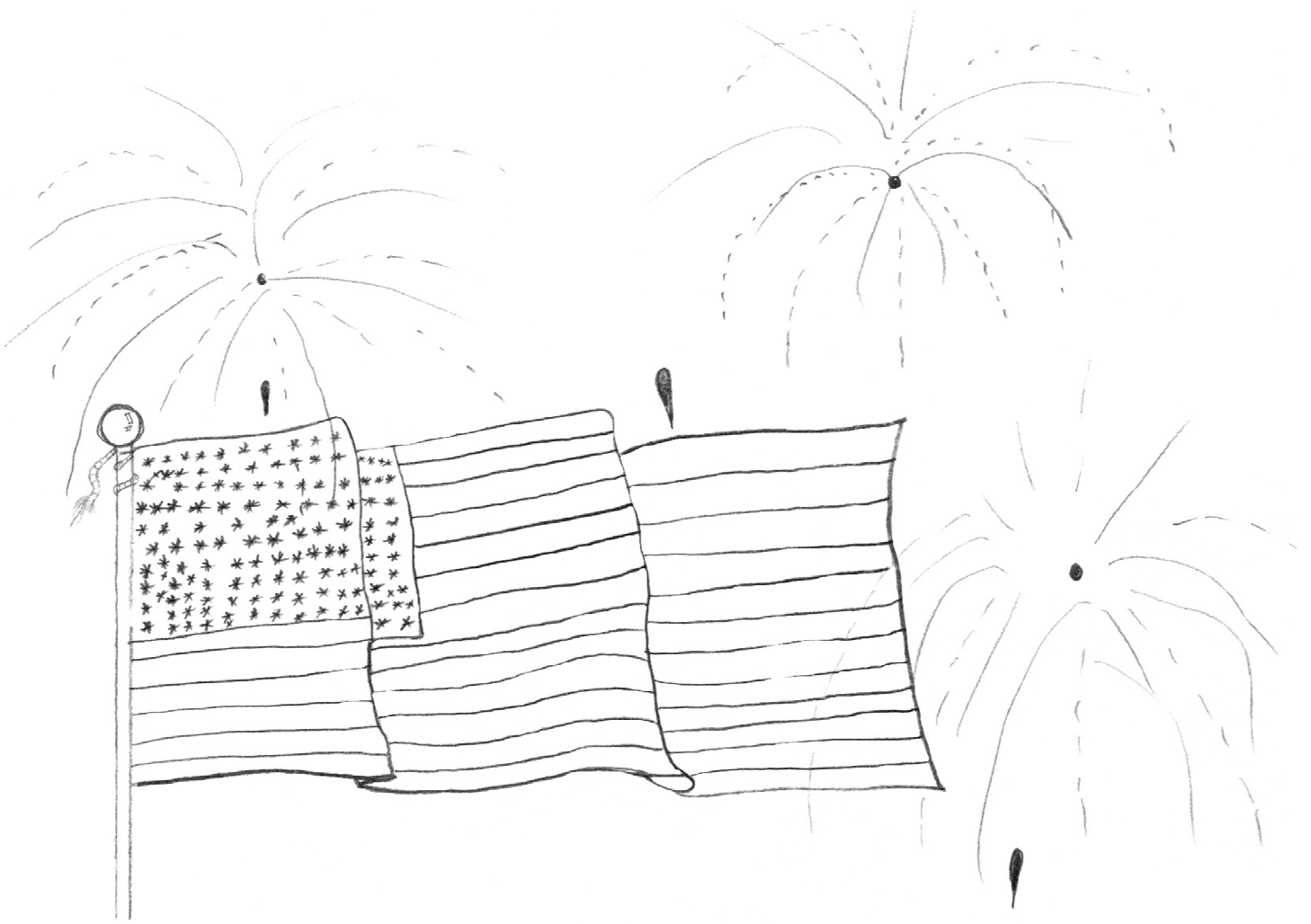

TEXAS REGISTER

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2020 Publication Schedule Inside

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

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

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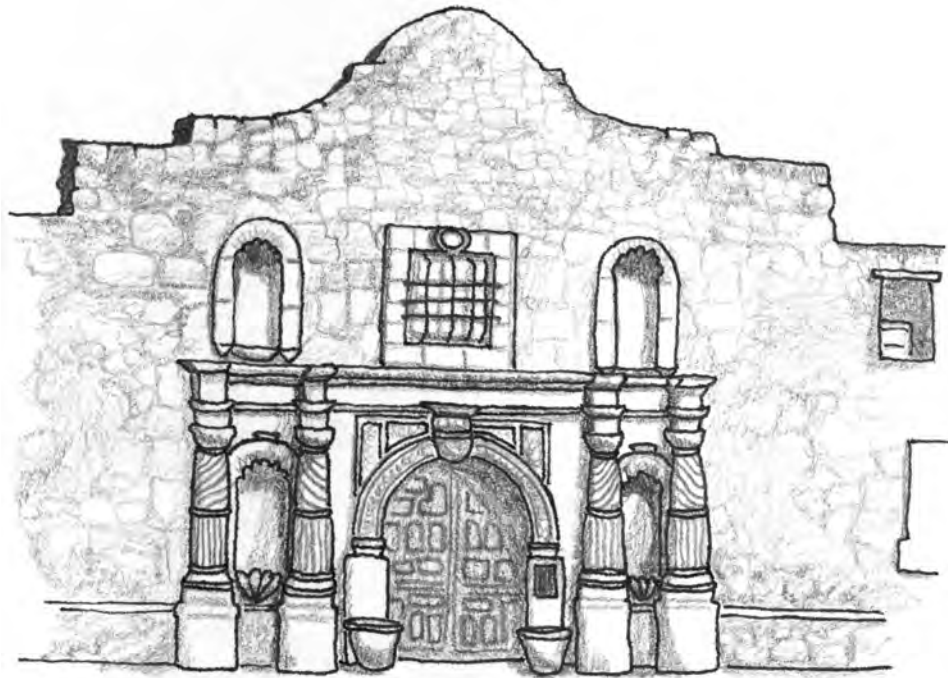
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THE GOVERNOR

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

Proclamation 41-3630

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 51 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 51 would require the creation and use of standardized forms for certain actions in criminal cases. The Office of Court Administration can already create forms for courts to use, so House Bill 51 is unnecessary for that purpose. But in going further and mandating that judges use these standardized forms, the bill as drafted could create larger problems. The author's good intentions are appreciated, but the bill may end up discouraging judges from giving individualized attention to the important matters being waived or otherwise addressed by the forms, and it risks creating loopholes for criminal defendants to exploit whenever the forms are not used. It also could preclude judges from handling these matters orally on the record, which unduly restricts the ability of judges to run their courtrooms.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901867



Proclamation 41-3631

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 70 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 70 would unnecessarily direct the Department of Agriculture to include in its strategic plan the goal of preventing crop diseases and plant pests. That subject is adequately covered in the Department of Agriculture's most recent strategic plan, and that is not expected to change in future iterations. *See* Tex. Gov't Code §2056.002(b).

