCBS-AMH services may be assessed as described in 25 TAC Chapter 412, Subchapter C (relating to Charges for Community Services).

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

Filed with the Office of the Secretary of State on July 3, 2019.

TRD-201902098

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Effective date: July 23, 2019

Proposal publication date: March 15, 2019

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER H. CANCELLATION, DENIAL, AND NONRENEWAL OF CERTAIN PROPERTY AND CASUALTY INSURANCE COVERAGE

28 TAC §5.7018

The Texas Department of Insurance (TDI) adopts new 28 TAC Chapter 5, Subchapter H, §5.7018, relating to notice to lienholders of cancellation of personal automobile policies that provide physical damage coverage. Section 5.7018 implements Insurance Code §551.1041. TDI adopts new §5.7018 with changes to the proposed text in response to public comment. The proposed text was published in the January 25, 2019, issue of the *Texas Register* (44 TexReg 403).

EXPLANATION. Senate Bill 1450, 85th Legislature, Regular Session (2017), enacted Insurance Code §551.1041, which requires the Commissioner "to adopt rules under which an insurer that cancels a personal automobile insurance policy that provides comprehensive or collision physical damage coverage for an automobile that is subject to a purchase money lien is required to notify the lienholder, if known, that the coverage will be canceled." New §5.7018 is necessary to implement the statute.

The rule requires insurers to give lienholders at least 10 days' written notice of cancellation of a policy. Ten days is a reasonable period for a lienholder to act to protect its interests. Insurance

Code §551.103 and §551.104 describe when an insurer may cancel a personal auto policy.

Insurance Code §35.003 provides that a "regulated entity may conduct business electronically to the same extent that the entity is authorized to conduct business otherwise if before the conduct of business each party to the business agrees to conduct the business electronically." Therefore, the rule allows the written notice to be given electronically.

TDI received comments on an informal draft of the rule that was posted on TDI's website on April 24, 2018, and on the proposal published in the *Texas Register* on January 25, 2019. TDI considered those comments when drafting the adoption order.

REASONED JUSTIFICATION. The new section is necessary to implement Insurance Code §551.1041, which requires the Commissioner "to adopt rules under which an insurer that cancels a personal automobile insurance policy that provides comprehensive or collision physical damage coverage for an automobile that is subject to a purchase money lien is required to notify the lienholder, if known, that the coverage will be canceled." TDI revised §5.7018(b) from the text as proposed to clarify the language.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received written comments from three commenters. The Office of Public Insurance Counsel and the Texas Independent Automobile Dealers Association supported the proposal with changes. The American Property Casualty Insurance Association opposed the proposal.

Comment on §5.7018(a).

A commenter suggests including a requirement for the notice to be sent by mail to the lienholder's last known address.

Agency Response to Comment on §5.7018(a).

TDI agrees that mail is an acceptable method for providing notice and has added that delivery method to the rule. In addition, TDI has added hand delivery and electronic delivery to allow flexibility in the method by which the notice is transmitted. TDI made this change in §5.7018(c) and (d). As to sending notice to the lienholder's last known address, including this language would be duplicative, as Insurance Code §551.1041 states that insurers are required to send notice to the "lienholder, if known." TDI declines to make that change.

Comment on §5.7018(a).

A commenter suggests noting the lienholder on the declaration page or other policy documents as an additional insured.

Agency Response to Comment on §5.7018(a).

This rule is limited to clarifying requirements for notice of insurer cancellation. Requiring the insurer to add a lienholder as an additional insured exceeds the scope of the rule. Therefore, TDI disagrees with the comment and declines to make this change.

Comment on §5.7018(a).

A commenter suggests requiring the insurer to send notice to the lienholder recorded on the title documents on file with the Texas Department of Motor Vehicles to ensure the veracity of notice only to bona fide lienholders.

Agency Response to Comment on §5.7018(a).

Insurers rely on the lienholder name provided by the policyholder. It is not part of current insurance practice to obtain

copies of title documents or to do additional investigation to uncover potential lienholders. In addition, this suggestion is beyond the scope of this rule. Therefore, TDI disagrees with the comment and declines to make this change.

Comment on §5.7018(a).

A commenter suggests including the terms "lien" and "title" to harmonize with definitions in Business and Commerce Code §1.201.

Agency Response to Comment on §5.7018(a).

Insurance Code §551.1041 requires notice to lienholders of vehicles subject to purchase money liens, which is a very specific type of security interest. The terms in the Business and Commerce Code are broader than this statute contemplates. Because of this, TDI disagrees with the comment and declines to make this change.

Comment on §5.7018(c).

A commenter suggests allowing the lienholder and insurer to agree to electronic delivery of documents, including email.

Agency Response to Comment on §5.7018(c).

TDI agrees with the comment and TDI added new §5.7018(c) to clarify that electronic notices are permissible if the method complies with Insurance Code Chapter 35. Subsection (c), which allows insurers and lienholders to agree to different notice requirements, has been redesignated as subsection (d).

Comment on §5.7018.

A commenter suggests clarification that remedies available under §551.111 are available in the event of noncompliance with this rule.

Agency Response to Comment on §5.7018.

Insurance Code §551.1041 gives the Commissioner rulemaking authority to require the insurer to provide the vehicle's lienholder with notice of cancellation of coverage. An insurer that fails to deliver a notice to a lienholder that has not opted out of the notice requirement or that has not agreed to different notice requirements with the insurer would violate the rule. TDI will take appropriate action when such specific violations are brought to its attention. TDI encourages the commenter to report any specific violations. Not listing specific authority or penalties for violations in each rule does not deprive TDI of this enforcement authority. TDI does not agree that it is necessary to clarify remedies in the rule text and did not make any changes in response to this comment.

Comment on §5.7018.

A commenter expresses concern that requiring a notice would increase costs.

Agency Response to Comment on §5.7018.

Insurance Code §551.1041 requires the Commissioner to adopt rules to require insurers to notify lienholders of cancellation. The rule does not specify a form for the notice. Therefore, any costs that result from this requirement lie with the statute itself. TDI did not make any changes in response to this comment.

Comment on §5.7018.

A commenter expresses concern that the rule, in its current (proposed) form, does not address notice requirements in the event of policyholder cancellation.

Agency Response to Comment on §5.7018.

This rule only implements §551.1041, which is focused on insurer cancellation. Policyholder cancellation is beyond the scope of this rule. Because of this, TDI does not agree that any changes are necessary and did not make any changes in response to this comment.

Comment on §5.7018(b).

A commenter requests that §5.7018(b) be amended to clarify that the cancellation or nonrenewal will take effect no earlier than the 10th day after the insurer sends written notice of the cancellation or nonrenewal to the lienholder.

Agency Response to Comment on §5.7018(b).

TDI agrees that adding this language will clarify the requirement. TDI has revised Subsection (b) to make this change.

STATUTORY AUTHORITY. The Commissioner adopts §5.7018 under Insurance Code §551.1041 and §36.001.

Insurance Code §551.1041 gives the Commissioner authority to adopt rules under which an insurer that cancels a personal automobile insurance policy that provides comprehensive or collision physical damage coverage for an automobile that is subject to a purchase money lien is required to notify the lienholder, if known, that the coverage will be canceled.

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.

§5.7018. *Notice to Lienholders.*

(a) For a personal automobile policy that includes comprehensive or collision physical damage coverage for an automobile that is subject to a purchase money lien, insurers must give written notice to the lienholder, if known, at least 10 days before the insurer:

- (1) cancels coverage; or
- (2) nonrenews the policy.

(b) Cancellation or nonrenewal of a policy may not take effect earlier than the 10th day after the insurer sends written notice of the cancellation or nonrenewal to the lienholder.

(c) Notice may be given by mail, hand delivery, or electronically if the notice complies with Chapter 35 of the Texas Insurance Code.

(d) A lienholder may opt out of the notice requirement or agree to different notice requirements with an insurer.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902131

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Effective date: July 28, 2019

Proposal publication date: January 25, 2019

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SUBCHAPTER M. FILING REQUIREMENTS

The Texas Department of Insurance (TDI) adopts amendments to 28 TAC §§5.9310, 5.9330, 5.9331, 5.9334, 5.9335, 5.9340 - 5.9342, 5.9351, 5.9352, 5.9355 - 5.9357, 5.9360, 5.9361, 5.9370 - 5.9374, and 5.9376 without changes to the proposed text as published in the January 11, 2019, issue of the *Texas Register* (44 TexReg 205). The repeal of §§5.9320 - 5.9323 and new §§5.9312, 5.9320, 5.9321, 5.9324, and 5.9326 - 5.9328 are adopted without changes to the proposed text. These rules will not be republished. TDI adopts amendments to §5.9332 and §5.9333, and new §§5.9311, 5.9322, 5.9323, and 5.9325 with nonsubstantive changes to the proposed text. These rules will be republished.

Section 5.9311 was changed to clarify that commercial property filings by Lloyd's plans and reciprocals or interinsurance exchanges are excepted from the public inspection requirement in Insurance Code §2301.009; §5.9323 was changed to correct punctuation, and §5.9325 was changed to clarify a reference. TDI revised new §5.9322 and §5.9325 in response to a public comment. Sections 5.9332 and 5.9333 are adopted with non-substantive changes to the proposed text. Both sections were changed to provide background information on the categories of information required by each section in response to a comment.

These amendments, new sections, and repeal relate to requirements for property and casualty filings for forms, rates, rules, underwriting guidelines, credit scoring models, and certificates of insurance, and implement Senate Bill 978, 84th Legislature, Regular Session (2015); Senate Bill 1554, 84th Legislature, Regular Session (2015); and House Bill 1298, 85th Legislature, Regular Session (2017). These bills revised Insurance Code Chapters 2053, 2251, and 2301. The amendments and repeal also reorganize and update the rules to make them clearer and more user-friendly, and they promote more efficient processing of filings by making the use of the System for Electronic Rate and Form Filing (SERFF) mandatory for most filings.

REASONED JUSTIFICATION. The amendments, new sections, and repeal relate to requirements for property and casualty filings for forms, rates, rules, underwriting guidelines, credit scoring models, and certificates of insurance. The adopted amendments, new sections, and repeal are necessary to implement SB 978, 84th Legislature, Regular Session (2015); SB 1554, 84th Legislature, Regular Session (2015); and HB 1298, 85th Legislature, Regular Session (2017). These bills revised Insurance Code Chapters 2053, 2251, and 2301. The amendments and repeal are important, as they improve efficiency by reorganizing and updating the rules to make them clearer and more user-friendly and they promote more efficient processing of filings by making the use of the SERFF mandatory. The following section-by-section summary provides detailed descriptions of the changes to Divisions 4 through 11 of 28 TAC Chapter 5, which are commonly referred to as the "Filings Made Easy rules."

Division 4. Transmittal Information and General Filing Requirements for Property and Casualty Form, Rate and Rule, Underwriting Guideline, and Credit Scoring Model Filings.

Section 5.9310. Property and Casualty Transmittal Information and General Filing Requirements. The amendments to §5.9310 alphabetize the definitions, revise the definitions of "interline filing" and "multi-peril insurance," add definitions for the terms "NAIC" and "SERFF," and make minor editorial revisions to the definition of a "reference filing."

The definition of "multi-peril insurance" in §5.9310(b)(3) incorporates the new definition of "commercial property insurance" in HB 1298. HB 1298 amended Insurance Code §§2251.002 and §2301.002 by defining "commercial property insurance" as "insurance coverage against loss caused by or resulting from loss, damage, or destruction of real or personal property provided through a commercial property insurance policy. The term includes any combination of commercial fire or allied lines; commercial inland marine insurance; commercial crime coverage; boiler and machinery insurance other than explosion; glass insurance provided as part of other coverage; and, as authorized by Commissioner rule, insurance covering other perils or providing other coverages or other lines of first party property insurance."

The updated definition of an "interline filing" better describes the forms that can be filed together and used for more than one line of insurance.

The amendments also clarify that the company name the filer provides must be the name used for financial reporting to NAIC. New language requires filers to include the TDI file number for the previously approved policy to which a proposed form will be attached. A new subsection requires third-party filers to submit a letter of authorization.

Previous language in §5.9310 about information marked "copyright" or confidential information is deleted from the section, and similar language is in new §5.9311.

Amendments to §5.9310 also update the instructions on how insurers may submit filings. The rule requires that filings under Divisions 5, 6, 7, 8, and 9 must be submitted through SERFF.

SERFF is TDI's system of record for all filings subject to the Filings Made Easy rules. When filers deliver or mail paper filings to TDI, staff must organize, scan, and upload the filings into SERFF. When filers do not use SERFF, TDI must communicate with those filers by email, fax, mail, or by phone. There have been times when filers did not receive these communications from TDI, or vice versa, because of incorrect contact information. Using SERFF eliminates these communication problems and improves efficiency.

TDI has amended rule text regarding public disclosure of contact information so that it conforms to the mandatory use of SERFF. This text has been deleted from Divisions 5, 6, 8, and 9 and similar text is adopted in §5.9310(g), since that section will apply to all filings for property and casualty forms, rates and rules, underwriting guidelines, and credit scoring model filings.

Section 5.9311. Copyright, Public Inspection, and Confidential Filings. New §5.9311 organizes the rule to put similar items together. The amendments delete text about copyright and public inspection in previous §5.9310(e) and adopt similar provisions in §5.9311(a) and (b). The text in §5.9311 does not include the reference to Insurance Code Chapter 2251 that is in the previous §5.9310(e), as §5.9311(a) applies generally to all filings. Section 5.9311(b) provides information on public inspection of filings under Insurance Code Chapters 2053, 2251, and 2301 and restates the statutory language about public inspection in those chapters.

New §5.9311(c) addresses filings that are marked confidential. A function in SERFF allows filers to mark entire filings as confidential. When filers do this, the public cannot access information to determine whether a filing was made, but the public has a right to know that a filing exists. The fact that a filing was made is not

confidential. TDI will reject filings that are marked wholly confidential and filers will need to resubmit their filings correctly.

The text of §5.9311(b) as proposed was changed to clarify that Insurance Code §2301.003(c) excepts commercial property filings by Lloyd's plans and reciprocals or interinsurance exchanges from the public inspection requirement in Insurance Code §2301.009.

Section 5.9312. Personally Identifiable Information. New §5.9312 states that TDI may reject filings that include personally identifiable information. This kind of information must remain confidential and should not be included in filings.

New Division 5. Requirements for Property and Casualty Policy Form and Endorsement Filings.

Section 5.9320. Purpose and Definitions. New §5.9320 provides the purpose and definitions for Division 5, which are similar to §5.9320(a) and (b) in the repealed rule.

Section 5.9321. General Filing Requirements. New §5.9321 provides the general filing requirements for policy forms and endorsements. Many of these requirements are the same as in repealed §5.9320(c) and (h). The new information required in this section includes the requirements that filings contain the form number and edition date for each proposed form, the TDI file number for the previously approved policy to which a proposed form will attach, and a form usage table. TDI staff often request this information from filers. Requiring this information with the filing will help reduce the time for staff to review the filing. Section 5.9321 requires that filers provide a separate marked-up copy of each amended policy form and endorsement. Many filers already do this, but making it a requirement will also help expedite TDI staff's review of filings.

Section 5.9321 also requires filings to include the readability score from the Flesch Reading Ease Test for each filed form or endorsement for personal automobile and residential property. This requirement is in Insurance Code §2301.053 and is included in Commissioner's Order Number 92-0573. The requirement is included in the new rule for efficiency.

Section 5.9322. Additional Information. New §5.9322 includes filing requirements similar to those in repealed §5.9320(c)(2), along with new language clarifying that TDI may request related forms or information to support the filing. Filers already provide supporting information at TDI's request.

In response to comment, the text of §5.9322(a)(1) as proposed was changed in the adoption order to clarify that related forms or information requested by TDI must be necessary for review of the filing.

Section 5.9323. Requirements for Reference Filings. New §5.9323 is substantially similar to §5.9320(e) in the repealed rule. The new section also adds a requirement for reference filings for personal automobile, residential property, and personal multi-peril insurance by requiring the filer to include a list of each form and endorsement that the insurer will use from each referenced filing and a form usage table. Filers are already providing this information upfront in filings or providing them as supplementary material in response to an objection.

Amendments to 5.9323 also add clarifying language that if a filer amends a form or endorsement that was previously approved for another insurer or advisory organization, then it is not a reference filing.