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901868



Proclamation 41-3632

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 93 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 93 would mandate that all orders by magistrate judges not only be signed, but also include the magistrate's name in legible print or writing. Yet it does not address what the consequences would be if the magistrate's name is not printed in the form prescribed, which could create loopholes for opportunistic litigants and prompt needless challenges to court orders. The author may have intended to address the integrity of court orders against possible forgery, but the bill as drafted is not the right answer.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901869



Proclamation 41-3633

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 109 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Although the purpose of House Bill 109 was to keep Texas schools closed on Memorial Day, as written it would allow up to 859 school districts to remain open on the holiday. Memorial Day is an important holiday, intended to honor and remember the brave men and women who gave their lives in defense of our country. Teaching young Texans how to respectfully celebrate this holiday is critical, and we do not accomplish this goal with a law that may require them to attend school on Memorial Day. If the goal was to create more uniformity in how

charter schools and school districts celebrate holidays, the Legislature should draft a more targeted bill next session.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901870



Proclamation 41-3634

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 345 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

I have already signed House Bill 2092, requiring DPS to adopt procedures for issuing personal identification certificates to all individuals who surrender their driver's licenses. House Bill 345 would apply to only some of those individuals and require DPS to adopt additional procedures for the automatic issuance of personal identification certificates. Disapproving House Bill 345 will allow individuals to transition to personal identification certificates when they desire and ensure that implementation of this program will not cause administrative headaches.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901871



Proclamation 41-3635

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 389 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

I have signed House Bill 892, which gives all counties statewide the authority to regulate game rooms by removing all local bracket provisions from the relevant statute. House Bill 389 attempts to amend the provisions already repealed by House Bill 892. As such, House Bill 389 is unnecessary and I am vetoing it at the request of the author.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof

by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901872



Proclamation 41-3636

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 448 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 448 is an unnecessary invasion of parental rights and an unfortunate example of over-criminalization. Texas already compels drivers to use a car seat for a child under eight years of age. *See* Tex. Transp. Code §545.412. House Bill 448 would get even more prescriptive, dictating which way the car seat must be facing for a child under two years of age. It is not necessary to micromanage the parenting process to such a great extent, much less to criminalize different parenting decisions by Texans.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901873



Proclamation 41-3637

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 455 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

I appreciate the good intentions behind House Bill 455, and there is no disputing the educational and health benefits of recess during the school day. But requiring the State and its school districts to churn out more policies and mandates about recess is just bureaucracy for bureaucracy's sake.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901874

◆ ◆ ◆
Proclamation 41-3638

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 463 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 463, by mandating that air ambulance companies enter into reciprocity agreements, would unnecessarily intrude into the operations of private businesses and could very well reduce the availability of products that protect rural Texans from expensive air ambulance bills. The author was understandably trying to help Texans, but this bill likely runs afoul of federal law and could have unintended consequences. The Legislature and the federal government should find better ways to address the high costs of air ambulance services.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901875

◆ ◆ ◆
Proclamation 41-3639

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 651 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

I have signed House Bill 4289, which grants counties, cities, and hospital districts the authority to establish a health care provider participation program. In light of House Bill 4289, House Bill 651 is unnecessary because it sought to achieve the same purpose and similarly would grant authority to establish these programs, but only for certain counties. I am grateful to Representative Springer and Senator Kolkhorst for working to address this important issue.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901876

◆ ◆ ◆
Proclamation 41-3640

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 929 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Under current law, a magistrate must inform an arrested person of important constitutional protections, such as the right to counsel. House Bill 929 would have added yet more recitations about non-constitutional matters, making these magistration warnings less helpful to arrestees. Magistration should focus arrestees on exercising their constitutional rights at the beginning of the criminal-justice process.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901877

◆ ◆ ◆
Proclamation 41-3641

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 994 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

The Tax Code permits homeowners to protest the appraised value of their property to an Appraisal Review Board and, if they are not satisfied with the Board's ruling, to appeal that ruling to district court or binding arbitration. House Bill 994 would have created an exception to this process for just one county, allowing homeowners in Atascosa County whose homes are valued at \$500,000 or less to appeal to a justice of the peace, rather than to a district court or arbitration. The Legislature has not identified a reason to treat the residents of one county so differently, and to depart from uniform procedures for property tax appraisal and protest.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901878

◆ ◆ ◆
Proclamation 41-3642

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 1031 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

I have signed House Bill 892, which gives all counties statewide the authority to regulate game rooms by removing all local bracket provisions from the relevant statute. House Bill 1031 attempts to amend the provisions already repealed by House Bill 892. As such, House Bill 1031 is unnecessary.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901879



Proclamation 41-3643

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 1053 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 1053 has two fatal flaws:

First, it would exempt the Willacy County Navigation District from competitive bidding requirements applicable to all other navigation districts, allowing it to donate, exchange, convey, sell, or lease a real property interest for less than reasonable market value and without providing public notice. This exception to the general laws of our State would unnecessarily undermine the tenets of transparency.

Second, it would authorize the Port of Harlingen Authority to impose an ad valorem tax. The end-of-session addition of this power was not properly vetted through the legislative process and did not receive a public hearing. While likely not the intent of this bill's author or sponsor, this would set a bad example for how special districts can evade statutory and legislative oversight in the future.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901880



Proclamation 41-3644

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 1059 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 1059 would mandate a series of reports that are redundant and unnecessary. Many cities and counties are already using adaptive

strategies to manage stormwater runoff. Institutions of higher education, meanwhile, are providing sufficient information and support to local governments to promote even broader application of these stormwater-management tools.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901881



Proclamation 41-3645

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 1099 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 1099 would allow the Texas Board of Veterinary Medical Examiners to hire peace officers to investigate violations of the Veterinary Licensing Act. Legislation was passed last session to help the Board develop an effective way to inspect and monitor the potential diversion of controlled substances at veterinarians' offices, and to consistently implement its enforcement procedures. The Board should use its existing tools instead of creating more state-commissioned peace officers and seeking out new tasks related to supervising those officers.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901882



Proclamation 41-3646

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 1120 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Special districts exist to perform functions within their districts, but House Bill 1120 would extend this power outside the boundaries without adequate safeguards to protect against the potential for abuse.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901883



Proclamation 41-3647

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 1168 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 1168 would impose an unacceptable restraint on the Second Amendment rights of law-abiding travelers. The Legislature may have intended simply to keep firearms off the tarmac, but the bill as drafted would newly prohibit carrying in *any* part of the airport terminal building, even ahead of the TSA inspection checkpoint. By vetoing this bill, I am ensuring that Texans can travel without leaving their firearms at home. I look forward to working with the next Legislature on the good idea behind this bill.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901884



Proclamation 41-3648

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 1174 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 1174 would allow county assistance districts to give their financial resources to other political subdivisions, but would do so without protecting against abuse.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901885



Proclamation 41-3649

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 1215 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 1215 mirrors current policy regarding the use of educational quality by the Texas Department of Housing and Community Affairs in administering the low income housing tax credit program. The bill would limit administrative flexibility, however, to a degree that is unacceptable.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901886



Proclamation 41-3650

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 1404 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

I have signed House Bill 892, which gives all counties statewide the authority to regulate game rooms by removing all local bracket provisions from the relevant statute. House Bill 1404 attempts to amend the provisions already repealed by House Bill 892. As such, House Bill 1404 is unnecessary and I am vetoing it at the request of the author.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901887



Proclamation 41-3651

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 1742 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

In an effort to end surprise medical billing in Texas, I have signed Senate Bill 1264 into law. That leaves no work to be done by House Bill 1742, as the bill itself acknowledges in Section 14. I applaud the Legislature for addressing this critical issue in a number of bills, and I am proud to have signed the broadest one that reached my desk.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901888



Proclamation 41-3652

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 1771 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Although House Bill 1771 is a well-intentioned tool to protect victims of human trafficking, it has unintended consequences. The bill takes away options that law enforcement and prosecutors can use to separate victims from their traffickers, and it may provide a perverse incentive for traffickers to use underage prostitutes, knowing they cannot be arrested for engaging in prostitution. Efforts to reduce trafficking are to be commended, and I have signed numerous laws this session cracking down on it. I look forward to working with the author on ways to separate victims from their traffickers, both physically and economically.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901889



Proclamation 41-3653

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 1806 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 1806 would allow the San Antonio Water System to sell water from the Edwards Aquifer to adjacent counties, many of which are outside the regulatory jurisdiction of the Edwards Aquifer Authority, without any input from other permit holders or the governing board of the Edwards Aquifer Authority. The goal of the Edwards Aquifer Act, which was passed by the 73rd Legislature, was to treat all permit holders equally. This bill goes in the opposite direction by elevating the rights of one user above all others. Vetoing this bill maintains the careful balance of water rights within the Edwards Aquifer Authority and ensures that the resources of the aquifer remain protected.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objec-

tions in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901890



Proclamation 41-3654

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 2111 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Texas stopped allowing school districts to voluntarily erode their tax bases many years ago because of the impact on the school finance system. House Bill 2111 would undo this effort by allowing Southside I.S.D. in San Antonio to contribute its maintenance and operation tax revenue to a tax increment reinvestment zone for an indefinite period of time. The bill also would force taxpayers in Southside I.S.D. to pay higher taxes, undermining the significant reforms accomplished this session.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901891



Proclamation 41-3655

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 2112 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

After Hurricane Harvey, I formed the Governor's Commission to Rebuild Texas, which identified ways to improve how our government responds to natural disasters. One of the Commission's recommendations was to develop a process for the Department of Motor Vehicles to coordinate with the Federal Emergency Management Agency to ensure that it has the information necessary to identify flooded vehicles. I have now signed into law House Bill 2310, which implements that recommendation.

House Bill 2112 also seeks to address the challenge of identifying flooded vehicles, but in doing so, it would eliminate the current methodology for identification and repeal the provision of law added by House Bill 2310. The new process established in House Bill 2310 should have a chance to work.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901892



Proclamation 41-3656

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 2348 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

First responders play a vital role in disaster recovery, so I appreciate the good intentions of the author. But this does not mean we need to create a new civil cause of action so that employees who volunteer in disasters can sue their employers. House Bill 2348 would open the door to such lawsuits against both public and private employers. Employers have every incentive to accommodate their brave employees who serve as first responders, but they deserve the flexibility to develop their own leave policies for their employees, instead of having the State dictate the terms.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901893



Proclamation 41-3657

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 2475 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Because I have signed House Bill 2048 into law, which repeals the Driver Responsibility Program, the changes made in House Bill 2475 are no longer necessary.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901894



Proclamation 41-3658

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 2481 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 2481, as passed by the House, represented an improvement in access to specialty treatment courts for our Texas veterans. Unfortunately, a last-minute amendment was added in the Senate and would create a juvenile family drug court program that is entirely different and unrelated. This new program would authorize a court to exercise jurisdiction over an individual who has never been charged with any crime, but who resides in the home of a child subject to a case under Title 3 of the Family Code and who is suspected by the Department of Family and Protective Services of having a substance abuse problem. The lack of due-process protections is unacceptable. Next session, I look forward to increasing the ability of our Texas veterans to access treatment without this concerning program attached.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901895



Proclamation 41-3659

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 2856 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 2856 attempts to address the very real problem of disaster-remediation contractors who take advantage of disaster victims. But it does so with a stiff criminal penalty in an area where civil remedies already exist, which could discourage well-intentioned, quality tradespeople from seeking work in Texas following a disaster. This could inadvertently harm victims and impede recovery. We must take a more measured approach to this issue -- as was done in House Bill 2320, which I have signed into law this session. I look forward to working with the author next session.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor

TRD-201901896



Proclamation 41-3660

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 3022 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 3022 would require the Texas Department of Public Safety to capture the contact information of driver's license applicants who consent to being part of local emergency warning systems, and to work with local governments on creating those local warning systems. I appreciate the author's good intentions, and I have signed important legislation this session that will help Texans prepare for disasters. But to ensure that the local emergency warning systems use data that is accurate, updated, and used appropriately, local governments--not the State--should be in charge of gathering and managing this type of data.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor

TRD-201901897



Proclamation 41-3661

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 3078 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

I have signed into law this session a number of important bills that will help Texas continue to lead on the issue of human trafficking. This is a priority for me, and I applaud the author's contribution to this effort. But adding a thick layer of bureaucracy to the Board of Pardons and Paroles, as House Bill 3078 would have done, is not the way to help victims of human trafficking.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor

TRD-201901898



Proclamation 41-3662

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 3082 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Current law already imposes criminal penalties for the conduct addressed in House Bill 3082. This proposed legislation would expose too many Texans to criminal liability for unintentional conduct. Negligently flying a drone over a railroad switching yard should not result in jail time.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor

TRD-201901899



Proclamation 41-3663

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 3195 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Parts of House Bill 3195 are unnecessary because they duplicate provisions of House Bill 2184, which I have already signed into law. But among its other changes, House Bill 3195 would remove an important requirement: that juvenile offenders participate in certain educational programs before being eligible for parole. This requirement is intended to improve the literacy skills and behavior of juvenile offenders so that recidivism rates decrease. It should not be eliminated.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor

TRD-201901900



Proclamation 41-3664

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 3252 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 3252 would change how the public is notified about a primary election, but in a way that could cause confusion and is now unnecessary. House Bill 3252 would require that notice of a primary elec-

tion be posted on the county clerk's website, but in Texas, some county clerks are not responsible for administering elections. And House Bill 2640, which I have signed into law, now requires the same notice of a primary election to be posted on the county's official website. Disapproving House Bill 3252 will help ensure that voters know where to find information about how to cast their ballot.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor

TRD-201901901



Proclamation 41-3665

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 3490 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Cyberbullying is unacceptable and must be stopped. In 2017, I signed Senate Bill 179 into law because cyberbullying is a very real problem. House Bill 3490 shares the same good intentions.