The text of §5.9323 as proposed was changed to correct punctuation.

Section 5.9324. Incomplete Filings. New §5.9324 is similar to §5.9320(g) in the repealed rule.

Section 5.9325. Request for Deemer Period Waiver. The text in new §5.9325 replaces §5.9321 of the repealed rule. The adoption order language clarifies insurers' ability to withdraw their previous waiver of a deemer period.

In response to comment, the text of §5.9325 as proposed was changed to add subsection (b), which allows insurers to withdraw their previous waiver of a deemer period. Allowing withdrawal of the waiver is more efficient than requiring the insurer to resubmit a filing.

Section 5.9326. Insurers Providing Coverage through a Purchasing Group. The text in new §5.9326 duplicates §5.9322(a) of the repealed rule.

Section 5.9327. Residential Property Declarations Pages Forms. New §5.9327 is similar to §5.9323 under the repealed rule.

Section 5.9328. Insurers Writing Commercial Group Property Insurance. New §5.9328 replaces repealed §5.9322(b). In the repealed rule, this subsection was inadvertently placed in the rule about purchasing groups.

Division 6. Requirements for Rate and Rule Filings.

Section 5.9330. Purpose. Under the previous Filings Made Easy rules, insurers' rule filings were filed under Division 5 in §5.9320(d). The adoption order deletes the language in Division 5 and, as amended, §5.9330 requires filers to submit rule filings under Division 6. Amended §5.9330 also includes language that mirrors language in both the repealed and new Division 5 requiring all insurer and advisory organization filings to comply with the filing requirements of Division 6 and any other applicable rules adopted by the Commissioner.

Section 5.9331. Definitions. Amended §5.9331 includes minor grammatical corrections, an update to a reference to the Insurance Code, and the addition of clarifying language to the definition of "short track filing."

Section 5.9332. Categories of Supporting Information. The proposed amendment to delete the opening language was reversed in the adoption order and additional language to clarify how §5.9332 relates to §5.9334 was added. This was done in response to a comment. The amendments also update the description for several categories of supporting information and make minor grammatical corrections.

In the category of "actuarial support" in §5.9332(3), the term "data" is replaced with "loss experience." Data is a generic term used to describe many things. Insurance Code §2251.052(a) states that in setting rates, an insurer must use loss experience. An insurer can also use other information. Revising the category of "actuarial support" was necessary to clarify that the actuarial support must demonstrate why the proposed rates are not excessive, inadequate, or unfairly discriminatory.

The category titled "SERFF rate data" in §5.9332(4) is amended to delete language that was relevant to filers that did not use SERFF. Under the adopted rules, SERFF is mandatory, so this language is not needed.

The category titled "policyholder impact information" in §5.9332(5) is amended to clarify that insurers must use infor-

mation reflecting the changes for all policyholders to determine the policyholder impact. TDI became aware that some filers were only using a subset of their policyholders to compute this information, which could lead to inaccurate estimates of the expected impact to policyholders. In addition, the description for this category eliminates references to specific lines of insurance. Under §5.9334, policyholder impact information is required in filings for owner-occupied homeowner and personal automobile insurance. This requirement does not change with this rule. If this information is necessary for other lines of insurance, TDI can request it under §5.9335.

TDI adopts a similar change under the category titled "average rate change by county" in §5.9332(6). The description deletes the term "homeowners" and adds that the average rate change by county may be provided separately by coverage. Similar to policyholder impact information, filers must submit the average rate change by county in filings for owner-occupied homeowners insurance, as required by §5.9334. However, TDI could ask for this category of supporting information for other lines of insurance in a request for information under §5.9335.

The category titled "rate change information" in §5.9332(7) is also amended to clarify that insurers must use information reflecting the changes for all policyholders to determine rate change information.

The title of the "historical and projected expense information" category in §5.9332(9) is amended to be "expense information."

Section 5.9333. Categories of Supplementary Rating Information. The proposed amendment to delete the opening language is reversed in the adoption order and additional language to clarify how §5.9333 relates to §5.9334 was added. This was done in response to a comment.

Section 5.9334. Requirements for Rate and Rule Filing Submissions. Amendments to §5.9334 include clarifying language to reflect that rule filings are filed under Division 6. Subsection (e) has been split into two subsections, without changing the requirements of the rule, to make the requirements easier to read. The subsequent subsections in this section are redesignated because of this change.

Amendments to redesignated §5.9334(h)(10) reflect the change in the name for expense information in §5.9332(9). In the previous rule, expense information was required in filings that change or replace current rates; however, expense information is needed for all filings, including those introducing new rates. A similar revision is made to redesignated subsection (h)(11), because profit provision information is also needed in filings introducing new rates.

An amendment to redesignated §5.9334(i) adds a requirement to include a side-by-side comparison or a mark up, if applicable, for short track filings. This requirement will help TDI quickly identify the proposed revisions in the filing.

TDI deleted the text of previous §5.9334(i)(1), regarding disclosure of contact information in filings submitted through SERFF, and similar text is added to Division 4, §5.9310(g). The provision is more appropriate there because Division 4 includes general filing requirements that apply to filings made under Divisions 5, 6, 7, 8, and 9. The remaining paragraphs in the subsection have been renumbered as appropriate.

Previous §5.9334(i), now redesignated as §5.9334(k), implements the amendments made by SB 978 to Insurance Code §2053.004, which require that filings for workers' compensation

rates and supplementary rating information, including any supporting information, is public information subject to Government Code Chapter 552, including any applicable exception from required disclosure under that chapter.

Section 5.9335. Requests for Information. Amendments to §5.9335 reflect that rule filings are filed under Division 6.

Division 7. Requirements for Underwriting Guideline Filings.

Section 5.9340. Purpose. An amendment to §5.9340 reflects nonsubstantive editorial and formatting changes to enhance clarity and readability.

Section 5.9341. Definitions. An amendment to §5.9341 reflects nonsubstantive editorial and formatting changes to enhance clarity readability.

Section 5.9342. Filing Requirements. Amendments to §5.9342, regarding filing requirements for underwriting guideline filings, clarifies the lines of insurance for which insurers must file their underwriting guidelines. New subsection (h) reminds insurers that information used to classify risks to determine a rate must be filed in a rate and rule filing under Division 6. This information is supplementary rating information. This information may also be filed in an underwriting guideline filing, as it is included in the definition of underwriting guideline in Insurance Code §38.002.

Division 8. Requirements for Credit Scoring Model Filings for Personal Insurance.

Section 5.9351. Definitions. Amendments to §5.9351 reflect a nonsubstantive editorial change to enhance clarity and readability.

Section 5.9352. Filing Requirements. In addition to clarifying language, amendments to §5.9352, which addresses the filing requirements for credit scoring models, add two additional pieces of information—information about which insured's credit score is used for policies with more than one named insured, and how often the credit score is updated. This information will help TDI respond to inquiries from consumers, legislative offices, and other stakeholders.

Previous §5.9352(c), which addressed disclosure of contact information in filings submitted through SERFF, has been deleted and similar text is adopted in §5.9310(g) of Division 4. The provision is more appropriate there because Division 4 includes general filing requirements that apply to filings made under Divisions 5, 6, 7, 8, and 9. The amendment to §5.9310(g) does not include the text of the first sentence of previous §5.9352(c), because Insurance Code §559.152 already states that a credit scoring model "is public information; is not subject to any exceptions to disclosure under Government Code Chapter 552; and cannot be withheld from disclosure under any other law."

Previous §5.9352(d) is redesignated as §5.9352(c), and the last sentence of the subsection is separated from the rest of the subsection and included as new subsection (d).

Division 9. Reduced Filing Requirements for Certain Insurers.

Section 5.9355. Purpose. Amendments to §5.9355 implement changes made by SB 1554. SB 1554 repealed Insurance Code Chapter 2251, Subchapter E, regarding the standard rate index for personal automobile insurance. The repeal was effective September 1, 2015.

Section 5.9356. Definitions. Amendments to §5.9356 reflect a nonsubstantive editorial change to enhance clarity and readability.

Section 5.9357. Filing Requirements. Amendments to §5.9357 are necessary to implement the repeal of Insurance Code Chapter 2251, Subchapter E, by SB 1554, regarding the standard rate index for personal automobile insurance. The amendments remove subsection (b), which referenced criteria in repealed Insurance Code §2251.205 regarding personal automobile insurers that issue personal automobile liability insurance policies only below 101 percent of the minimum limits required by Chapter 601, Transportation Code. The rest of the text in Insurance Code §2251.205 was moved to Insurance Code §2251.1025. The remaining subsections in §5.9357 are redesignated as appropriate.

In addition, amendments to §5.9357 include added language to clarify that insurers that qualify for reduced filing requirements under Division 9 do not have to provide supporting information, as described in the rule, unless it is requested. This does not change the rule requirements, which state that requests for additional information, as outlined in §5.9335, apply to rate and rule filings under Division 9.

Previous §5.9357(e), which addressed disclosure of contact information in filings submitted through SERFF, is deleted, and similar text is added to §5.9310(g) in Division 4. The provision is more appropriate there because Division 4 includes general filing requirements that apply to filings made under Divisions 5, 6, 7, 8, and 9.

Division 10. Additional Filing Requirements for Certain County Mutual Insurance Companies.

Section 5.9360. Purpose. Amendments to §5.9360 reflect that rule filings are filed under Division 6.

Section 5.9361. Additional Requirements. Amendments to §5.9361 reflect that rule filings are filed under Division 6 and updates references to earlier rules.

Division 11. Certificates of Property and Casualty Insurance.

Section 5.9370. Purpose and Scope. Amendments to §5.9370 reflect nonsubstantive editorial and formatting changes.

Section 5.9371. Definitions. Amendments to §5.9371 alphabetize the definitions to enhance clarity and readability.

Section 5.9372. Preparation and Submission of Certificate of Insurance Form Filings. Amendments to §5.9372 reflect nonsubstantive editorial and formatting changes to enhance clarity and readability.

Section 5.9373. Certificate of Insurance Form Filing Transmittal Information. Amendments to §5.9373 add clarifying language to improve readability and understanding of the rule.

Section 5.9374. Incomplete Filings. Amendments to §5.9374 provide that TDI will inform a filer of why a filing is incomplete, rather than return the filing to the filer without this information, to improve efficiency.

Section 5.9376. Restrictions on the Content of Certificates of Insurance. Amendments to §5.9376 reflect nonsubstantive editorial and formatting changes.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received two written comments. Both commenters, the Office of Public Insurance Counsel and the Insurance Council of Texas, supported the proposal, but requested various changes to the proposal.

Comment on 28 TAC Chapter 5, Subchapter M, Division 5.

A commenter suggested the proposal be amended to add a new section to prohibit insurers from using residential property and personal automobile policy endorsements that contain language not applicable to a policy to which the endorsement attaches. The commenter was concerned that using a comprehensive endorsement with extraneous provisions may be confusing to the consumer.

Agency Response to Comment on 28 TAC Chapter 5, Subchapter M, Division 5.

TDI acknowledges the concern raised in this comment, but declines to consider it in this rulemaking. This change could result in cost issues for insurers, who have filed comprehensive endorsements that include numerous policy revisions. TDI will continue to review policies according to the applicable standards under the Insurance Code.

Comment on §5.9321(c)(6)(B).

A commenter requested an addition to the proposed text to allow filers to provide information requested in the form usage table by referencing where the information is contained in other filings.

Agency Response to Comment on §5.9321(c)(6)(B).

TDI acknowledges the convenience of cross-referencing other filings; however, the information required in the form usage table needs to be included in the form filing itself to clearly and immediately present how a form will be used. This reduces the chance for confusion, reduces risk of inaccuracies, and expedites review. TDI routinely requests that filers present the information in that manner, and this rule simply formalizes the existing practice. For these reasons, TDI declines to make this change to the text.

Comments on §5.9324.

A commenter made three comments related to this section:

1. The commenter raises concern over language in the proposed text that "TDI" is too broad and may describe individuals who appear to be given authority that is not contemplated by statute. The commenter suggests changing references from "TDI" to "analyst," "reviewer," or the "Commissioner" as appropriate.
2. The commenter also expresses concern about reviewers requesting information that is beyond what is required by statute or rule and may not be necessary to review a filing, thereby extending deemer periods indefinitely.
3. The commenter suggests that an incomplete filing should be "closed" rather than "rejected."

Agency Response to Comments on §5.9324.

TDI responds to the comments in order:

1. TDI disagrees with this comment and declines to make this change. Prior §5.9320 already refers to "TDI" receiving filings and determining whether they are complete or incomplete. Insurance Code §31.041 and §36.102 allow and direct the Commissioner to appoint deputies, assistants, and other personnel to delegate summary procedures for routine matters. TDI declines to delineate particular jobs such as "reviewer" or "analyst" within the rule itself.

2. TDI disagrees with this comment; however, it agrees to make a revision to clarify the provision. TDI receives a wide array of form filings that regularly contain new products or provisions. Under Insurance Code Chapter 2301, TDI must evaluate whether each provision in a form is unjust or deceptive, encourages misrepresentation, or violates law or public policy.

Given the breadth of those requirements, TDI sometimes needs additional information to understand the context of a provision and how it is likely to be understood and operate in the marketplace. The rule allows TDI to request certain kinds of additional information when reviewing a filing, such as coverage comparisons and policy summaries. It also allows TDI to request other forms or information related to the filing.

The rule incorporates the flexibility needed to perform the review contemplated by Insurance Code Chapter 2301. It does not give TDI unrestricted ability to indefinitely extend deemer periods. To more clearly express those limits, new §5.9322(a)(1) is changed from the proposal by adding language that clarifies that a request for related forms or information must be limited to what is needed for review of the filing.

3. TDI disagrees with the comment and declines to make this change because using language such as "closed" instead of "rejected" is more likely to create confusion among the public about whether a filing is approved or disapproved.

Comment on §5.9325.

A commenter requests clarification of the proposed text, because it allows insurers to waive the deemer period, but does not address whether an insurer can later withdraw its waiver of the deemer period.

Agency Response to Comment on §5.9325.

Allowing insurers to withdraw a waiver of the deemer period is more efficient than requiring the insurer to resubmit an entire filing. To provide for this, the text of §5.9325 as proposed has been revised to allow insurers to withdraw the waiver of a deemer period by submitting the withdrawal in writing and getting TDI's written acknowledgment in return. Upon acknowledgment, the deemer period described by Insurance Code §2301.006 will begin. The language ensures that withdrawals are submitted and acknowledged uniformly, eliminating confusion or ambiguity and clarifying the point asked about by the commenter.

Comment on §5.9332.

A commenter requests that the term "data" be kept in the text and the term "loss experience" added, rather than replacing "data" with "loss experience." The commenter also suggests keeping examples of competitive analysis, instead of deleting those examples.

Agency Response to Comment on §5.9332.

TDI declines to accept this suggestion. The term "data" is replaced with "loss experience" to track the language in Insurance Code §2251.052(a), because it specifically requires insurers to use "loss experience" in setting rates. Insurers may use additional information to supplement loss experience in calculating rates.

Comment on §5.9332(6).

A commenter expresses concern over what the commenter perceives to be an expansion of filing requirements for rate filings by requiring the average rate change by county for all lines of insurance and coverages, rather than just homeowners insurance as required by the previous rule. The commenter expresses concern that if this is an expansion, it may be difficult for filers to provide this information for certain lines of insurance.

Agency Response to Comment on §5.9332(6).

TDI clarifies that this change is not an expansion in filing requirements. Section 5.9332 describes the different categories of supporting information; it does not include the filing requirements. The description for the average rate change by county was made more general by deleting the reference to homeowners. The specific filing requirements for rate and rule filings are in §5.9334. If a filer is submitting rates and rules for owner-occupied homeowners insurance, the filer must provide the average rate change by county, as required by §5.9334(h)(8). If a filer submits rates and rules for another line of insurance, commercial auto for example, the filer is not required to include the average rate change by county information in its filing. In this example, if TDI needed this information for its review, TDI would need to request the rate change by county information under §5.9335, which concerns Requests for Information. When reviewing a rate and rule filing, TDI may request additional supporting information that is not required up front when the filer submits the filing. TDI may request additional supporting information five times under §5.9335. For a rate and rule filing for a line of insurance other than owner-occupied homeowners, a request for additional supporting information that includes rate change by county information would be considered one of TDI's five requests.

Comment on §5.9332(9).

A commenter requests that the definition of "expense information" in §5.9332(9) be amended to permit filers to display loss adjustment expenses as a ratio to ultimate developed losses or as a ratio to incurred losses.

Agency Response to Comment on §5.9332(9).

TDI declines to accept this suggestion. The rule requires consistent data elements from all filers so that information can be effectively compared between insurers and between filings made by the same insurer. Allowing the alternative method requested by the commenter would make such comparison more difficult and reduce the value of the data provided. An insurer may provide the information described in the comment in addition to the required information.

DIVISION 4. FILINGS MADE EASY- -TRANSMITTAL INFORMATION AND GENERAL FILING REQUIREMENTS FOR PROPERTY AND CASUALTY FORM, RATE AND RULE, UNDERWRITING GUIDELINE, AND CREDIT SCORING MODEL FILINGS

28 TAC §§5.9310 - 5.9312

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §5.9310 and new §5.9311 and §5.9312 under Insurance Code §§38.002, 38.003, 559.004, 559.151, 912.056, 2052.002, 2053.003, 2053.004, 2053.034, 2171.003, 2251.101, 2251.1025, 2251.107, 2251.252, 2301.001, 2301.006, 2301.009, 2301.053, 2301.055, 2301.056, 3502.101, 3502.104, 3502.108, and 36.001.

Section 38.002 requires each insurer writing personal automobile insurance or residential property insurance to file its underwriting guidelines with TDI and to ensure that the underwriting guidelines are sound, actuarially justified, substantially commensurate with the contemplated risk, and not unfairly discriminatory.

Section 38.003 provides that TDI may obtain a copy of the underwriting guidelines of an insurer for lines other than personal automobile insurance or residential property insurance.

Section 559.004 provides that the Commissioner "adopt rules that prescribe the allowable differences in rates charged by insurers due solely to the difference in credit scores."

Section 559.151 provides that an insurer that uses credit scores to underwrite and rate risks must file its credit scoring model or other credit scoring processes with TDI.

Section 912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the Commissioner requires by rule.

Section 2052.002 provides that in writing workers' compensation insurance, an insurance company may not use a form other than one prescribed by the Commissioner, and that before an insurance company may use a workers' compensation form that the Commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI.

Section 2053.003 provides that each insurance company writing workers' compensation insurance file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas.

Section 2053.004 provides that each filing for workers' compensation insurance, including any supporting information, is public information subject to Government Code Chapter 552.

Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines.

Section 2171.003 provides that an insurer must file a policy form for use with commercial group property insurance with the Commissioner before using the form.

Section 2251.101 provides that each insurer must file its rates, rating manuals, supplementary rating information, and additional information with TDI. It also provides for the Commissioner to adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information.

Section 2251.1025 provides that the Commissioner adopt rules regarding filing requirements for certain personal automobile insurers with less than 3.5 percent of the market share of the personal automobile insurance market in this state.

Section 2251.107 provides that each filing under Insurance Code Chapter 2251, including any supporting information, is public information subject to Government Code Chapter 552.

Section 2251.252 provides that an insurer is exempt from the filing requirements of Insurance Code Chapter 2251 if it or the rate it is filing meets certain criteria.

Section 2301.001 states that the purpose of Insurance Code Chapter 2301, Subchapter A, includes regulating insurance forms to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive.

Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted from the Commissioner, until the insurer files the forms with and receives approval by the Commissioner.

Section 2301.009 provides that filings under Insurance Code Chapter 2301, Subchapter A, are open to public inspection as of the date of filing.

Section 2301.053 provides that a form may not be used unless the form is written in plain language. A form is considered written in plain language if it achieves a minimum score established by the Commissioner on the Flesch reading ease test.

Section 2301.055 provides that the Commissioner may adopt reasonable and necessary rules to implement Insurance Code Chapter 2301, Subchapter B.

Section 2301.056 requires that declaration pages for residential property insurance policy forms list each type of deductible under the policy and state the exact dollar amount of each deductible.

Section 3502.101(a) provides that a mortgage guaranty insurer must file rate and supplementary rate information, and any changes to the rate or supplementary rate information with the Commissioner not later than 15 days before it uses the rate or supplementary rate information in this state. Section 3502.101(b) provides that the rate filing must include adequate supporting data; an explanation of the insurer's interpretation of any statistical data on which the insurer relied; an explanation and description of the methods used in making the rates; and certification of the appropriateness of the charges, rates, or rating plans based on reasonable assumptions and accompanied by adequate supporting information.

Section 3502.104 requires that a mortgage guaranty insurer file forms, classifications, and rules with TDI.

Section 3502.108(a) provides that the Commissioner may adopt reasonable rules relating to the minimum standards for coverage under policy forms consistent with the purpose of Chapter 3502, relating to Mortgage Guaranty Insurance, and the public policy of this state. Section 3502.108(b) provides that TDI "may establish requirements for data and information filed under this chapter."

Section 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.

§5.9311. Copyright, Public Inspection, and Confidential Filings.

(a) Copyright. Information included in filings that is marked "copyright" may be made available for public disclosure in the same manner as information that is not marked "copyright." Public disclosure methods may include posting filings on TDI's website or making them available for viewing through SERFF.

(b) Public inspection. Each filing submitted under Insurance Code Chapter 2301 or 3502, including any supporting information filed, will be open for public inspection as of the date of the filing. This subsection does not apply to a commercial property insurance filing submitted by a Lloyd's plan or a reciprocal or interinsurance exchange under Chapter 2301. Each filing submitted under Insurance Code Chapter 2053 and 2251, including any supporting information filed, is public information subject to Government Code Chapter 552, including any applicable exception from required disclosure under that chapter.

(c) Confidential filings. If a filer marks its entire filing as confidential, TDI will reject the filing.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902121

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Effective date: July 28, 2019

Proposal publication date: January 11, 2019

For further information, please call: (512) 676-6584



DIVISION 5. FILINGS MADE EASY-- REQUIREMENTS FOR PROPERTY AND CASUALTY POLICY FORM, ENDORSEMENT, AND MANUAL RULE FILINGS

28 TAC §§5.9320 - 5.9323

STATUTORY AUTHORITY. The Commissioner adopts the repeal of 28 TAC Chapter 5, Subchapter M, Division 5, §§5.9320 - 5.9323 under Insurance Code §§2052.002, 2171.003, 2301.001, 2301.006, 2301.053, 2301.055, 2301.056, 3502.104, 3502.108, and 36.001.

Section 2052.002 provides that in writing workers' compensation insurance, an insurance company may not use a form other than one prescribed by the Commissioner, and that before an insurance company may use a workers' compensation form that the Commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI.

Section 2171.003 provides that an insurer must file a policy form for use with commercial group property insurance with the Commissioner before using the form.

Section 2301.001 states that the purpose of Chapter 2301, Subchapter A, includes regulating insurance forms to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive.

Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the Commissioner, until the insurer files the forms with and receives approval from the Commissioner.

Section 2301.053 provides that a form may not be used unless the form is written in plain language. A form is considered written in plain language if it achieves a minimum score established by the Commissioner on the Flesch reading ease test.

Section 2301.055 provides that the Commissioner may adopt reasonable and necessary rules to implement Insurance Code Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage).

Section 2301.056 requires that declaration pages for residential property insurance policy forms list each type of deductible under the policy and state the exact dollar amount of each deductible.

Section 3502.104 requires that a mortgage guaranty insurer file forms, classifications, and rules with TDI.

Section 3502.108(a) provides that the Commissioner may adopt reasonable rules relating to the minimum standards for coverage under policy forms consistent with the purpose of Insurance Code Chapter 3502, relating to Mortgage Guaranty Insurance, and the public policy of this state. Section 3502.108(b) provides that TDI "may establish requirements for data and information filed under this chapter."

Section 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.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902122

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Effective date: July 28, 2019

Proposal publication date: January 11, 2019

For further information, please call: (512) 676-6584



28 TAC §§5.9320 - 5.9328

STATUTORY AUTHORITY. The Commissioner adopts new Division 5, §§5.9320 - 5.9328 under Insurance Code §§2052.002, 2171.003, 2301.001, 2301.006, 2301.053, 2301.055, 2301.056, 3502.104, 3502.108, and 36.001.

Section 2052.002 provides that in writing workers' compensation insurance, an insurance company may not use a form other than one prescribed by the Commissioner, and that before an insurance company may use a workers' compensation form that the Commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI.

Section 2171.003 provides that an insurer must file a policy form for use with commercial group property insurance with the Commissioner before using the form.

Section 2301.001 states that the purpose of Insurance Code Chapter 2301, Subchapter A, includes regulating insurance forms to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive.

Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the Commissioner, until the insurer files the forms with and receives approval by the Commissioner.

Section 2301.053 provides that a form may not be used unless the form is written in plain language. A form is considered written in plain language if it achieves a minimum score established by the Commissioner on the Flesch reading ease test.

Section 2301.055 provides that the Commissioner may adopt reasonable and necessary rules to implement Insurance Code Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage).

Section 2301.056 requires that declaration pages for residential property insurance policy forms list each type of deductible under the policy and state the exact dollar amount of each deductible.

Section 3502.104 requires that a mortgage guaranty insurer file forms, classifications, and rules with TDI.

Section 3502.108(a) provides that the Commissioner may adopt reasonable rules relating to the minimum standards for coverage under policy forms consistent with the purpose of Chapter 3502, relating to Mortgage Guaranty Insurance, and the public policy of this state. Section 3502.108(b) provides that TDI "may establish requirements for data and information filed under this chapter."

Section 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.

§5.9322. Additional Information.

(a) When reviewing each filing under this division, TDI may request additional information specific to the filing. This information may include:

- (1) related forms or information needed for the review;
- (2) a summary of all policy provisions, including a detailed description and explanation of the coverages, limitations, exclusions, and conditions;
- (3) a coverage comparison to a similar policy form or endorsement that the Commissioner has approved or adopted containing a detailed explanation of all the differences including any restrictions in coverage, enhancements in coverage, or clarifications to the previously approved policy forms or endorsements.
- (4) a coverage evaluation that contains a detailed explanation of the proposed changes including any restrictions in coverage, enhancements in coverage, or clarifications to approved or adopted policy forms or endorsements. The coverage evaluation may be provided in a side-by-side comparison showing any differences between the previously approved or adopted policy forms or endorsements and the proposed policy forms or endorsements.

(b) Filers must provide information requested by TDI under this section.

§5.9323. Requirements for Reference Filings.

(a) Reference filings for policy forms and endorsements should not include a copy of the referenced material.

(b) In addition to the transmittal information, a reference filing must include:

- (1) the name of the insurance company or advisory organization whose filing is being referenced; and
- (2) the TDI file number of the filing being referenced.

(c) For personal automobile, residential property, and personal multi-peril insurance, the filing must also include:

- (1) a list of each form and endorsement that the insurer will use from each referenced filing; and
- (2) a form usage table, as described in §5.9321(c)(6) of this title (relating to General Filing Requirements), that includes each form and endorsement that the insurer will use from each referenced filing.

(d) If a filer wants to change a form or endorsement approved for another insurer or an advisory organization, the filer may not submit the form as a reference filing. The filer must submit the amended form for approval with the information required by §5.9321 and §5.9322

of this title (relating to General Filing Requirements and Additional Information).

§5.9325. Request for Deemer Period Waiver.

(a) By sending written notice to TDI, an insurer may waive the deadlines by which the Commissioner, under Insurance Code §2301.006, must approve or disapprove a form before it is deemed approved.

(b) An insurer that waives the deadlines referenced in subsection (a) of this section may opt to withdraw its waiver. For the withdrawal to be effective, the insurer must provide written notice of withdrawal and the withdrawal must be acknowledged by TDI in writing. Subject to §5.9324(d) of this title, the deemer period described by Insurance Code §2301.006 will begin on acknowledgement of the withdrawal.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902123

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Effective date: July 28, 2019

Proposal publication date: January 11, 2019

For further information, please call: (512) 676-6584



DIVISION 6. FILINGS MADE EASY-- REQUIREMENTS FOR RATE AND RULE FILINGS

28 TAC §§5.9330 - 5.9335

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §§5.9330 - 5.9335 under Insurance Code §§559.004, 912.056, 2053.003, 2251.101, 2251.1025, 2251.252, 3502.101, 3502.104, 3502.108, and 36.001

Section 559.004 provides that the Commissioner "adopt rules that prescribe the allowable differences in rates charged by insurers due solely to the difference in credit scores."

Section 912.056 requires that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the Commissioner requires by rule.

Section 2053.003 requires that each insurance company writing workers' compensation insurance file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas.

Section 2251.101 provides that the Commissioner adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information.

Section 2251.1025 provides that the Commissioner adopt rules regarding filing requirements for certain personal automobile insurers with less than 3.5 percent of the market share of the personal automobile insurance market in this state.

Section 2251.252 provides that an insurer is exempt from the filing requirements of Insurance Code Chapter 2251 if it or the rate it is filing meets certain criteria.

Section 3502.101(a) requires that a mortgage guaranty insurer must file rate and supplementary rate information, and any changes to the rate or supplementary rate information, not later than 15 days before it uses the rate or supplementary rate information in this state. Section 3502.101(b) provides that the rate filing must include adequate supporting data; an explanation of the insurer's interpretation of any statistical data on which the insurer relied; an explanation and description of the methods used in making the rates; and certification of the appropriateness of the charges, rates, or rating plans based on reasonable assumptions and accompanied by adequate supporting information.

Section 3502.104 requires that a mortgage guaranty insurer file forms, classifications, and rules with TDI.

Section 3502.108(a) provides that the Commissioner may adopt reasonable rules relating to the minimum standards for coverage under policy forms consistent with the purpose of Chapter 3502, relating to Mortgage Guaranty Insurance, and the public policy of this state. Section 3502.108(b) provides that TDI "may establish requirements for data and information filed under this chapter."

Section 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.

§5.9332. *Categories of Supporting Information.*

The categories of supporting information addressed in this section describe the different items that may be required or requested in a rate and rule filing. Section 5.9334 of this title (relating to Requirements for Rate and Rule Filing Submissions) lists the categories of supporting information that different rate and rule filings require. Categories of supporting information include:

(1) Rate filing checklists. These are found in the Filings Made Easy Guide and show the information filers need to include with the filing.

(2) Actuarial memorandum. This memorandum describes the methodologies for determining each component used in developing the actuarial support, and a qualitative discussion on the selections for each component. It includes an explanation for any changes in methodologies or any changes to the component selections from the previous analysis.

(3) Actuarial support. This type of support consists of sufficient documentation and analysis to allow a qualified actuary to understand and evaluate the rates, each component used in developing the rates, and the appropriateness of each material assumption. Actuarial support is divided into the following subcategories:

(A) Rate indications consist of the analyses the insurer relies on to support its filed rates, each component used to develop the rate indications, and support for each of these components, including the data and methodologies used by the insurer. Rate indications may be on an overall basis or by coverage, class, form, or peril when appropriate. Rate indications must include each of the following with documentation in support of each, to the extent applicable:

- (i) premiums, on-level factors, and premiums at current rate level;
- (ii) incurred and paid losses;

(iii) loss and claim development factors;

(iv) premium and loss trend factors;

(v) hurricane and nonhurricane catastrophe factors or loss provisions, including the definition of a catastrophe and how the definition has changed over the experience period used to calculate the provisions;

(vi) off-balance factors if there are changes in relativities, for example: discounts, surcharges, or territorial definitions;

(vii) the measure of credibility, the complement of credibility, the criteria for full credibility, and the method for determining partial credibility;

(viii) expenses, including general expenses; other acquisition expenses; commissions and brokerage expenses; taxes, licenses and fees; loss adjustment expenses; and expense offsets from fee income;

(ix) the net cost of reinsurance;

(x) for rates filed under Insurance Code Chapter 2251, profit provisions, including risk loads;

(xi) for rates filed under Insurance Code Chapters 2053 and 3502, profit and contingency provisions, including risk loads;

(xii) the effect on premiums of individual risk variations based on loss or expense considerations; and

(xiii) any other component used in developing a rate indication.

(B) Relativity analysis consists of both the analysis and support for the selected rating factors, including the loss experience and methodologies used by the insurer to derive the indicated rating factors. Supporting information must include:

(i) the current relativity;

(ii) the indicated relativity;

(iii) support for the indicated relativities, including the loss experience and methodologies used by the insurer to derive the indications;

(iv) the selected relativity;

(v) support for the selected relativities if they differ from the indicated relativities; and

(vi) the percent change from current to selected relativity.