Unfortunately, the language used in the bill is overbroad and would sweep in conduct that legislators did not intend to criminalize, such as repeated criticisms of elected officials on Internet websites. I look forward to working next session to forcefully counter cyberbullying in ways that can be upheld constitutionally.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor

TRD-201901902



Proclamation 41-3666

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 3511 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 3511 is redundant of the Tri-Agency Workforce Initiative, which is comprised of the Texas Workforce Commission, the Texas Education Agency, and the Texas Higher Education Coordinating Board. Since 2016, those three agencies have worked to assess local economic activity, examine workforce challenges and opportunities, and consider innovative approaches to meeting the State's workforce goals. To-

gether, they are implementing reforms that will improve the quality of education and the workforce in Texas. We need to give those changes a chance to succeed before we start adding bureaucracy and duplicating effort through creation of an expansive new commission.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor

TRD-201901903



Proclamation 41-3667

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 3648 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

I appreciate the author of House Bill 3648 for seeking to clarify the authority of the independent ombudsman who serves a vital role in assisting children committed to the Texas Juvenile Justice Department. That important goal has already been accomplished in the exact same way through Senate Bill 1702, which I have signed into law, and the additional part of House Bill 3648 is unnecessary.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor

TRD-201901904



Proclamation 41-3668

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 3910 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

The Legislature has not shown the need for House Bill 3910, which would have created additional bureaucracy and increased the number of unelected officials with final decision-making power over county civil service matters. If workload is the problem, the answer is streamlined operations, not state laws creating unaccountable creatures like "supplemental" commissions. There is no apparent justification for singling out one county and giving it this ill-advised carve-out.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof

by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901905



Proclamation 41-3669

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Bill No. 4703 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

House Bill 4703 would create Harris County Improvement District No. 28 within the City of Houston. This municipal management district would be authorized to impose not only new assessments, but also to impose more ad valorem taxes on properties in its territory to fund certain infrastructure and services. These properties, however, are wholly within the service area of the city and its water utility. That means this district would be using its new ad valorem taxation to fund infrastructure and services that the city is already imposing its own taxes to provide. The City of Houston has a history of using special purpose districts to subject citizens to double taxation, and this district would be another example. The creation of such a district should not be used as a tool to circumvent property tax reforms, including the meaningful reform passed this session in Senate Bill 2.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901906



Proclamation 41-3670

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 15, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Concurrent Resolution No. 86 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

This is the kind of resolution that a Texas Governor would sign without thinking. Fortunately, with a little thinking and study, it was learned that a statement contained in the resolution is factually incorrect: it identifies the location of Jim Bowie's "Sandbar Fight" as "near Natchez, Louisiana," when in fact the fight occurred near Natchez, Mississippi. So, as a thinking Governor, I think it best not to sign a factually incorrect resolution and instead to allow the Legislature to consider this next session.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof

by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901907



Proclamation 41-3671

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 15, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto House Concurrent Resolution No. 133 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

I agree with the Legislature's statements, expressed in House Concurrent Resolution 133, regarding the importance of Texas Southern University and the desirability of a divinity program. But Article III, Section 30 of the Texas Constitution requires all laws to be passed as bills. New law cannot be made by concurrent resolution. Because House Concurrent Resolution 133 purports to direct the actions of a state agency in the manner of a law, it goes beyond the proper bounds of a concurrent resolution.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901908



Proclamation 41-3672

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 390 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Senate Bill 390 would create, within Houston city limits, a municipal management district that would be governed by a self-perpetuating board appointed by the city and would impose assessments on property to fund services that the city already has a responsibility to provide to area residents. This goes too far. Creating districts like these within city limits undermines core principles of protecting taxpayers and promoting transparency, which led to historic achievements this session in Senate Bill 2. It is tantamount to double taxation on the district's property owners, forcing them to pay an ad valorem tax to the city and another assessment to the district. The creation of a municipal management district, or any special purpose district, should not be used to circumvent property-tax reforms.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof

by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901909



Proclamation 41-3673

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 550 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

I vetoed similar legislation in 2015 and must do so again here. Convicted criminals should have a pathway to reintegrating into society after they complete their sentences, and the law rightfully allows them to clear their records in certain circumstances. For example, this session I have signed into law Senate Bill 20, which expands the ability of human trafficking victims to seek orders of nondisclosure. Senate Bill 550, however, would allow individuals who were convicted of violent felonies to hide their dangerous conduct from society and from potential employers. I look forward to working with the next Legislature on a more tailored approach.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901910



Proclamation 41-3674

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 667 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Senate Bill 667 would make a number of improvements to the law governing probate and guardianship matters, but they unfortunately cannot take effect this session because of a section of the bill that would create new public guardianship offices controlled by counties. It has not been shown that it is necessary to add permanent county offices dedicated to this function. Private attorneys are capable of handling these cases without the expense of this new bureaucracy.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901911



Proclamation 41-3675

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 815 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

The law requires that arrested individuals be brought before a magistrate to be informed about the charges against them and to receive important warnings about their rights. Records must be made of these communications, and while a statute currently fixes the periods for which courts must retain the records, Senate Bill 815 would instead have delegated to an agency the discretion to set--and change--the retention periods. Administrative flexibility is not a virtue in this instance. The Legislature should be the one to provide clear direction on this issue.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901912



Proclamation 41-3676

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 1319 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

The author of Senate Bill 1319 had the right idea in imposing additional reporting requirements for hotel occupancy taxes. Taxpayers deserve that kind of transparency. But the bill was amended by others to add pet projects that would allow a single county and a single city to have an existing tax, previously enacted for a particular purpose, "converted" by election into a different tax for a different purpose. This tax "conversion" process would have misled voters, masking the reality that such an election is for a new tax by failing to inform them that they could simply allow the existing tax to expire. I applaud the author for his original concept and look forward to approving it next session, without the counterproductive amendments.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901913



Proclamation 41-3677

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 1575 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Disaster-recovery tools are critically important in Texas, and this session I have signed into law important legislation that will help Texans rebuild from prior disasters and prepare for future ones. But Senate Bill 1575 goes too far in shielding municipalities from being sued for all sorts of contracts they may enter into for an unspecified period after a disaster declaration. I look forward to working with the Legislature on a more tailored approach to this issue next session.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901914



Proclamation 41-3678

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 1793 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Senate Bill 1793 would have given government lawyers a pass on filling out a nepotism disclosure form prescribed by the State Auditor's Office. For procurement contracts worth at least \$1 million, this form compels agency employees to disclose relationships with, and direct or indirect pecuniary interests in, any party to the proposed contract with the state agency. Uncovering such ties to a potential vendor is important even if the procurement employee happens to be a member in good standing of the Texas Bar. Government lawyers should fill out the same nepotism disclosure form as everyone else at the agency.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor

TRD-201901915



Proclamation 41-3679

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 1861 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Public facility corporations are a way for government entities to get in the business of affordable housing and issue conduit debt. To the extent Senate Bill 1861 would encourage taxing entities, including school districts and community colleges, to engage in activities that are outside of their core missions, it would distract those entities from improving student outcomes. Schools and community colleges should focus on educating students, and House Bill 3 provides the necessary resources to accomplish that goal.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor
TRD-201901916



Proclamation 41-3680

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 2456 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Municipal management districts typically serve as a financing mechanism for commercial, residential, or entertainment development, but sometimes they are misused to supplant services that a city should provide, resulting in double taxation for district residents. Senate Bill 2456 illustrates the problem. It would give the Karis Municipal Management District, located within the City of Crowley, new powers to perform a litany of services paid for by assessments on property within the district. The services range from police and fire protection to the construction and permitting of public concession facilities. These are services that residents should expect the city to provide, using taxes the city imposes. Yet Senate Bill 2456 would allow the district to impose additional assessments for these services. Property owners should not be forced to pay both residential property taxes to the city and residential assessments to the district. Giving this district such expansive authority would reduce transparency and circumvent the taxpayer protections in Senate Bill 2.

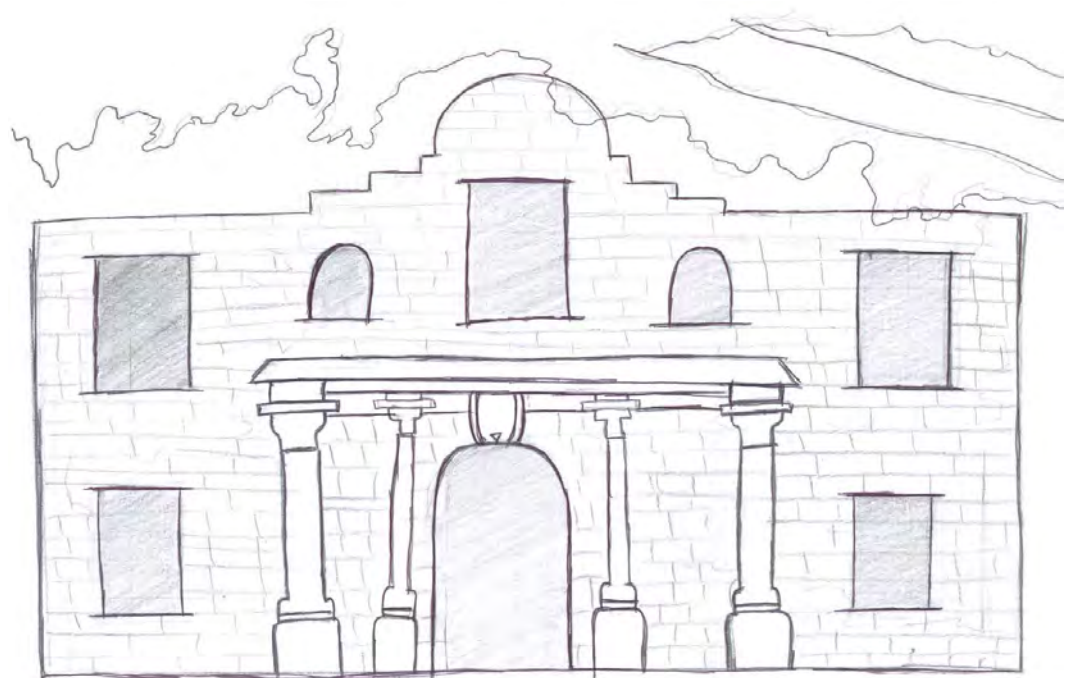
Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2019.

Greg Abbott, Governor

TRD-201901917





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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §355.112, concerning Attendant Compensation Rate Enhancement; §355.723, concerning Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs; and §355.6907, Reimbursement Methodology for Day Activity and Health Services.

BACKGROUND AND PURPOSE

The proposed amendments are necessary to comply with House Bill (H.B.) 1, General Appropriations Act, 86th Legislature, Regular Session, 2019, Rider 44.

Rider 44(a)(1) appropriates \$20,985,362 in General Revenue (GR) for the biennium for rate increases in the Home and Community-Based Services (HCS) program. These funds are intended to provide rate increases for the benefit of direct care staff through increased direct care staff wages. Rider 44(a)(1) also requires that HHSC increase the factor for HCS Supervised Living and Residential Support Services (SL/RSS) and Day Habilitation services from 4.4 percent to 7.0 percent. The factor is applied to the median rates to cover the costs for more providers than a simple median.

Rider 44(b) directs HHSC to increase the factor in Texas Home Living (TxHmL) Day Habilitation and Day Activity and Health Services (DAHS) to increase the factor from 4.4 percent to 7 percent. Although the factor will increase, total reimbursement rates for these providers will not change because the rider did not include a related appropriation.

To comply with the provisions in Rider 44, HHSC proposes rule amendments to the reimbursement methodologies for attendant compensation rate enhancement, common waiver services, HCS/TxHmL, and DAHS to increase the HCS rates and to increase the factor for HCS SL/RSS, HCS and TxHmL Day Habilitation, and DAHS from 4.4 to 7.0 percent. HHSC is also proposing clarifying amendments to these rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.112(l)(1)(C) changes the factor applied to the attendant compensation rate component for DAHS from 1.044 to 1.07.

The proposed amendment to §355.112(l)(2)(B) specifies that the attendant compensation rate component for HCS Supported Home Living (HCS SHL), TxHmL Community Support Services

(TxHmL CSS), HCS and TxHmL Respite, HCS and TxHmL Supported Employment, and HCS and TxHmL Employment Assistance will have a factor of 1.044; for HCS SL/RSS and HCS and TxHmL Day Habilitation, the component will have a factor of 1.07. The proposed amendment also specifies that the attendant compensation rate component for the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) Residential and Day Habilitation services will also have a factor of 1.07.

The proposed amendment to §355.112(l)(2)(D) adds an effective date of July 1, 2017.

Proposed new subparagraph §355.112(l)(2)(E) provides that as of September 1, 2019, the HCS SHL attendant compensation rate component will be calculated using cost data from the most recently audited cost report multiplied by a factor of 1.044.

The proposed amendment to §355.723 replaces all references to "foster care/companion care" with "host home/companion care" in paragraphs (b)(1), (d)(2) - (d)(5), and (d)(8) to reflect the correct program name.

The proposed amendment to §355.723(b)(2) adds TxHmL Day Habilitation to the list of services with non-variable rates and removes the language setting the TxHmL Day Habilitation rate equal to the rate for HCS Day Habilitation Level of Need 5.

The proposed amendment to §355.723(c)(2) adds new subparagraph (B) to specify that the recommended modeled rate for HCS SHL is calculated effective September 1, 2019, in accordance with paragraph (c)(1) and subsection (d). A new subparagraph (C) is also added to specify that, effective September 1, 2019, the TxHmL CSS **recommended modeled** rate is the rate in effect on August 31, 2019.