(C) Other actuarial support consists of both the analysis and support for the selected rates, including the loss experience and methodologies used by the insurer to derive them. The support must clearly demonstrate why the proposed rates are not excessive, inadequate, or unfairly discriminatory. A rate is reasonable and not excessive, inadequate, or unfairly discriminatory if it is an actuarially sound estimate of the expected value of all future costs associated with an individual risk transfer. These costs include claims, claim settlement expenses, operational and administrative expenses, and the cost of capital.

(4) SERFF rate data. This data consists of all information necessary to complete the company rate information fields in SERFF.

(5) Policyholder impact information. Policyholder impact information must reflect the changes for all policyholders. This information consists of the following provided separately by form or coverage:

(A) a histogram that graphically depicts the impact of the filed changes to policyholders in 5 percentage point intervals;

(B) the policy counts in each interval displayed in either the histogram or a separate table;

(C) the minimum and maximum policyholder impact; and

(D) a description of the changes that contributed to the minimum and maximum policyholder impact.

(6) Average rate change by county. This is the average impact of all changes included in a filing by county, provided separately by form or coverage.

(7) Rate change information. Rate change information must reflect the changes for all policyholders.

(A) For loss cost reference filings, rate change information consists of:

(i) the proposed percentage change in the underlying loss costs;

(ii) the change in the insurer's loss cost multiplier;

(iii) the combined change in the loss costs and the loss cost multipliers;

(iv) a six-year rate change history; and

(v) the effect that changes in fee income have on the total average rate change for all coverages and forms combined.

(B) For workers' compensation filings using classification relativities established under Insurance Code §2053.051, rate change information consists of:

(i) the percentage change in the underlying classification relativities;

(ii) the change in the insurer's deviation;

(iii) the combined change in the classification relativities and the insurer's deviation;

(iv) a six-year rate change history; and

(v) the effect that changes in fee income have on the total average rate change.

(C) For all other filings, rate change information consists of:

(i) the average proposed rate change for each applicable coverage or form;

(ii) the total average rate change for all applicable coverages and forms combined;

(iii) a six-year rate change history; and

(iv) the effect that changes in fee income have on the total average rate change for all applicable coverages and forms combined.

(8) Historical premium and loss information. This information consists of an insurer's most recent five-year experience, for both Texas and countrywide, of direct premiums written, direct premiums earned, direct losses and defense and cost containment expenses paid, direct losses and defense and cost containment expenses incurred, and the ratio of the direct losses and defense and cost containment expenses incurred to direct earned premiums. The Texas experience is the amounts, or a subset of the amounts, pertinent to the line of business reported on the Exhibit of Premiums and Losses (Statutory Page

14 Data) in the insurer's Annual Statement. The countrywide experience is the amounts, or a subset of the amounts, pertinent to the line reported on the insurer's Insurance Expense Exhibit (IEE), Part III in the insurer's Annual Statement.

(9) Expense information. This information consists of Texas experience and, if applicable, countrywide experience. The loss adjustment expenses must be shown as a dollar amount and as a ratio to incurred losses. All other expenses must be shown as a dollar amount and as a ratio to premium. All expense items must be on a direct basis.

(A) Three years of historical Texas experience must be included for commissions and brokerage expenses incurred; taxes, licenses, and fees incurred; losses incurred; and defense and cost containment expenses incurred. These must be the amounts, or a subset of the amounts, reported on the Exhibit of Premiums and Losses (Statutory Page 14 Data) in the insurer's Annual Statement.

(B) Three years of historical countrywide experience must be included for commissions and brokerage expenses incurred, other acquisition expenses incurred, general expenses incurred, losses incurred, defense and cost containment expenses incurred, and adjusting and other loss adjustment expenses incurred. These must be the amounts, or a subset of the amounts, reported in the insurer's IEE, Part III in the insurer's Annual Statement.

(C) Three years of historical countrywide experience must be included for each category of disallowed expenses. These must be the amounts reported in the insurer's response to the annual TDI Disallowed Expense Call. Other acquisition and general expenses, each adjusted to remove disallowed expenses, must be listed separately. The total adjusted general expense percentage must reflect any necessary adjustment due to the capping of general expenses at 110 percent of the industry median for the line of insurance.

(D) To the extent that the expense provisions differ from the historical expenses, the filing must provide additional support for the expense provisions underlying the rates. Provisions for commissions and brokerage expenses; other acquisition expenses; general expenses; taxes, licenses, and fees; and profit and contingencies must be displayed and a sum computed. For filings submitted under Insurance Code Chapter 2251, the expense provisions must exclude disallowed expenses.

(E) When additional expense provisions are included, such as the net cost of reinsurance or an expense offset from fee income, the filing must include expected or historical experience. Support for provisions for the net cost of reinsurance may include reinsurance premiums, expected reinsurance recoverables, and a description of reinsurance coverage including attachment points and limits.

(10) Loss cost information for reference filings. This information consists of the following:

(A) the TDI file number of the loss costs being referenced;

(B) the derivation of the proposed loss cost multiplier including any loss cost modification factor and the following expense and profit provisions:

(i) commissions and brokerage expenses;

(ii) other acquisition expenses, adjusted to remove disallowed expenses;

(iii) general expenses, adjusted to remove disallowed expenses;

(iv) taxes, licenses, and fees; and

(v) underwriting profit and contingencies;

(C) supporting documentation for loss cost modification factors other than 1.00;

(D) the loss cost multiplier to be used as of the effective date of the filing;

(E) the loss cost multiplier used immediately before the effective date of the filing; and

(F) the effective rate-level change due to any change in the loss cost multiplier.

(11) Profit provision information. This information consists of a description of the methodology, assumptions, and support for the assumptions used to arrive at the profit provisions underlying the proposed rates.

(12) A side-by-side comparison. This comparison must show any differences between the previously filed and the proposed rates, rating manual, rules, or other supplementary rating information.

(13) A mark up. This is a copy of the previously filed rates, rating manuals, rules, or other supplementary rating information indicating the differences between it and the revised version, with any new language or factors underlined and the deleted language or factors in brackets with a strikethrough, or other clearly identified or highlighted editorial notations referencing the new and replaced language or factors.

(14) Sample premium impacts by selected ZIP codes. These are sample premiums and premium changes based on all changes included in a filing for certain specified policy types and ZIP codes.

(15) Rate filing templates. These are found in the Filings Made Easy Guide and provide insurers with an optional means of providing certain supporting information and supplementary rating information.

(16) Other information. This includes any other information required by the Commissioner necessary to determine that the rates meet the rate standards.

§5.9333. *Categories of Supplementary Rating Information.*

The categories of supplementary rating information addressed in this section describe the different items that may be required or requested in a rate and rule filing. Section 5.9334 of this title (relating to Requirements for Rate and Rule Filing Submissions) lists the categories of supplementary rating information that different rate and rule filings require. Categories of supplementary rating information include:

(1) Rating manual. This type of manual consists of any rating schedule, plan of rules, and rating rules. A rating manual may contain factors and relativities, including increased limits factors, classification relativities, deductible relativities, territory relativities, premium discounts, and other similar factors. A rating manual may also include some or all information in the remaining categories of supplementary rating information.

(2) Rating algorithm.

(3) Rating plan.

(4) Territory codes and descriptions.

(5) Classification system. This consists of any other criteria, guidelines, models, and methods that place individual risks into rating classifications, such as tiers, categories, or similar groupings, regardless of the name used.

(6) Factors and relativities, including increased limits factors, classification relativities, deductible relativities, territory relativities, premium discounts or surcharges, and other similar factors.

(7) Other information. This is any other information used by the insurer to determine the applicable premium for an insured.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902124

James Person

Interim General Counsel

Texas Department of Insurance

Effective date: July 28, 2019

Proposal publication date: January 11, 2019

For further information, please call: (512) 676-6584



DIVISION 7. FILINGS MADE EASY-- REQUIREMENTS FOR UNDERWRITING GUIDELINE FILINGS

28 TAC §§5.9340 - 5.9342

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §§5.9340 - 5.9342 under Insurance Code §§38.002, 38.003, 2053.034, and 36.001.

Section 38.002 requires each insurer writing personal automobile insurance or residential property insurance to file its underwriting guidelines with TDI to ensure that the underwriting guidelines are sound, actuarially justified, substantially commensurate with the contemplated risk, and not unfairly discriminatory.

Section 38.003 provides that TDI may obtain a copy of the underwriting guidelines of an insurer for lines other than personal automobile insurance or residential property insurance.

Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines.

Section 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.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902125

James Person

Interim General Counsel

Texas Department of Insurance

Effective date: July 28, 2019

Proposal publication date: January 11, 2019

For further information, please call: (512) 676-6584



**DIVISION 8. FILINGS MADE EASY--
REQUIREMENTS FOR CREDIT SCORING
MODEL FILINGS FOR PERSONAL INSURANCE**

28 TAC §§5.9351, §5.9352

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §5.9351 and §5.9352 under Insurance Code §§559.004, 559.151, and 36.001.

Section 559.004 provides that the Commissioner "adopt rules that prescribe the allowable differences in rates charged by insurers due solely to the difference in credit scores."

Section 559.151 requires that an insurer that uses credit scores to underwrite and rate risks file its credit scoring model or other credit scoring processes with TDI.

Section 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.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902126

James Person

Interim General Counsel

Texas Department of Insurance

Effective date: July 28, 2019

Proposal publication date: January 11, 2019

For further information, please call: (512) 676-6584



**DIVISION 9. FILINGS MADE EASY--
REDUCED FILING REQUIREMENTS FOR
CERTAIN INSURERS**

28 TAC §§5.9355 - 5.9357

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §§5.9355 - 5.9357 under Insurance Code §§2251.101, 2251.1025, 2251.252, and 36.001.

Section 2251.101 provides that the Commissioner adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information.

Section 2251.1025 provides that the Commissioner adopt rules regarding filing requirements for certain personal automobile insurers with less than 3.5 percent of the market share of the personal automobile insurance market in this state.

Section 2251.252 provides that an insurer is exempt from the filing requirements of Chapter 2251 if it or the rate it is filing meets certain criteria.

Section 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.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902127

James Person

Interim General Counsel

Texas Department of Insurance

Effective date: July 28, 2019

Proposal publication date: January 11, 2019

For further information, please call: (512) 676-6584



**DIVISION 10. FILINGS MADE EASY--
ADDITIONAL FILING REQUIREMENTS FOR
CERTAIN COUNTY MUTUAL INSURANCE
COMPANIES**

28 TAC §§5.9360, §5.9361

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §5.9360 and §5.9361 under Insurance Code §§912.056, 2251.101, and 36.001.

Section 912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the Commissioner requires by rule.

Section 2251.101 provides that the Commissioner adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information.

Section 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.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902128

James Person

Interim General Counsel

Texas Department of Insurance

Effective date: July 28, 2019

Proposal publication date: January 11, 2019

For further information, please call: (512) 676-6584



**DIVISION 11. FILINGS MADE EASY--
-CERTIFICATES OF PROPERTY AND
CASUALTY INSURANCE**

28 TAC §§5.9370 - 5.9374, 5.9376

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §§5.9370 - 5.9374 and 5.9376 under Insurance Code §§1811.003, 1811.052, 1811.053, 1811.101, 1811.104, and 36.001.

Section 1811.003 allows the Commissioner to adopt rules necessary or proper to accomplish the purposes of Insurance Code Chapter 1811.

Section 1811.052 states that an insurer or an agent may not issue a certificate of insurance unless the certificate has been filed with and approved by TDI or is a standard form deemed approved by TDI under Insurance Code §1811.103.

Section 1811.053 states that a person may not alter or modify a certificate of insurance form approved under Insurance Code §1811.101 unless the alteration or modification is approved by TDI.

Section 1811.101 states that an insurer or agent may not deliver or issue for delivery in this state a certificate of insurance unless the certificate has been filed with and approved by the Commissioner and contains the phrase "for information purposes only" or similar language.

Section 1811.104 provides that a certificate of insurance form and any supporting information filed with TDI is open to public inspection as of the date of the filing.

Section 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.

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

Filed with the Office of the Secretary of State on July 8, 2019.

TRD-201902129

James Person

Interim General Counsel

Texas Department of Insurance

Effective date: July 28, 2019

Proposal publication date: January 11, 2019

For further information, please call: (512) 676-6584



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 Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (DWC) will review all sections within 28 Texas Administrative Code (TAC) Chapters 102 - 116. This review will be in accordance with the requirements for periodic rule review under Texas Government Code §2001.039.

DWC will consider whether the reasons for adopting these rules initially continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

To comment on this rule review project, submit written comments by 5:00 p.m., Central time, on August 19, 2019. Comments received after that date will not be considered. Comments should clearly specify the section of the rule to which they apply and include proposed alternative language as appropriate. General comments should be designated as such.

Comments or hearing requests may be submitted by email to rulecomments@tdi.texas.gov or by mailing or delivering to Cynthia Guillen, Office of General Counsel, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Any repeals or suggested amendments identified during the review of these rules may be considered in future rulemaking in accordance with the Administrative Procedures Act, Texas Government Code Chapter 2001.

TRD-201902161
Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 9, 2019



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 214, Secondary Containment Requirements for Underground Storage Tank Systems Located Over Certain Aquifers.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state

agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 214 continue to exist.

Comments regarding suggested changes to the rules in Chapter 214 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 214. 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 Non-Rule Project Number 2019-090-214-CE. Comments must be received by August 19, 2019. For further information, please contact Elizabeth Vanderwerken, Program Support and Environmental Assistance Division, at (512) 239-5900.

TRD-201902159
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 9, 2019



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 295, Water Rights, Procedural.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 295 continue to exist.

Comments regarding suggested changes to the rules in Chapter 295 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 295. 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 Non-Rule Project Number 2019-057-295-OW. Comments must be received by August 19, 2019. For further information, please contact Kathy Ramirez, Water Availability Division, at (512) 239-6757.

TRD-201902158

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 9, 2019



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 299, Dams and Reservoirs.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 299 continue to exist.

Comments regarding suggested changes to the rules in Chapter 299 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 299. Written comments may be submitted to Paige Bond, 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 Non-Rule Project Number 2019-091-299-CE. Comments must be received by August 19, 2019. For further information, please contact Warren Samuelson, P.E., Manager, Dam Safety Section, Critical Infrastructure Division, at (512) 239-5195.

TRD-201902144

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 9, 2019



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 309 continue to exist.

Comments regarding suggested changes to the rules in Chapter 309 may be submitted but will not be considered for rule amendments as

part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 309. Written comments may be submitted to Paige Bond, 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 Non-Rule Project Number 2019-036-309-OW. Comments must be received by August 19, 2019. For further information, please contact Laurie Fleet, Water Quality Division at (512) 239-5445.

TRD-201902145

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 9, 2019



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 350, Texas Risk Reduction Program.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 350 continue to exist.

Comments regarding suggested changes to the rules in Chapter 350 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 350. Written comments may be submitted to 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 Non-Rule Project Number 2019-082-350-WS. Comments must be received by August 19, 2019. For further information, please contact Anna R. Brulloths, Remediation Division, at (512) 239-5052.

TRD-201902157

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 9, 2019



Adopted Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

Chapters 41 - 69, "Old Law" chapters

The Texas Department of Insurance, Division of Workers' Compensation (DWC) is readopting all sections within the "Old Law" chapters, Chapters 41 - 69, of Title 28, Part 2 of the Texas Administrative Code. This reoption is in compliance with Texas Government Code §2001.039, which requires a state agency to review each of its rules every four years and to readopt, readopt with amendment, or repeal the rule. A notice of rule review was published in the April 5, 2019, issue of the *Texas Register* (44 TexReg. 1719). DWC has determined that the reasons for adopting the chapters continue to exist.

DWC received eight comments on the review. Six commenters stated that the reasons for adopting the rules under 28 TAC Chapters 41 - 69 continue to exist and that the rules should be readopted. A commenter also suggested that 28 TAC §42.107 be updated so that the current re-

quirements of 28 TAC §134.201 apply to "Old Law" claims. Another commenter supports amendments to clarify 28 TAC §42.105.

Any repeals or suggested amendments identified during the review of these rules may be considered in future rulemaking in accordance with the Administrative Procedures Act, Texas Government Code Ch. 2001.

TRD-201902160

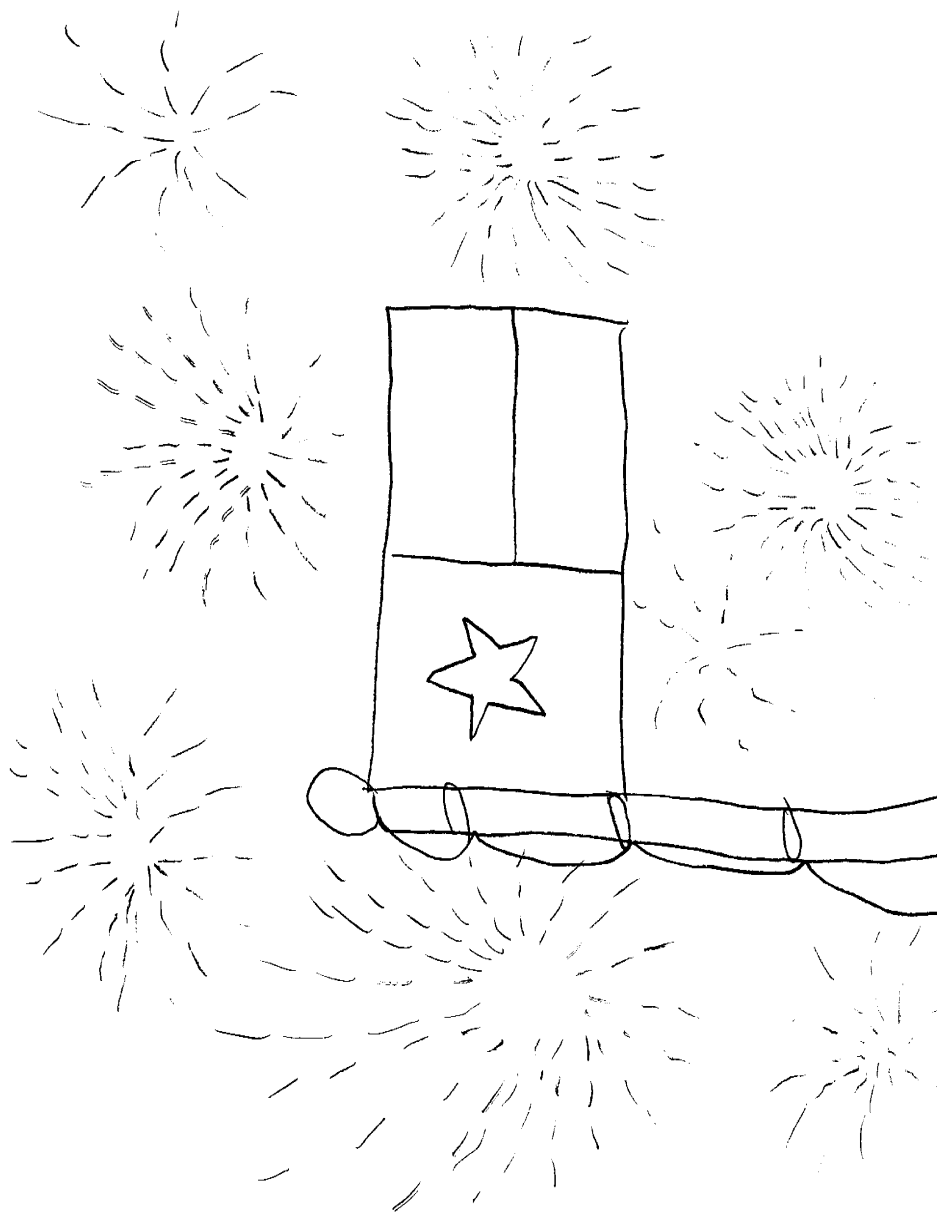
Nicholas Canaday III

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: July 9, 2019





TABLES & GRAPHICS

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.

2018 Charter School Performance Framework: Overview

The Charter School Performance Framework (CSPF), required by Texas Education Code (TEC §12.1181), is designed to provide parents, the public, charter operators, and the authorizer with information about each charter school's performance. Consistent with TEC §§12.1141, 12.115, and 12.1181, these performance results inform the authorizer's monitoring efforts as well as decisions related to renewal and revocation.

The Texas Education Agency (TEA) is committed to expanding the number of high-quality educational options in our portfolio. To help us meet this goal, the 2018 CSPF has been redesigned to increase transparency about TEA's performance expectations for charter schools. In addition, the 2018 CSPF is now better aligned with the Texas A-F accountability framework, the Charter FIRST financial accountability rating system, and best practices that have been identified by the National Association of Charter School Authorizers.

The CSPF includes three frameworks that measure academic, financial, and operational performance. 2018 CSPF reports will include an overall CSPF score and a subscore for each framework. Indicators that will be assessed within each framework are outlined in this document.

Charters are rated at the district (LEA) level. The calculation for the overall CSPF score is as follows¹:



¹ If the charter school does not receive an A-F rating, it will not receive an overall rating. If the charter school does not receive an operational or financial rating, its A-F rating will equal its overall CSPF score.

Overall performance

Measures the charter school's overall combined performance on the academic, financial, and operational frameworks.

Meets Expectations

The charter school attained an overall score that was at or above 60%.

Does Not Meet Expectations

The charter school attained an overall score that was less than 60%.

2018 Academic Framework Indicators

The Academic Framework evaluates each charter school's academic performance. This framework answers the evaluative question: Is the academic program a success for all students? Meeting the expectations in this framework is indicative of an effective academic program where student learning—the central purpose of every school—is taking place.

The following Academic Framework indicators facilitate the evaluation of charter school academic performance.

Number	Indicator	Source and Calculation	Points possible
1a	Overall A-F score	2018 accountability rating: overall scale score	100
1b	Achievement status for subgroups	<ul style="list-style-type: none"> 2018 Closing the Gaps data: academic achievement status Percent of evaluated indicators met 	100
1c	English language proficiency for English learners	<ul style="list-style-type: none"> 2018 Closing the Gaps data: English language proficiency Earn 10 points if target was met. Earn 0 points if target was missed. 	10
1d	Campus status	<ul style="list-style-type: none"> Earn 10 points if all the charter's campuses received A or B ratings. Earn 4 points if all the charter's campuses received A, B, or C ratings. Earn 2 points if all the charter's campuses received A, B, C, or D ratings. Earn 0 points if any campus failed. <p><i>Campuses that were not rated will not be counted in this calculation.</i></p>	10
<i>Academic framework calculation</i> ² = .6(1a) + .2(1b) + .1(10*1c) + .1(10*1d)			100

² If data is not available, academic framework scores may be based on the following calculations:

- If the school did not test enough English learners (i.e., small *n* size) to generate a Closing Gaps English language proficiency score, the overall calculation will be adjusted to .3(1b).
- If there is no Closing Gaps data for the school, the overall calculation will be adjusted to .9(1a).
- If the charter school does not receive an A-F rating, it will not receive an academic framework rating.

Overall score on the academic framework Measures the charter school's overall performance on indicators included in the academic framework.
<input type="checkbox"/> Meets Expectations The charter school attained an overall score on the academic framework that was at or above 60%.
<input type="checkbox"/> Does Not Meet Expectations The charter school attained an overall score on the academic framework that was less than 60%.

2018 Academic Framework Indicators: AEA Provisions

In accordance with TEC §12.1181, the Academic Framework includes indicators for charter schools evaluated under alternative education accountability (AEA) provisions of the Texas Accountability Rating System. The *2018 Accountability Manual* describes in more detail how scores are calculated or scaled differently for AEA schools.³

Number	Indicator	Source and Calculation	Points possible
1a	Overall academic performance	2018 accountability rating: overall scale score (AEA scaling)	100
1b	Academic status and growth for subgroups	2018 Closing the Gaps data: Closing the Gaps scaled score (AEA scaling)	100
1c	Campus status	<ul style="list-style-type: none"> • Earn 10 points if all the charter's campuses received A or B ratings. • Earn 4 points if all the charter's campuses received A, B, or C ratings. • Earn 2 points if all the charter's campuses received A, B, C, or D ratings. • Earn 0 points if any campus failed. <p><i>Campuses that were not rated will not be counted in this calculation.</i></p>	10
<p><i>Academic framework calculation⁴ = .6(1a) + .3(1b) + .1(10*1c)</i></p>			100

³ For additional detail read: p. 17 (graduation and dropout rate calculations); p. 45 (student achievement domain scaling tables); p. 46 (scaling tables for graduation rate and the Closing the Gaps domain); chapter 7 (AEA provisions); and Appendix I Scaling Resources. The full *2018 Accountability Manual* is available online at the following link: <https://tea.texas.gov/2018accountabilitymanual.aspx>.

⁴ If data is not available, AEA academic framework scores may be based on the following calculations:

- If there is no Closing Gaps data for the school, the overall calculation will be adjusted to .9(1a).
- If the charter school does not receive an A-F rating, it will not receive an academic framework rating.

Overall score on the academic framework

Measures the AEA charter school's overall performance on indicators included in the academic framework.

Meets Expectations

The AEA charter school attained an overall score on the academic framework that was at or above 60%.

Does Not Meet Expectations

The AEA charter school attained an overall score on the academic framework that was less than 60%.

2018 Financial Framework Indicators

Financial Framework indicators are evaluated in the Charter School Financial Integrity Rating System of Texas (Charter FIRST). As described in 19 TAC §109.1001, the purpose of Charter FIRST is to ensure that charter schools are held accountable for the quality of their financial management practices.

Note: Financial Framework indicators are not evaluated for charter schools in their first year of operation.

Read more about Charter FIRST on the TEA website.

The Financial Framework indicators below provide key data to assess the financial health and viability of charter schools.⁵

Number	Indicator	Source and Calculation	Points possible
2a	Overall financial performance	Overall score on Charter FIRST (2017-2018)	100
2b	Short-term solvency: cash on hand	Charter FIRST indicator #6 (2017-2018)	10
2c	Short-term solvency: ratio of current assets to current liabilities	Charter FIRST indicator #7 (2017-2018)	10
2d	Long-term solvency: revenues equal or exceed expenses	Charter FIRST indicator #9 (2017-2018)	10
2e	Long-term solvency: debt service coverage ratio	Charter FIRST indicator #10 (2017-2018)	10
$\text{Financial framework calculation} = .6(2a) + .2(10 * \frac{\#2b + \#2c}{2}) + .2(10 * \frac{\#2d + \#2e}{2})$			100

Overall score on the financial framework	
Measures the charter school's overall performance on indicators included in the financial framework.	
<input type="checkbox"/>	Meets Expectations The charter school attained an overall score on the financial framework that was at or above 60%.
<input type="checkbox"/>	Does Not Meet Expectations The charter school attained an overall score on the financial framework that was less than 60%.

⁵ Charter schools that are operated by institutions of higher education will receive only a pass/fail on the financial framework, reflective of their FIRST score. These schools receive neither an overall numeric FIRST score nor scores on solvency indicators. To calculate the overall CSPF score: pass = 100.

2018 Operational Framework Indicators

The Operational Framework indicators facilitate evaluation of charter schools' compliance with federal law, state law, state rules or regulations, and/or the charter contract.

The ratings assigned to indicators in the Operational Framework neither negate any ratings (including, but not limited to state accountability, Charter FIRST, Accreditation, or PBMAS) that a charter school or charter campus receives, nor removes the requirements associated with any sanctions or interventions required as a result of their ratings.

The following Operational Framework indicators evaluate the charter school's compliance with educational, operational, governance, and reporting requirements.

Number	Indicator	Points
3a	Teacher qualifications	<ul style="list-style-type: none"> Meets: 1 point Does not meet: 0 points
3b	Program requirements: Special populations	<ul style="list-style-type: none"> Meets: 1 point Does not meet: 0 points Far below: -1 point
3c	Program requirements: Bilingual education/English as a second language populations	<ul style="list-style-type: none"> Meets: 1 point Does not meet: 0 points Far below: -1 point
3d	Program requirements: Career and technical education populations	<ul style="list-style-type: none"> Meets: 1 point Does not meet: 0 points Far below: -1 point
3e	Timely filing of governance reporting forms	<ul style="list-style-type: none"> Meets: 1 point Does not meet: 0 points
3f	Training requirements for board members and charter school officials	<ul style="list-style-type: none"> Meets: 1 point Does not meet: 0 points
3g	Criminal record employment requirements	<ul style="list-style-type: none"> Meets: 1 point Does not meet: 0 points
3h	Timely filing of PEIMS data	<ul style="list-style-type: none"> Meets: 1 point Does not meet: 0 points
3i	TREx usage requirements	<ul style="list-style-type: none"> Meets: 1 point Does not meet: 0 points
3j	Certificate of occupancy requirements	<ul style="list-style-type: none"> Meets: 1 point Does not meet: 0 points
3k	Administrative cost ratio	<ul style="list-style-type: none"> Meets: 1 point Does not meet: 0 points
3l	Maintenance of 501(c)(3) status ⁶	<ul style="list-style-type: none"> Meets: 1 point Does not meet: 0 points
3m	50% of students in tested grades	<ul style="list-style-type: none"> Meets: 1 point Does not meet: 0 points
3n	Eligibility to participate in child nutrition program	<ul style="list-style-type: none"> Meets: 1 point Does not meet: 0 points

⁶ If the charter holder fails to maintain 501(c)(3) status, it is no longer eligible to operate charter schools.

Number	Indicator	Points
3o	Appropriate handling of secure assessment materials	<ul style="list-style-type: none"> • Meets: 1 point • Does not meet: 0 points
$\text{Operational framework calculation} = \frac{(\# \text{points earned})}{(\# \text{ of indicators evaluated})} * 100$		100

Operational Framework Indicators

3a. Teacher Qualifications
Charter school teachers must hold a baccalaureate degree.
TEC §12.129, 19 TAC §100.1015(b)(3)(F)

Meets Expectations
All teachers at the charter school hold a baccalaureate degree or meet the statutory exception.⁷

Does Not Meet Expectations
Fewer than 100.0% of teachers at the charter school hold a baccalaureate degree or do not meet the statutory exception.

Not Applicable
The charter school failed to report staff data or reported only contracted classroom teachers.

Data source: 2017-18 TAPR District Staff Information, Teachers by Highest Degree Held

3b. Program Requirements – Special Populations
Charter schools must meet program requirements for special populations, including, but not limited to, special education.
TEC §12.104(b)(2)(F), 19 TAC §100.1032(1)(D)

Meets Expectations
The charter school received a *Meets Requirements* determination for special education.

Does Not Meet Expectations
The charter school received a *Needs Assistance* determination for special education.

Far Below Expectations
The charter school received a *Needs Intervention* or *Needs Substantial Intervention* determination for special education.

Data source: 2018 PBMAS, 2018-19 Intervention Stage and Activity Manager (ISAM)

⁷ Per TEC §12.129(b), in some cases, teachers of noncore vocational courses may qualify for an exception if they meet alternative requirements.

3c. Program Requirements – Bilingual Education/English as a Second Language Populations

Charter schools must meet program requirements for BE/ESL populations.
TEC §12.104(b)(2)(G), 19 TAC §100.1032(1)(D)

<input type="checkbox"/> Meets Expectations The charter school is not staged for BE/ESL.
<input type="checkbox"/> Does Not Meet Expectations The charter school is in Stage 1 or Stage 2 for BE/ESL.
<input type="checkbox"/> Far Below Expectations The charter school is in Stage 3 or Stage 4 for BE/ESL.

Data source: 2018 PBMAS and 2018-19 ISAM

3d. Program Requirements – Career and Technical Education Populations

Charter schools must meet program requirements for CTE populations.
19 TAC §100.1032(1)(D)

<input type="checkbox"/> Meets Expectations The charter school is not staged for CTE.
<input type="checkbox"/> Does Not Meet Expectations The charter school is in Stage 1 or Stage 2 for CTE.
<input type="checkbox"/> Far Below Expectations The charter school is in Stage 3 or Stage 4 for CTE.

Data source: 2018 PBMAS and 2018-19 ISAM

3e. Timely Filing of Governance Reporting Forms

Charter schools must file Governance Reporting Forms in a timely manner.
TEC §12.119(b), 19 TAC §100.1007

<input type="checkbox"/> Meets Expectations The charter school filed 2018-2019 governance reporting forms in a timely manner.
<input type="checkbox"/> Does Not Meet Expectations The charter school failed to file 2018-2019 governance reporting forms in a timely manner.