The proposed amendment to §355.723(d)(2) revises the second step of the administration and operation cost component determination for the host home/companion care coordinator. It reorganizes the paragraph by creating new subparagraph (d)(2)(B) with language moved from paragraph (d)(11) and by creating new subparagraphs (d)(2)(A) and (d)(2)(C) to improve clarity.

The proposed amendment to §355.723(d)(10) revises the tenth step of the administration and operation cost component determination. New subparagraph (d)(10)(A) provides that the cost component per unit of service for HCS SHL, TxHmL CSS, TxHmL Respite, HCS and TxHmL Supported Employment and HCS and TxHmL Employment Assistance will have a factor of 1.044. New (d)(10)(B) provides that the administration and operation cost component per unit of service for HCS SL/RSS and HCS and TxHmL Day Habilitation will have a factor of 1.07.

The proposed amendment to §355.723(d)(11) revises the eleventh step of the administration and operation cost compo-

ment determination for improved clarity. The language in this paragraph comes from paragraph (d)(10).

Proposed new paragraph §355.723(d)(12) adds a twelfth step to the administration and operation cost component determination. The new paragraph provides that all TxHmL rates effective September 1, 2019, except rates for TxHmL CSS, are the rates effective on August 31, 2019.

The proposed amendment to §355.6907(f)(5), regarding the reimbursement methodology for DAHS, changes the factor applied to the other cost areas in subparagraphs (B) - (D) from 1.044 to 1.07.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$10,018,488 in General Revenue (GR) (\$25,472,892 All Funds (AF)) for fiscal year (FY) 2020; \$10,966,874 GR (\$28,845,014 AF) in FY 2021; and \$10,938,029 GR (\$28,845,014 AF) for each of the fiscal years 2022 to 2024.

There are no fiscal implications to local government.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

HHSC has insufficient information to determine if the proposed rules will affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with these rules as proposed. There is no requirement that small businesses, micro-businesses, or rural communities alter current business practices. Moreover, the proposed amendments either increase or do not change the rates for the specified services.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

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; do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Rate Analysis, has determined that for each year of the first five years the rules are in effect, the public benefit will be that the proposed amendments enable HHSC to implement increases in reimbursement rates in compliance with H.B. 1. Additionally, the proposed amendments clarify the rules and enhance HHSC's transparency.

Trey Wood has determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The amendments update existing reimbursement methodology and do not require providers to alter their current business practices.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing is scheduled for July 9, 2019, at 3:15 p.m. (central time) in the Public Hearing Room of the Brown-Heatly Building located at 4900 North Lamar Boulevard in Austin. Persons requiring further information, special assistance, or accommodations should contact HHSC Rate Analysis Customer Information Center at (512) 424-6637.

PUBLIC COMMENT

Questions about this proposal may be directed to the HHSC Rate Analysis Long Term Services and Supports Customer Information Center at (512) 424-6637.

Written comments on this proposal may be submitted to the HHSC Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200, by fax to (512) 730-7475, or by email to RAD-LTSS@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) faxed or emailed before midnight on the last day of the comment period. If 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 faxing or emailing comments, please indicate "Comments on Proposed 19R049" in the subject line.

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

STATUTORY AUTHORITY

The amendments are proposed under 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; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code, Chapter 32.

The proposed amendments affect Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32.

§355.112. *Attendant Compensation Rate Enhancement.*

(a) - (k) (No change.)

(l) Determination of attendant compensation rate component for nonparticipating contracts.

(1) For the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; DBMD; and CBA--AL/RC programs, HHSC will calculate an attendant compensation rate component for nonparticipating contracts as follows.

(A) Determine for each contract included in the cost report data base used in determination of rates in effect on September 1, 1999, the attendant compensation cost center from subsection (c) of this section.

(B) Adjust the cost center data from subparagraph (A) of this paragraph in order to account for inflation utilizing the inflation factors used in the determination of the September 1, 1999 rates.

(C) For each contract included in the cost report data-base used to determine rates in effect on September 1, 1999, divide the result from subparagraph (B) of this paragraph by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS, the median cost per unit of service is selected. For all other programs, the units of service are summed until the median unit of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied by 1.044 for PHC₂[₃] [~~DAHS~~]; CLASS--DSA₂[₃] CBA--HCSS₂[₃] and DBMD₂; and by 1.07 for RC₂[₃] [~~and~~] CBA--AL/RC₂ and DAHS. The result is the attendant compensation rate component for nonparticipating contracts.

(D) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(2) For ICF/IID DH, ICF/IID residential services, HCS SL/RSS, HCS DH, HCS supported home living, HCS respite, HCS supported employment, HCS employment assistance, TxHmL DH, TxHmL community supports, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance, for each level of need, HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each service as follows:

(A) For each service, for each level of need, determine the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants. For ICF/IID, the fully-funded model is the model as calculated under §355.456(d) of this title (relating to Reimbursement Methodology) prior to any adjustments made in accordance with §355.101 of this title (relating to Introduction) and §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs). For HCS and TxHmL, the fully-funded model is the model as calculated under

§355.723(d) of this title (relating to Reimbursement Methodology for Home and Community-based Services and Texas Home Living Programs) prior to any adjustments made in accordance with §355.101 of this title and §355.109 of this title for the rate period.

(B) For each service, for each level of need, multiply the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants from subparagraph (A) of this paragraph by the total adopted reimbursement rate for that service in effect on August 31, 2010. The result is multiplied by 1.044 for HCS supported home living, HCS respite, HCS supported employment, HCS employment assistance, TxHmL community support services, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance and by 1.07 for HCS SL/RSS, HCS DH, TxHmL DH and ICF Residential and ICF Day Habilitation. The result is the attendant compensation rate component for that service for nonparticipating contracts.

(C) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature; and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(D) Effective July 1, 2017, the [The] attendant compensation rate component for nonparticipating contracts for HCS supported home living and TxHmL community supports is equal to \$14.52 per hour.

(E) Effective September 1, 2019, the attendant compensation rate component for nonparticipating contracts for HCS Supported home living is calculated using cost data from the most recently audited cost report multiplied by 1.044.

(m) - (hh) (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 June 24, 2019.

TRD-201901972

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 424-6637



SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.723

STATUTORY AUTHORITY

The amendment is proposed under 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; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code, Chapter 32.

The proposed amendment affects Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32.

§355.723. *Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.*

(a) Prospective payment rates. The Texas Health and Human Services Commission (HHSC) sets payment rates to be paid prospectively to Home and Community-based Services (HCS) and Texas Home Living (TxHmL) providers.

(b) Levels of need.

(1) Variable rates. Rates vary by level of need for the following services: Residential Support Services, Supervised Living, Host Home/Companion Care [~~Foster/Companion Care~~], and HCS Day Habilitation.