Data source: TEA Charter School Tracking System governance reporting forms

3f. Training Requirements

Charter board members and school officials must complete the annually required training.

TEC §12.123, 19 TAC §§ 100.1102-100.1105

Meets Expectations

All charter board members and school officers appointed or hired prior to December 3, 2018 reported that they completed the annually-required training or met the criteria for exceptions provided for in the TEA Governance Form.

Does Not Meet Expectations

Some charter board members and/or school officers appointed or hired prior to December 3, 2018 failed to report that they completed the annually required training, failed to meet criteria for exceptions provided for in the TEA Governance Form, or the charter school failed to submit a governance reporting form by the required reporting deadline.

Data source: TEA Charter School Tracking System governance reporting forms

3g. Criminal Record Employment Requirements

Charter schools must certify compliance with TEC §22.085.

TEC §§ 12.120, 12.1059, 22.0832, 22.085, 19 TAC §100.1151

Meets Expectations

The charter school certified its compliance with TEC §22.085 by submitting the "Criminal History Compliance Certification" for the 2018-19 school year in a timely manner.

Does Not Meet Expectations

The charter school failed to certify its compliance with TEC §22.085 because it did not submit the "Criminal History Compliance Certification" for the 2018-19 school year in a timely manner or if a finding from a Special Accreditation Investigation indicates the charter school is not in compliance.

Data source: TEA Educator Certification

3h. Timely Filing of PEIMS Data

This indicator measures the charter school's compliance with PEIMS reporting requirements.

TEC §12.104

Meets Expectations

The charter school was in compliance with 2017-18 PEIMS data reporting timelines.

Does Not Meet Expectations

The charter school was not in compliance with 2017-18 PEIMS data reporting timelines.

Data source: TEA Student Education Data System/PEIMS Division

3i. TREx Usage Requirements

Charter schools must participate in the electronic Texas Records Exchange (TREx) system.

TEC §7.010, TEC §25.002(a-1), 19 TAC §129.1025

Meets Expectations

All the charter's campuses responded to requests for information in TREx within 10 working days and followed the TREx data standards.

Does Not Meet Expectations

Some of the charter's campuses failed to respond to requests for information in TREx within 10 working days and/or did not follow the TREx data standards.

Data source: TEA Student Education Data System/PEIMS Division

3j. Certificate of Occupancy Requirements

All charter school buildings used for educational purposes must have a valid certificate of occupancy for educating children.

19 TAC §§ 100.1215(b) and 100.1001(3)(E)

Meets Expectations

The charter school is in compliance with certificate of occupancy requirements.

Does Not Meet Expectations

The charter school is not in compliance with certificate of occupancy requirements.

Not Applicable

The charter holder is a university that has not provided a certificate of occupancy for the educational use of charter school sites that are on the university campus.

Data source: TEA Charter Schools Tracking System

3k. Administrative Cost Ratio

Measures whether the charter school's administrative costs and size are proportionate.

Meets Expectations

The charter school scored 6 points or higher on Charter FIRST indicator #11.

Does Not Meet Expectations

The charter school scored fewer than 6 points on Charter FIRST indicator #11.

Not Applicable

The charter school is in its first year of operation and is not evaluated on this indicator.

Data source: 2017-18 Charter FIRST Indicator 11

3f. Maintenance of 501(c)(3) Status

Charter holders are required to maintain their 501(c)(3) status at all times.

TEC §12.101, 19 TAC §100.1217

Meets Expectations

The charter holder maintained its 501(c)(3) status.

Does Not Meet Expectations

The charter holder failed to maintain its 501(c)(3) status.

Not Applicable

The charter holder is a governmental entity, college, or university.

Data sources: Texas Secretary of State and Internal Revenue Service (IRS)

Note: Per TEC §12.101, failure to maintain 501(c)(3) status means that the charter holder is no longer eligible to operate an open-enrollment charter school.

3m. 50% of students in tested grades

Confirms that the constitution of each campus within the charter school's student body is sufficient for state accountability standards.

19 TAC §100.1015(b)(3)(G)

Meets Expectations

Each campus operated by the charter school has at least 50% of its student population in tested grades, the charter school has not reached its fifth year of operation, or the charter holder has obtained a waiver from the commissioner of education.

Does Not Meet Expectations

One or more of the campuses operated by the charter school has fewer than 50% of its student population in tested grades and the charter holder has not obtained a waiver from the commissioner of education.

Data source: 2018-2019 TAPR

3n. Eligibility to Participate in Child Nutrition Program

Indicates whether the charter school has maintained its eligibility to participate in child nutrition programs

19 TAC §100.1022(c)(1)(A)(xi) and 100.1032(2)(N)

Meets Expectations

The charter school maintained its eligibility to participate in child nutrition programs.

Does Not Meet Expectations

The charter school failed to maintain its eligibility to participate in child nutrition programs and did not regain its eligibility within 30 days.

Data source: Texas Department of Agriculture

3o. Appropriate Handling of Secure Assessment Materials

Measures the charter school's compliance with state rules concerning assessment materials.

TEC §39.0301-39.0304, 19 TAC §101.3031

Meets Expectations

The charter school fully complied with state rules concerning delivery of assessment materials, storage and administration of assessments, and return of assessment materials for the most recent assessment period.

Does Not Meet Expectations

The charter school failed to fully comply with state rules concerning delivery of assessment materials, storage and administration of assessments, and return of assessment materials for the most recent assessment period.

Data source: TEA Student Assessment

Overall score on the operational framework

Measures the charter school's overall compliance with indicators on the operational framework.

Meets Expectations

The charter school attained an overall score on the operational framework that was at or above 60%.

Does Not Meet Expectations

The charter school attained an overall score on the operational framework that was less than 60%.

2018 Adult High School Diploma and Industry Certification Public Charter School Performance Framework Indicators

The Adult High School Diploma Charter School Framework contains standards by which to measure the performance of an adult high school program operated under a charter granted under Texas Education Code (TEC) §29.259.

The following indicators facilitate review of the adult high school diploma charter school's performance.

1. Student achievement on exit-level assessment
2. Completion of high school diploma program
3. Completion of industry certification program
4. Enrollment in institutions of higher education
5. Significant income increase

Data will be reported for all five indicators; however, the school's performance will only be scored for the first three. For each of those three indicators, the charter school may either meet or not meet the expectations described below.

1. Student achievement on academic assessments

Measures graduating students' performance on applicable end-of-course (EOC) assessments.

Meets Expectations

The percentage of all students performing at the "Meets Grade Level" standard on EOC assessments was greater than or equal to 20.

Does Not Meet Expectations

The percentage of all students performing at the "Meets Grade Level" standard on EOC assessments was less than 20.

Data source: 2017-18 TAPR District Performance – STAAR Percent at Met Standard or Above (All Grades), All Subjects

2. Completion of high school diploma program

Measures number of program participants who successfully completed high school diploma program.

Meets Expectations

The number of graduates was equal to or greater than the number of students classified as 12th graders.

Does Not Meet Expectations

The number of graduates was less than the number of students classified as 12th graders.

Data source: 2017-2018 TAPR

Note: The number of graduates is used for this indicator, rather than percentage over time, because sufficient longitudinal data is not yet available.

3. Completion of industry-based certification program

Measures percentage of program participants who successfully completed an approved industry-based certification.⁸

Meets Expectations

At least 25% of program participants successfully completed an approved industry-based certification.

Does Not Meet Expectations

Fewer than 25% of program participants successfully completed an approved industry-based certification.

Data source: 2017-2018 TAPR

⁸ A list of approved industry-based certifications is available at: <https://tea.texas.gov/cte/>.

Figure: 22 TAC §102.1(a)

		TSBDE Board Fee
Dentist		
	Application by Exam	\$ 282.00
	Renewal	\$ 363.00
	Renewal - Late 1 to 90 days	\$ 438.00
	Renewal - Late 91 to 180 days	\$ 513.00
	Licensure by Credentials	\$ 2,867.00
	Temporary Licensure by Credentials	\$ 817.00
	Temporary Licensure by Credentials Renewal	\$ 213.00
	Provisional License	\$ 100.00
	Faculty Initial Application	\$ 182.00
	Faculty Renewal	\$ 257.00
	Faculty Renewal - Late 1 to 90 days	\$ 304.00
	Faculty Renewal - Late 91 to 180 days	\$ 351.00
	Conversion Fee - Faculty to Full Privilege	\$ 113.00
	Nitrous Oxide Permit	\$ 32.00
	Level 1 Permit	\$ 32.00
	Level 2 Permit	\$ 260.00
	Level 3 Permit	\$ 260.00
	Level 4 Permit	\$ 260.00
	Nitrous and Level 1 Permit Renewal	\$ 10.00
	Level 2 Permit Renewal	\$ 60.00
	Level 3 Permit Renewal	\$ 60.00
	Level 4 Permit Renewal	\$ 60.00
	Application to Reactivate a Retired License	\$ 138.00
	Reinstatement of a Canceled Dental License	\$ 363.00
	Duplicate License / Renewal	\$ 25.00
	Conversion Fee - Full Privilege to Faculty	\$ 113.00
	Conversion Fee - Temporary Licensure by Credentials to Full Privilege	\$ 2,117.00
DENTAL HYGIENIST		
	Application by Exam	\$ 122.00
	Renewal	\$ 218.00
	Renewal - Late 1 to 90 days	\$ 268.00
	Renewal - Late 91 to 180 days	\$ 318.00
	Licensure by Credentials	\$ 637.00
	Temporary Licensure by Credentials	\$ 227.00
	Temporary Licensure by Credentials renewal	\$ 103.00
	Faculty Initial Application	\$ 122.00
	Faculty Renewal	\$ 203.00
	Faculty Renewal - Late 1 to 90 days	\$ 245.00

	Faculty Annual Renewal - Late 91 to 180 days	\$ 287.00
	Conversion Fee - Faculty to Full Privilege	\$ 53.00
	Application to Reactivate a Retired License	\$ 78.00
	Reinstatement of a Canceled Dental Hygiene License	\$ 215.00
	Duplicate License / Renewal	\$ 25.00
	Nitrous Oxide Monitoring Application	\$ 25.00
	Conversion Fee - Full Privilege to Faculty	\$ 57.00
	Conversion Fee - Temporary Licensure by Credentials to Full Privilege	\$ 417.00
DENTAL ASSISTANT		
	Initial Application	\$ 36.00
	Nitrous Oxide monitoring Renewal Registration only	\$ 63.00
	Renewal	\$ 63.00
	Renewal - Late 1 to 90 days	\$ 78.00
	Renewal - Late 91 to 180 days	\$ 93.00
	Duplicate License / Renewal	\$ 25.00
	Nitrous Oxide Monitoring Application	\$ 25.00
	Nitrous Oxide Monitoring Duplicate Certificate	\$ 25.00
DENTAL LABORATORIES		
	Application	\$ 125.00
	Renewal	\$ 134.00
	Renewal - Late 1 to 90 days	\$ 200.00
	Renewal - Late 91 to 180 days	\$ 266.00
	Duplicate Certificate	\$ 25.00
OTHER		
	Mobile Application	\$ 120.00
	Mobile Renewal	\$ 63.00
	Mobile Renewal - 1 to 90 days	\$ 92.00
	Mobile Renewal - 91 to 180 days	\$ 122.00
	Duplicate Certificate Mobile Certificate	\$ 25.00
	Dentist Intern / Resident Prescription Privileges	\$ 50.00
	Jurisprudence	\$ 54.00
	Licensure Verification with Seal	\$ 9.00
	Criminal History Evaluation	\$ 25.00
	Board Scores	\$ 25.00

Figure: 22 TAC §104.2(e)(22)

Other entities approved by the Board per 22 TAC §104.2:

- A. Dental Quality Assurance;
- B. Texas School of Sleep Medicine and Technology,
- C. Dentist Secure Labs; and
- D. Boyd W. Shephard, D.D.S., J.D

Comptroller of Public Accounts

Public Notice of Court Costs and Fees

Government Code, §51.607, requires the comptroller to publish a list of all court costs and fees imposed or changed during the most recent regular session of the Legislature. This section also provides generally that, notwithstanding the effective date of the law imposing or changing the amount of a court cost or fee, the imposition or change does not take effect until January 1 following the effective date of the law.

The listing of court costs and fees to be identified and published as required by Government Code, §51.607 are as follows:

House Bill 1399

Creation and Storage of DNA Records

HB 1399 is effective January 1, 2020. House Bill 1399 creates and stores DNA records for a person arrested for certain felony offenses. Previously, the requirement to pay a fee for DNA testing applied to persons who were indicted or waived indictment. This bill expands the requirement to include persons who are arrested for certain felony offenses.

House Bill 1631

Prohibiting the Use of Photographic Traffic Signal Enforcement Systems

HB 1631 is effective January 1, 2020. Local Government Code, §133.004 is amended. The bill eliminates the filing fee for the judicial fund imposed in district court, statutory county court, and county court regarding the enforcement of compliance with the instructions of a traffic control signal. Transportation Code, §542.406(c-1) and §707.008(a-1), are removed pertaining to the portion of the civil or administrative penalty that was imposed by a local authority.

House Bill 3361

Court Reporter Service Fees in Certain Counties

HB 3361 is effective January 1, 2020. Government Code, §51.601(a-1) is amended. This bill amends which counties are eligible to collect a court reporter service fee of \$30 as a court cost for each civil case filed. Statute previously required that a court reporter serving a county that was located in a municipality with a population of 500,000 or more and along the Texas-Mexico border could impose this fee (El Paso County). The amended bill expands the number of persons subject to this fee by making the fee applicable in a county with a population of 750,000 or more located on the Texas-Mexico border (Hidalgo County and El Paso County).

Senate Bill 346

Court Costs

SB 346 is effective January 1, 2020. Senate Bill 346 relates to the consolidation, allocation, classification, and repeal of certain criminal court costs and other court-related costs, fines, and fees; increases the current consolidated fee on conviction and adds a new consolidated fee; and to the decrease of certain other fees by repealing the state's portion of the fees.

The bill amends the Local Government Code to increase the consolidated fee on conviction from \$133 to \$185 for felony convictions, from \$83 to \$147 for Class A and B misdemeanor convictions, and from \$40 to \$62 for non-jailable misdemeanor convictions, including criminal violations of a municipal ordinance, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle.

The bill creates a local consolidated fee on conviction in the amount of \$105 for a felony conviction, \$123 for a Class A or B misdemeanor conviction, and \$14 for a conviction of a non-jailable offense, including a criminal violation of a municipal ordinance. The fee is charged on conviction and in addition to the state consolidated fee on conviction and any other fee or cost authorized by law, including the fees and costs reclassified by the bill as reimbursement fees or fines. The bill requires the county or municipal treasurer to allocate money received for the cost to designated accounts in the county or municipal treasury.

Senate Bill 562

Mental Health of Defendants

SB 562 is effective immediately. Senate Bill 562 relates to criminal or juvenile procedures regarding persons who are or may be persons with a mental illness or intellectual disability and the operation and effects of successful completion of a mental health court program.

The bill amends Code of Criminal Procedure, Article 102.006, and applies to the fees charged or costs assessed for an expunction order entered on or after the effective date of this Act, regardless of whether the underlying arrest occurred before, on, or after the effective date of this Act.

This bill waives the fees for an expunction order if the petitioner has successfully completed a veterans treatment court program created under Government Code, Chapter 124, or former law; or under Article 55.01(a)(2)(A)(ii)(b) after successful completion of a mental health court program created under Government Code, Chapter 125, or former law.

Senate Bill 658

Increases in Records Archive Fees and Records Management and Preservation Fees

SB 658 takes effect January 1, 2020. Senate Bill 658 would make permanent the former temporary increases in records archive fees and records management and preservation fees charged by district and county clerks.

Government Code, §51.317(b), allows a county commissioner court to increase a fee up to \$10 for other fees related to filing a suit, including an appeal from an inferior court, cross-action, counterclaim, intervention, contempt-action, motion for new trial or third-party petition.

Local Government Code, §118.011(b) and (f), permits the county clerk to increase the fee for records management and preservation to \$10 and increase the records archive fee to \$10.

This agency hereby certifies that this notice has been reviewed by legal counsel and found to be within the agency's authority to publish.

Issued in Austin, Texas, on July 9, 2019.