(2) Non-variable rates. Rates do not vary by level of need for the following services: Supported Home Living, High Medical Needs Support, Community Support Services, Supported Employment, Employment Assistance, Respite, Registered Nurse (RN), Licensed Vocational Nurse (LVN), High Medical Needs RN, High Medical Needs LVN, Dietary, Behavioral Support, Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, Cognitive Rehabilitative Therapy, [and] Social Work, and TxHmL Day Habilitation [~~Rates for TxHmL Day Habilitation will be equal to HCS level of need five Day Habilitation rates~~].

(c) Recommended rates.

(1) Rate Models. The recommended modeled rates are determined for each HCS and TxHmL service listed in subsection (b)(1) - (2) of this section by type and, for services listed in subsection (b)(1) of this section, by level of need to include the following cost components: direct care worker staffing costs (wages, benefits, modeled staffing ratios for direct care workers, direct care trainers and job coaches), other direct service staffing costs (wages for direct care supervisors, benefits, modeled staffing ratios); facility costs (for respite care only); room and board costs for overnight, out-of-home respite care; administration and operation costs; and professional consultation and program support costs. The determination of all components except for the direct care worker staffing costs component is based on cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers). The determination of the direct care worker staffing costs component is calculated as specified in §355.112 of this chapter (relating to Attendant Compensation Rate Enhancement).

(2) Supported Home Living and Community Support Services.

(A) Effective July 1, 2017, the recommended modeled rates for HCS Supported Home Living and TxHmL Community Support Services include the following cost components: direct care worker staffing costs, and administration and operation costs. The modeled rates for these two services do not include a cost component for other direct service staffing costs. The determination of the administration and operation cost component is calculated as specified in subsection (d)(10) of this section. The determination of the direct care

worker staffing costs component is calculated as specified in §355.112 of this chapter.

(B) Effective September 1, 2019, the recommended modeled rate for HCS Supported Home Living is calculated as specified in paragraph (c)(1) and subsection (d) of this section.

(C) Effective September 1, 2019, the recommended modeled rate for TxHmL Community Support Services is equal to the rate that was in effect for these services on August 31, 2019.

(3) High Medical Needs Support. Payment rates for High Medical Needs Support are developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(d) Administration and operation cost component. The administration and operation cost component included in the recommended rates described in subsection (c) of this section for each HCS and TxHmL service type is determined as follows.

(1) Step 1. Determine total projected administration and operation costs and projected units of service by service type using cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter.

(2) Step 2. Determine the host home/companion care [~~foster/companion care~~] coordinator component of the host home/companion care [~~foster/companion care~~] rate as follows: [-] [~~For fiscal years 2010 through 2013, this component will be modeled using the weighted average foster/companion care coordinator wage as reported on the most recently available, reliable audited HCS cost report database plus 10.25 percent for payroll taxes and benefits inflated to the rate period and a consumer to foster/companion care coordinator ratio of 1:15. For fiscal year 2014 and thereafter, this component will be determined by summing total reported foster/companion care coordinator wages and allocated payroll taxes and benefits from the most recently available audited cost report, inflating those costs to the rate period and dividing the resulting product by the total number of foster care units of service reported on that cost report.~~]

(A) For fiscal years 2010 through 2013, the host home/companion care coordinator component of the host home companion care rate was modeled using the weighted average host home/companion care coordinator wage as reported on the most recently available and reliable audited HCS cost report plus 10.25 percent for payroll taxes and benefits inflated to the rate period and a consumer to host home/companion care coordinator ratio of 1:15.

(B) For fiscal years 2012 and 2013, the host home/companion care coordinator component of the host home companion care rate was remodeled using a consumer to host home/companion care coordinator ratio of 1:20.

(C) For fiscal years 2014 and thereafter, this component is determined by summing total reported host home/companion care coordinator wages and allocated payroll taxes and benefits from the most recently available audited HCS cost report, inflating those costs to the rate period and dividing the resulting product by the total number of host home units of service reported on that cost report.

(3) Step 3. Determine total host home/companion care [~~foster/companion care~~] coordinator dollars as follows. Multiply the host home/companion care [~~foster/companion care~~] coordinator component of the host home/companion [~~foster/companion~~] care rate from paragraph (2) of this subsection by the total number of host home

[foster] care units of service reported on the most recently available, reliable audited HCS cost report database.

(4) Step 4. Determine total projected administration and operation costs after offsetting total host home/companion care [foster/companion care] coordinator dollars as follows. Subtract the total host home/companion care [foster/companion care] coordinator dollars from paragraph (3) of this subsection from the total projected administration and operation costs from paragraph (1) of this subsection.

(5) Step 5. Determine projected weighted units of service for each HCS and TxHmL service type as follows:

(A) Supervised Living and Residential Support Services in HCS. Projected weighted units of service for Supervised Living and Residential Support Services equal projected Supervised Living and Residential Support units of service times a weight of 1.00.

(B) Day Habilitation in HCS and TxHmL. Projected weighted units of service for Day Habilitation equal projected Day Habilitation units of service times a weight of 0.25.

(C) Host Home/Companion Care [Foster/Companion Care] in HCS. Projected weighted units of service for Host Home/Companion Care [Foster/Companion Care] equal projected Host Home/Companion Care [Foster/Companion Care] units of service times a weight of 0.50.

(D) Supported Home Living in HCS, High Medical Needs Support in HCS, and Community Support Services in TxHmL. For each service, projected weighted units of service equal projected units of service times a weight of 0.30.

(E) Respite in HCS and TxHmL. Projected weighted units of service for Respite equal projected Respite units of service times a weight of 0.20.

(F) Supported Employment in HCS and TxHmL. Projected weighted units of service for Supported Employment equal projected Supported Employment units of service times a weight of 0.25.

(G) Behavioral Support in HCS and TxHmL. Projected weighted units of service for Behavioral Support equal projected Behavioral Support units of service times a weight of 0.18.

(H) Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Cognitive Rehabilitative Therapy in HCS and TxHmL. Projected weighted units of service for Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Cognitive Rehabilitative Therapy equal projected Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Cognitive Rehabilitative Therapy units of service times a weight of 0.18.

(I) Social Work in HCS. Projected weighted units of service for Social Work equal projected Social Work units of service times a weight of 0.18.

(J) Nursing in HCS and TxHmL and High Medical Needs Nursing in HCS. Projected weighted units of service for Nursing and High Medical Needs Nursing equal projected Nursing and High Medical Needs Nursing units of service times a weight of 0.25.

(K) Employment Assistance in HCS and TxHmL. Projected weighted units of service for Employment Assistance equal projected Employment Assistance units of service times a weight of 0.25.

(L) Dietary in HCS and TxHmL. Projected weighted units of service for Dietary equal projected Dietary units of service times a weight of 0.18.

(6) Step 6. Calculate total projected weighted units of service by summing the projected weighted units of service from paragraph (5)(A) - (L) of this subsection.

(7) Step 7. Calculate the percent of total administration and operation costs to be allocated to the service type by dividing the projected weighted units for the service type from paragraph (5) of this subsection by the total projected weighted units of service from paragraph (6) of this subsection.