◆ ◆ ◆
Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/15/19 - 07/21/19 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/15/19 - 07/21/19 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

◆ ◆ ◆
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 **August 19, 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 **August 19, 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, pro-

vides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: ALLEN KELLER CO I LLC; DOCKET NUMBER: 2019-0911-WQ-E; IDENTIFIER: RN108308396; LOCATION: Mason, Mason County; TYPE OF FACILITY: earthwork and paving contracting firm; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: ALLEN KELLER CO I LLC; DOCKET NUMBER: 2019-0910-WQ-E; IDENTIFIER: RN106523855; LOCATION: Ozona, Crockett County; TYPE OF FACILITY: earthwork and paving contracting firm; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: Ana Holdings, Incorporated dba Happy Days Grocery; DOCKET NUMBER: 2019-0434-PST-E; IDENTIFIER: RN102047495; LOCATION: Malakoff, Henderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to inspect the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$4,914; ENFORCEMENT COORDINATOR: Tyler Gerhardt, (512) 239-2506; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Arconic Incorporated; DOCKET NUMBER: 2019-0551-AIR-E; IDENTIFIER: RN100221373; LOCATION: Elmendorf, Bexar County; TYPE OF FACILITY: aluminum sheet coil manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O2348, General Terms and Conditions and Special Terms and Conditions Number 10, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: \$3,938; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: City of Benjamin; DOCKET NUMBER: 2019-0513-PWS-E; IDENTIFIER: RN101390169; LOCATION: Benjamin, Knox County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate (as nitrogen); PENALTY: \$1,233; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Splendora; DOCKET NUMBER: 2019-0203-PWS-E; IDENTIFIER: RN101176717; LOCATION: Splendora, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e) and Texas Health and Safety Code, §341.033(a), by failing to use a water works operator who holds an applicable valid license issued by the executive director; PENALTY: \$113; ENFORCEMENT COORDINATOR: Ronica

Rodriguez, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: City of Sundown; DOCKET NUMBER: 2019-0295-MWD-E; IDENTIFIER: RN101916955; LOCATION: Sundown, Hockley County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ0011253001, Special Provisions Number 14, by failing to provide certification by a Texas Licensed Professional Engineer that the completed pond lining meets the appropriate criteria; PENALTY: \$6,562; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$5,250; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(8) COMPANY: Clearstream Wastewater Systems, Incorporated; DOCKET NUMBER: 2019-0448-AIR-E; IDENTIFIER: RN100214659; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: fiberglass tank manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit (FOP) Number O1796, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; and 30 TAC §122.143(4) and §122.146(2), FOP Number O1796, GTC and Special Terms and Conditions Number 9, and THSC, §382.085(b), by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: \$9,563; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: David Clark Whaley, Kathy Lynn Whaley, and Jordan David Whaley, as Trustees of David and Kathy Whaley Family Trust dba Whaley Heifer Ranch; DOCKET NUMBER: 2019-0262-AGR-E; IDENTIFIER: RN110496486; LOCATION: Dublin, Erath County; TYPE OF FACILITY: dairy replacement heifer facility; RULE VIOLATED: 30 TAC §321.33(d), by failing to obtain authorization to expand an existing animal feeding operation prior to meeting the definition of a concentrated animal feeding operation (CAFO) through an individual water quality permit or a CAFO general permit; PENALTY: \$813; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Kuraray America, Incorporated; DOCKET NUMBER: 2017-1539-AIR-E; IDENTIFIER: RN107305922; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 4445, Special Conditions Number 1, Federal Operating Permit Number O1911, General Terms and Conditions and Special Terms and Conditions Number 17, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Lyons Water Supply Corporation; DOCKET NUMBER: 2019-0227-PWS-E; IDENTIFIER: RN101459055; LOCATION: Lyons, Burleson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(3)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM) based on the locational running annual average and failing to provide public notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to comply

with the MCL for TTHM during the third quarter of 2018; PENALTY: \$172; ENFORCEMENT COORDINATOR: James Knittel, (512) 239-2518; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: OM Db Investment, Incorporated dba A to Z Discount Stop; DOCKET NUMBER: 2019-0445-PST-E; IDENTIFIER: RN102230513; LOCATION: Malakoff, Henderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every 30 days; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: Omar Tello; DOCKET NUMBER: 2018-1361-MSW-E; IDENTIFIER: RN110463155; LOCATION: Mcallen, Hidalgo County; TYPE OF FACILITY: unauthorized scrap tire site; RULES VIOLATED: 30 TAC §328.60(a) and Texas Health and Safety Code, §361.112(a), by failing to obtain a scrap tire storage site registration for the site prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers; PENALTY: \$11,250; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(14) COMPANY: PSST LLC dba Best Twin Oak Country Store; DOCKET NUMBER: 2019-0672-PST-E; IDENTIFIER: RN105711444; LOCATION: Kilgore, Rusk County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,880; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: SMITH BEND WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-1431-PWS-E; IDENTIFIER: RN101271914; LOCATION: Clifton, Bosque County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(D), by failing to ensure that livestock in pastures are not allowed within 50 feet of the water supply wells; PENALTY: \$52; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361)825-3425; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Texas Facilities Commission; DOCKET NUMBER: 2019-0413-PST-E; IDENTIFIER: RN100691435; LOCATION: Austin, Travis County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$9,375; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(17) COMPANY: Town of Flower Mound; DOCKET NUMBER: 2019-0056-WQ-E; IDENTIFIER: RN101251619; LOCATION: Flower Mound, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: TWC, §26.039(b), by failing to notify the TCEQ as soon as possible but not later than 24 hours after the occurrence of a spill or discharge; and 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: \$6,563; SUPPLEMENTAL

ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$6,563; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201902146

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 9, 2019



Enforcement Orders

A default order was adopted regarding Fabian Almeida dba Ecu Farm, Docket No. 2016-0516-AGR-E on July 10, 2019, assessing \$28,860 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cogent Midstream Westex, LLC, Docket No. 2016-2055-AIR-E on July 10, 2019, assessing \$8,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ECOWATER INDUSTRIES, LLC, Docket No. 2017-0117-IHW-E on July 10, 2019, assessing \$9,726 in administrative penalties with \$1,945 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Comal Ag Operations, LLC and Santa Rita Land & Cattle Holdings, Ltd., Docket No. 2017-0268-SLG-E on July 10, 2019, assessing \$7,125 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding E & J SONS, LLC dba Johnny's Country Corner, Docket No. 2017-0916-PST-E on July 10, 2019, assessing \$7,605 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TROY CONSTRUCTION, LLC, Docket No. 2017-1532-MLM-E on July 10, 2019, assessing \$65,388 in administrative penalties with \$13,077 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hilario Ramirez Perez, Docket No. 2017-1639-MLM-E on July 10, 2019, assessing \$10,595 in administrative penalties with \$9,395 deferred. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding William Gates, Docket No. 2018-0150-MSW-E on July 10, 2019, assessing \$1,312 in administra-

tive penalties. Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KIM'S CONVENIENCE STORE, INC. dba Smith Tex Express, dba Kims 35 and dba Kims 36, Docket No. 2018-0183-PST-E on July 10, 2019, assessing \$11,691 in administrative penalties with \$2,336 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PALO DURO SERVICE COMPANY, INC., Docket No. 2018-0244-PWS-E on July 10, 2019, assessing \$466 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding A-2 Convenience LLC dba Super Stop 181, Docket No. 2018-0267-PST-E on July 10, 2019, assessing \$4,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lake Livingston Water Supply Corporation, Docket No. 2018-0327-PWS-E on July 10, 2019, assessing \$4,417 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Johnny D. Gravis, Katherine Gravis, Helen Ainsworth, Joan Martin Gravis and William Roy Gravis, Docket No. 2018-0384-PST-E on July 10, 2019, assessing \$7,812 in administrative penalties with \$1,562 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Scott, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Big Baraka International, LLC dba Save & Smile, Docket No. 2018-0566-PST-E on July 10, 2019, assessing \$8,447 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Mercurief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Diamond Shamrock Refining Company, L.P., Docket No. 2018-0671-IHW-E on July 10, 2019, assessing \$43,050 in administrative penalties with \$8,610 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Harden Cabinets LLC, Docket No. 2018-0739-IHW-E on July 10, 2019, assessing \$12,963 in administrative penalties with \$2,592 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Orlando Guerra, Jr. dba Pepes, Docket No. 2018-0859-PST-E on July 10, 2019, assessing \$19,674 in administrative penalties with \$3,934 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie

McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WTG Jameson, LP, Docket No. 2018-0862-AIR-E on July 10, 2019, assessing \$14,325 in administrative penalties with \$2,865 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Signature Car Wash I, Ltd., Docket No. 2018-0902-PST-E on July 10, 2019, assessing \$8,750 in administrative penalties with \$1,750 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Stanton, Docket No. 2018-0922-PWS-E on July 10, 2019, assessing \$465 in administrative penalties with \$465 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MCCART INVESTMENTS INC dba C & D Kwik Stop 2, Docket No. 2018-0938-PST-E on July 10, 2019, assessing \$15,102 in administrative penalties with \$3,020 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fibergrate Composite Structures Incorporated, Docket No. 2018-0978-AIR-E on July 10, 2019, assessing \$10,606 in administrative penalties with \$2,121 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Grady Independent School District, Docket No. 2018-1089-PWS-E on July 10, 2019, assessing \$495 in administrative penalties with \$330 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 3S Leasing, LLC, Docket No. 2018-1124-PWS-E on July 10, 2019, assessing \$321 in administrative penalties with \$321 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SILVER CREEK VILLAGE WATER SUPPLY CORPORATION, Docket No. 2018-1161-PWS-E on July 10, 2019, assessing \$810 in administrative penalties with \$810 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Horseshoe Lodges, LLC, Docket No. 2018-1274-PWS-E on July 10, 2019, assessing \$660 in administrative penalties with \$660 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red,

Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Walter J. Carroll Water Company, Inc., Docket No. 2019-0119-PWS-E on July 10, 2019, assessing \$1,319 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Walter J. Carroll Water Company, Inc., Docket No. 2019-0184-PWS-E on July 10, 2019, assessing \$627 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201902172

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 10, 2019



Enforcement Orders

An agreed order was adopted regarding D.N.J.S., INC. dba Farmers Truck Center, Docket No. 2017-1306-PST-E on July 9, 2019, assessing \$7,424 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Beeville, Docket No. 2018-0199-PWS-E on July 9, 2019, assessing \$5,276 in administrative penalties with \$1,055 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BRAZOS COUNTY RK GLOBAL, LLC dba Express Stop 2, Docket No. 2018-0419-PST-E on July 9, 2019, assessing \$3,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NAMELESS HOLLOW COUNCIL OF CO-OWNERS, Docket No. 2018-0476-MLM-E on July 9, 2019, assessing \$390 in administrative penalties with \$78 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TEJPREET INC. dba Big Country, Docket No. 2018-0487-PST-E on July 9, 2019, assessing \$5,260 in administrative penalties with \$1,052 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Austin, Docket No. 2018-0550-EAQ-E on July 9, 2019, assessing \$3,937 in administrative penalties with \$787 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement

Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ARNOLD TRUCKING, INC., Docket No. 2018-0763-WQ-E on July 9, 2019, assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LFP Unimproved Investments, Ltd. and Swinging R LLC, Docket No. 2018-0784-WR-E on July 9, 2019, assessing \$250 in administrative penalties with \$50 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NEW SM, INC. dba Dry Clean Super Center, Docket No. 2018-0866-DCL-E on July 9, 2019, assessing \$5,222 in administrative penalties with \$1,044 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Scott, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding El Prado Stone, LP, Docket No. 2018-0890-MLM-E on July 9, 2019, assessing \$1,620 in administrative penalties with \$324 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Collin County, Docket No. 2018-0926-PST-E on July 9, 2019, assessing \$5,626 in administrative penalties with \$1,125 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DRYMALLA CONSTRUCTION COMPANY, INC., Docket No. 2018-0950-WQ-E on July 9, 2019, assessing \$2,550 in administrative penalties with \$510 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ah Tun and Tial Iang dba Save N Save, Docket No. 2018-1057-PST-E on July 9, 2019, assessing \$4,000 in administrative penalties with \$800 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Grace International Churches and Ministries, Inc. dba Center for Empowerment, Docket No. 2018-1087-PWS-E on July 9, 2019, assessing \$72 in administrative penalties with \$14 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Eleazar Plata, Docket No. 2018-1088-MLM-E on July 9, 2019, assessing \$7,409 in administrative penalties with \$1,481 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson,

Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Reno, Docket No. 2018-1116-MWD-E on July 9, 2019, assessing \$5,062 in administrative penalties with \$1,012 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Evant, Docket No. 2018-1135-MWD-E on July 9, 2019, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aaliyah, LLC dba K K Food Mart, Docket No. 2018-1189-PST-E on July 9, 2019, assessing \$2,937 in administrative penalties with \$587 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Day to Day Operations, LLC dba Stars, Docket No. 2018-1258-PST-E on July 9, 2019, assessing \$6,200 in administrative penalties with \$1,240 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Round Rock Independent School District, Docket No. 2018-1268-EAQ-E on July 9, 2019, assessing \$3,000 in administrative penalties with \$600 deferred. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texmark Chemicals, Inc., Docket No. 2018-1283-AIR-E on July 9, 2019, assessing \$7,201 in administrative penalties with \$1,440 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Texline, Docket No. 2018-1375-PWS-E on July 9, 2019, assessing \$1,183 in administrative penalties with \$236 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DCP Operating Company, LP, Docket No. 2018-1385-AIR-E on July 9, 2019, assessing \$2,625 in administrative penalties with \$525 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Beaumont Ranch LLC, Docket No. 2018-1405-PWS-E on July 9, 2019, assessing \$769 in administrative penalties with \$153 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of La Joya, Docket No. 2018-1413-PWS-E on July 9, 2019, assessing \$1,395 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Logan Harrell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Sabinal, Docket No. 2018-1439-PWS-E on July 9, 2019, assessing \$150 in administrative penalties with \$30 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Northwest Harris County Municipal Utility District No. 36, Docket No. 2018-1441-MWD-E on July 9, 2019, assessing \$1,375 in administrative penalties with \$275 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SCV Valve LLC, Docket No. 2018-1528-AIR-E on July 9, 2019, assessing \$2,250 in administrative penalties with \$450 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Joe Gauger Custom Homes, LLC, Docket No. 2019-0040-WQ-E on July 9, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Kenmark Homes, LP, Docket No. 2019-0122-WQ-E on July 9, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Larry W. Gray, Docket No. 2019-0287-WOC-E on July 9, 2019, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Royal Crest Custom Homes, Ltd., Docket No. 2019-0296-WQ-E on July 9, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Homes by JFerg Inc., Docket No. 2019-0324-WQ-E on July 9, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Mike Ward dba Mike Ward Custom Homes, Docket No. 2019-0326-WQ-E on July 9, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Steven Van Landin-

ham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Steven R. Smith, Docket No. 2019-0345-WOC-E on July 9, 2019, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding LGD Properties, Inc., Docket No. 2019-0374-WQ-E on July 9, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding City of Camp Wood, Docket No. 2019-0387-WR-E on July 9, 2019, assessing \$200 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Jason Browning, Docket No. 2019-0398-WOC-E on July 9, 2019, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Ivan Escobar, Docket No. 2019-0480-WOC-E on July 9, 2019, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201902173

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 10, 2019

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Texas Health and Human Services Commission

Notice of Public Hearing on Medicaid Payment Rates for Home and Community-Based Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 2, 2019, at 3:00 p.m. to receive comment on the Medicaid payment rates for Day Habilitation and Supervised Living and Residential Support Services (SL/RSS) within the Home and Community-Based Services (HCS) program. The proposed rates will be effective September 1, 2019.

The public hearing will be held in HHSC's Public Hearing Room at the Brown-Healty Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing. Persons watching remotely can submit written comments. The broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>, and will be archived for access on demand at the same website. The public hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. HHSC proposes to increase the payment rates for HCS Day Habilitation and HCS SL/RSS in accordance with the 2020-21 General Appropriations Act (Article II, 86th Legislature, Regular Session, 2019, Rider 44).

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code (1 TAC) §355.723, which addresses the reimbursement methodology for the HCS and Texas Home Living programs.

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://rad.hhs.texas.gov/rate-packets> on July 19, 2019. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Rate Analysis Department by telephone at (512) 424-6637; by fax at (512) 730-7475; or by e-mail at RAD-LTSS@hhs.state.tx.us. The briefing package will also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RAD-LTSS@hhs.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 424-6637 at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-201902174

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: July 10, 2019



Notice of Public Hearing on Proposed Payment Rates for the Non-State Operated Intermediate Care Facilities for Individuals with Intellectual Disabilities

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 2, 2019, at 3:00 p.m., to receive comment on proposed payment rates for the non-state operated Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID). The proposed rates will be effective September 1, 2019.

The public hearing will be held in HHSC's Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing. Persons watching remotely can submit written comments. The broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>, and will be archived for access on demand at the same website. The public hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. HHSC proposes to increase the following payment rates for non-state operated ICF/IID in accordance with the 2020-21 General Appropriations Act (Article II, 86th Legislature, Regular Session, 2019, Rider 44).

Proposed Rates for Non-State Operated Intermediate Care Facilities for Individuals with Intellectual Disabilities effective September 1, 2019

Setting and Level of Need (LON)	Proposed Rate
Small LON 1	\$150.31
Small LON 5	\$167.90
Small LON 8	\$191.85
Small LON 6	\$236.59
Medium LON 1	\$123.14
Medium LON 5	\$140.24
Medium LON 8	\$166.92
Medium LON 6	\$200.79
Large LON 1	\$116.30
Large LON 5	\$124.64
Large LON 8	\$139.44
Large LON 6	\$188.96

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code (1 TAC) §355.456, relating to the reimbursement methodology for ICF/IID.

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://rad.hhs.texas.gov/rate-packets> on or after July 19, 2019. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Rate Analysis Department by telephone at (512) 424-6637; by fax at (512) 730-7475; or by email at RAD-LTSS@hhsc.state.tx.us. The briefing package will also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by email to RAD-LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 424-6637 at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-201902175
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: July 10, 2019

Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Nationwide Insurance Company of Florida, a foreign fire and/or casualty company. The home office is in Columbus, Ohio.

Application to do business in the state of Texas for Positive Physicians Insurance Company, a foreign fire and/or casualty company. The home office is in Berwyn, Pennsylvania.

Application for Alterra America Insurance Company, a domestic fire and/or casualty company, to change its name to Pinnacle National Insurance Company. The home office is in Bedford, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201902165
James Person
General Counsel
Texas Department of Insurance
Filed: July 10, 2019

Texas Lottery Commission

Scratch Ticket Game Number 2073 "777"

A. The name of Scratch Ticket Game No. 2073 is "777". The play style is "coordinate with prize legend".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2073 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2073.

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, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, \$10.00, \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000, \$250,000, 7 SYMBOL and COLLECT SYMBOL.

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. 2073 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
38	TRET
39	TRNI
40	FRTY
41	FRON

42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$40.00	FRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$10,000	10 TH
\$250,000	250 TH
7 SYMBOL	SVN
COLLECT SYMBOL	TO WIN

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 Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2073), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2073-0000001-001.

H. Pack - A Pack of the "777" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 050 will be revealed on the back of the Pack. All Packs

will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "777" Scratch Ticket Game No. 2073.

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 "777" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-eight (78) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals 3 or more "7" Play Symbols in the play area, the player wins the corresponding prize in the PRIZE LEGEND. (Only highest prize paid.) 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 seventy-eight (78) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly seventy-eight (78) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the seventy-eight (78) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the seventy-eight (78) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to thirty (30) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$1,000, \$10,000 and \$250,000 will each appear at least once.

E. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

F. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol and there will never be more than two (2) "7" (SVN) Play Symbols.

J. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 10 and \$10, 20 and \$20, 30 and \$30, \$40 and 40 and 50 and \$50).

K. On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

L. Winning Tickets will contain a WINNING NUMBERS Play Symbol that matches a YOUR NUMBERS Play Symbol or at least three (3) "7" (SVN) Play Symbols.

M. No Ticket will contain more than seven (7) "7" (SVN) Play Symbols.

N. Winning Tickets will display the number of "7s" (SVN) Play Symbols as dictated in the PRIZE LEGEND shown on the Ticket.

O. The "7" (SVN) Play Symbol will appear at least once per Ticket.

P. The "7" (SVN) Play Symbol can win as per the prize structure.

Q. On Tickets winning with "7" (SVN) Play Symbols, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

R. The "7" (SVN) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

S. When a "7" (SVN) Play Symbol appears as a YOUR NUMBERS Play Symbol, the corresponding Prize Symbol will always be the "COLLECT" (TO WIN) Prize Symbol.

T. The "COLLECT" (TO WIN) Prize Symbol will only ever appear with a "7" (SVN) Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "777" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and 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 \$30.00, \$40.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "777" Scratch Ticket Game prize of \$1,000, \$10,000 or \$250,000, 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 "777" 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 the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

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.

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 "777" 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 "777" 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.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is

placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2073. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2073 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10	1,080,000	5.56
\$20	420,000	14.29
\$30	100,000	60.00
\$40	70,000	85.71
\$50	117,500	51.06
\$100	40,250	149.07
\$200	12,500	480.00
\$500	4,100	1,463.41
\$1,000	600	10,000.00
\$10,000	70	85,714.29
\$250,000	5	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.25. 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. 2073 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2073, 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-201902151

Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 9, 2019



Scratch Ticket Game Number 2158 "Cowboys"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2158 is "COWBOYS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2158 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2158.

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, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, FOOTBALL SYMBOL,

TOUCHDOWN SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$1,000, \$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. 2158 - 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
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV

38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
FOOTBALL SYMBOL	WIN
TOUCHDOWN SYMBOL	WINALL
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$1,000	ONTH
\$5,000	FVTH
\$100,000	100 TH

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 Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2158), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2158-0000001-001.

H. Pack - A Pack of "COWBOYS" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). 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 Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "COWBOYS" Scratch Ticket Game No. 2158.

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 "COWBOYS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "FOOTBALL" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "TOUCHDOWN" Play Symbol, the player WINS ALL 20 PRIZES INSTANTLY! 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 forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to

the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$1,000, \$5,000 and \$100,000 will each appear at least once, except on Tickets winning fifteen (15) times or more, with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. The "TD" (WINALL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

J. The "TD" (WINALL) Play Symbol will instantly win all twenty (20) prize amounts and will win only as per the prize structure.

K. The "TD" (WINALL) Play Symbol will never appear more than once on a Ticket.

L. The "TD" (WINALL) Play Symbol will never appear on a Non-Winning Ticket.

M. On Tickets winning with the "TD" (WINALL) Play Symbol, the YOUR NUMBERS Play Symbols will not match any of the WINNING NUMBERS Play Symbols.

N. The "FOOTBALL" (WIN) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

O. The "FOOTBALL" (WIN) Play Symbol will win the prize for that Play Symbol.

P. The "FOOTBALL" (WIN) Play Symbol will never appear more than once on a Ticket.

Q. The "FOOTBALL" (WIN) Play Symbol will never appear on a Non-Winning Ticket.

R. The "TD" (WINALL) Play Symbol and the "FOOTBALL" (WIN) Play Symbol will never appear on the same Ticket.

S. On Tickets winning with the "FOOTBALL" (WIN) Play Symbol, the YOUR NUMBERS Play Symbols will not match any of the WINNING NUMBERS Play Symbols.

T. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and \$5, 10 and \$10, 15 and \$15, 20 and \$20, 50 and \$50).

U. On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

V. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "COWBOYS" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$50.00 or \$100, 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 \$50.00 or \$100 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 "COWBOYS" Scratch Ticket Game prize of \$1,000, \$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 "COWBOYS" 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 the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

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 "COWBOYS" 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 "COWBOYS" 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 "COWBOYS" Scratch Ticket may be entered into one of five 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 Prizes. There will be approximately 9,720,000 Scratch Tickets in Scratch Ticket Game No. 2158. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2158 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	820,800	11.84
\$10	1,444,800	8.49
\$20	388,800	25.00
\$50	64,800	150.00
\$100	14,445	672.90
\$1,000	452	21,504.42
\$5,000	54	180,000.00
\$100,000	10	972,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.99. 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. 2158 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2158, 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-201902152

Bob Biard

General Counsel

Texas Lottery Commission

Filed: July 9, 2019



Scratch Ticket Game Number 2159 "Houston Texans"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2159 is "HOUSTON TEXANS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2159 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2159.

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, 16, 17, 18, 19, 20, 21,

22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, FOOTBALL SYMBOL, GOALPOST SYMBOL, \$5.00, \$10.00, \$20.00, \$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. 2159 - 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
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV

38	TRET
39	TRNI
40	FRTY
FOOTBALL SYMBOL	WIN
GOALPOST SYMBOL	WINX5
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$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 Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2159), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2159-0000001-001.

H. Pack - A Pack of "HOUSTON TEXANS" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). 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 Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "HOUSTON TEXANS" Scratch Ticket Game No. 2159.

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 "HOUSTON TEXANS" Scratch Ticket Game is determined once the latex on the Scratch Ticket

is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "FOOTBALL" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "GOALPOST" Play Symbol, the player wins 5 TIMES the prize for that symbol. 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 forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to twenty (20) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have five (5) different WINNING NUMBERS Play Symbols.

E. Non-Winning YOUR NUMBERS Play Symbols will all be different.

F. Non-Winning Prize Symbols will never appear more than four (4) times.

G. The "FOOTBALL" (WIN) and "GOALPOST" (WINX5) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "GOALPOST" (WINX5) Play Symbol will only appear as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "HOUSTON TEXANS" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$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 \$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 "HOUSTON TEXANS" 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 "HOUSTON TEXANS" 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 the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

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 "HOUSTON TEXANS" 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 "HOUSTON TEXANS" 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 "HOUSTON TEXANS" Scratch Ticket may be entered into one of five 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 Prizes. There will be approximately 5,520,000 Scratch Tickets in Scratch Ticket Game No. 2159. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2159 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	588,800	9.38
\$10	662,400	8.33
\$20	147,200	37.50
\$50	34,500	160.00
\$100	21,114	261.44
\$500	1,242	4,444.44
\$5,000	10	552,000.00
\$100,000	4	1,380,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.79. 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. 2159 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2159, 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-201902153
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: July 9, 2019

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Texas Parks and Wildlife Department

Notice of Hearing and Opportunity for Public Comment

This is a notice of an opportunity for public comment and a public hearing on a Hilcorp Energy Company application for a Texas Parks and Wildlife Department (TPWD) permit to dredge sand and gravel from within and adjacent to the Sun Oil Company Canal, East Bay, Galveston County, for the purpose of providing sufficient water depth to drill two wells at approximately Lat./Long 29.526511/-94.571522.

The hearing will be held at 1:30 p.m. on Friday, August 16, 2019, at TPWD headquarters, located at 4200 Smith School Road, Austin, Texas 78744. The hearing is not a contested case hearing under the Administrative Procedure Act.

Written comments must be submitted within 30 days of the publication of this notice in the *Texas Register* or the newspaper, whichever is later, or at the public hearing. Submit written comments, questions, or requests to review the application to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; fax (512) 389-4405; e-mail tom.heger@tpwd.texas.gov; or phone (512) 389-4583.

TRD-201902114
 Robert D. Sweeney, Jr.
 General Counsel
 Texas Parks and Wildlife Department
 Filed: July 8, 2019

◆ ◆ ◆
 Notice of Proposed Real Estate Transactions

Acquisition of Land - Starr County

Approximately 147 acres at Falcon State Park

In a meeting on August 22, 2019, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 147 acres at Falcon State Park in Starr County. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road,

Austin, Texas 78744 or by email at trey.vick@tpwd.texas.gov or via the department's website at www.tpwd.texas.gov.

Acquisition of Land - Cameron County

Approximately 17 acres at the Longoria Unit of the Las Palomas Wildlife Management Area

In a meeting on August 22, 2019, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 17 acres at the Longoria Unit of the Las Palomas Wildlife Management Area in Cameron County. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Stan David, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at stan.david@tpwd.texas.gov or via the department's website at www.tpwd.texas.gov.

Grant of Easement - Jefferson County

Approximately 66 Acres at the Justin Hurst Wildlife Management Area

In a meeting on August 22, 2019, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing an easement of approximately 66 acres for a high-voltage transmission line across a portion of the Justin Hurst Wildlife Management Area in Jefferson County. The public will have an opportunity to comment on the proposed easement before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Stan David, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at stan.david@tpwd.texas.gov or via the department's website at www.tpwd.texas.gov.

Acquisition of Land - Bastrop County

Approximately 19 acres at Bastrop State Park

In a meeting on August 22, 2019, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 19 acres at Bastrop State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at trey.vick@tpwd.texas.gov or via the department's website at www.tpwd.texas.gov.

Exchange of Easements - El Paso County

Approximately 3.5 acres at Franklin Mountains State Park

In a meeting on August 22, 2019, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the exchange of approximately 3.5 acres at Franklin Mountains State Park. The 3.5-acre easement exchange is needed for updated utilities associated with the Federal Aviation Administration Facilities and Tramway. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at trey.vick@tpwd.texas.gov or via the department's website at www.tpwd.texas.gov.

TRD-201902169

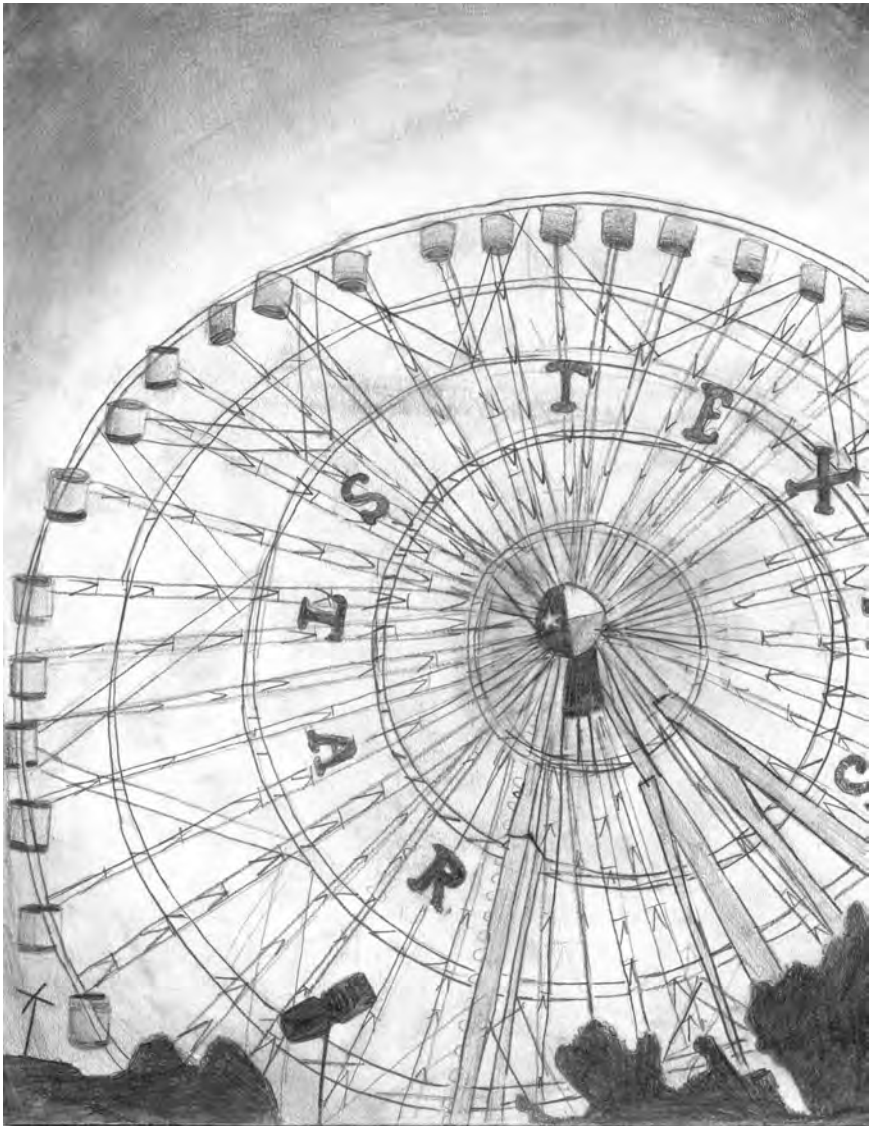
Todd S. George

Assistant General Counsel

Texas Parks and Wildlife Department

Filed: July 10, 2019





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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