(8) Step 8. Calculate the total administration and operation cost to be allocated to that service type by multiplying the percent of total administration and operation costs allocated to the service type from paragraph (7) of this subsection by the total administration and operation costs after offsetting total host home/companion care [foster/companion care] coordinator dollars from paragraph (4) of this subsection.

(9) Step 9. Calculate the administration and operation cost component per unit of service for each HCS and TxHmL service type by dividing the total administration and operation cost to be allocated to that service type from paragraph (8) of this subsection by the projected units of service for that service type from paragraph (1) of this subsection.

(10) Step 10. The final recommended administration and operation cost component per unit of service for each HCS and TxHmL service type is calculated as follows: [Effective July 1, 2017, the administration and operation cost component per unit of service for Supported Home Living in HCS, Community Support Services in TxHmL, and High Medical Needs Support in HCS is equal to the administrative and facility cost component of Habilitation Services in the Community Living Assistance and Support Services (CLASS) program as specified in §355.505 of this title (relating to Reimbursement Methodology for the Community Living and Support Services Waiver Program).]

(A) For HCS supported home living, HCS respite, HCS supported employment, HCS employment assistance, TxHmL community supports services, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance multiply the administration and operation cost component from paragraph (9) of this subsection by 1.044.

(B) For HCS SL/RSS, HCS DH, and TxHmL DH, multiply the administration and operation cost component from paragraph (9) of this subsection by 1.07.

(11) Step 11. Effective July 1, 2017, the final recommended administration and operation cost component per unit of service for Supported Home Living in HCS, Community Support Services in TxHmL, and High Medical Needs Support in HCS is equal to the administrative and facility cost component of Habilitation Services in the Community Living Assistance and Support Services (CLASS) program as specified in §355.505 of this chapter (relating to Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program).

{(11) Step 11. For fiscal years 2012 and 2013, the foster/companion care coordinator component of the foster/companion care rate will be remodeled using a consumer to foster/companion care coordinator ratio of 1:20. This remodeling will be performed after the administration and operation cost component per unit of service for each HCS and TxHmL service type is calculated as described in paragraph (9) of this subsection.}

(12) Step 12. Effective September 1, 2019, the recommended modeled rates for all TxHmL services except TxHmL Community Support Services are equal to the rates that were in effect for these services on August 31, 2019. The recommended modeled rate

for TxHmL Community Support Services is calculated as specified in (c)(2)(C).

(e) - (f) (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 June 24, 2019.

TRD-201901973

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 424-6637



SUBCHAPTER G. ADVANCED TELECOMMUNICATIONS SERVICES AND OTHER COMMUNITY-BASED SERVICES

1 TAC §355.6907

STATUTORY AUTHORITY

The amendment is proposed under 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; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code, Chapter 32.

The proposed amendment affects Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32.

§355.6907. Reimbursement Methodology for Day Activity and Health Services.

(a) - (e) (No Change.)

(f) Reimbursement determination. HHSC determines reimbursement in the following manner.

(1) A contracted provider must submit a cost report unless the provider meets one or more of the conditions in §355.105(b)(4)(D) of this title.

(2) HHSC staff allocate payroll taxes and employee benefits to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense. The employee benefits for administrative staff are allocated directly to the corresponding salaries for those positions. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Workers' Compensation Insurance (WCI), Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(3) HHSC staff project all allowable expenses, excluding depreciation and mortgage interest, for the period from each provider's reporting period to the next ensuing reimbursement period. HHSC staff determine reasonable and appropriate economic adjusters as described in §355.108 of this title (relating to Determination of Inflation Indices) to calculate the projected expenses. HHSC staff also adjust reimburse-

ment if new legislation, regulations, or economic factors affect costs as specified in §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(4) HHSC staff combine allowable reported costs into the following four cost areas:

(A) Attendant cost area. This cost area is calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(B) Other direct care costs. This cost area includes other direct care staff; food and food service costs; activity costs; and other direct service costs.

(C) Facility cost area. This cost area includes building, maintenance staff, and utility costs.

(D) Administration and transportation cost area. This cost area includes transportation, administrative staff, and other administrative costs.

(5) For the cost areas described in paragraph (4)(B) - (D) of this subsection, allowable costs are totaled by cost area and then divided by the total units of service for the reporting period to determine the cost per unit of service. HHSC staff rank from low to high all provider agencies' projected costs per unit of service in each cost area. The median projected unit of service cost from each cost area is then determined. Those median projected unit of service costs from each cost area are totaled. That resulting total is multiplied by 1.07 [-1.044] and becomes the recommended reimbursement.

(6) The reimbursement determination authority is specified in §355.101 of this title (relating to Introduction).

(g) - (j) (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 June 24, 2019.

TRD-201901974

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 424-6637



SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8052

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8052, concerning Inpatient Hospital Reimbursement.

BACKGROUND AND PURPOSE

The amendment to this rule is proposed to comply with the 2020-21 General Appropriations Act (Article II, H.B. 1, 86th Legislature, Regular Session, 2019, Rider 11 and Rider 28), which allocates certain funds appropriated to HHSC to provide

increased inpatient reimbursement for rural hospitals. In addition, the amendments to the rule are proposed to comply with Senate Bill 500 (S.B. 500), which appropriates \$50 million in general revenue funds for rate increases to Children's Hospitals.

The current Standard Dollar Amounts (SDAs) for rural hospitals have been in effect since September 1, 2013. Subsection (d) in Rider 11 directs HHSC to increase inpatient rates for rural hospitals by trending forward to 2020 using an inflationary factor. This rule amendment proposes to inflate the current SDAs using the Centers for Medicare and Medicaid Services Prospective Payment System Hospital Market Basket inflation factors. Applying these inflation factors will result in a 17.68 percent increase in the inpatient rate of each rural hospital.

Subsection (e) in Rider 11 directs HHSC to provide increases to inpatient rates in addition to those identified in subsection (d), using a specific amount of appropriated funding. This rule amendment proposes to increase the inflated rates an additional 6.25 percent.

The combination of these two increases will result in new Final SDAs for rural hospitals.

Rider 28 directs HHSC to provide a Medicaid add-on payment for labor and delivery services provided by rural hospitals. This rule amendment proposes an alternate SDA for inpatient stays related to labor and delivery in rural hospitals, which will be equal to the new Final SDA plus an SDA add-on sufficient to increase payment for each claim by no less than \$500.

The rule amendment proposes to create a new SDA add-on for children's hospitals called the Children's Hospital Supplemental add-on. This new SDA add-on will be effective for inpatient hospital discharges occurring after August 31, 2019, and before September 1, 2020. The add-on amount will be \$1128.18.

SECTION-BY-SECTION SUMMARY

Proposed amendment to paragraph §355.8052(b)(7) revises the definition of a children's hospital.

Proposed new subparagraph §355.8052(d)(1)(D) creates the new Children's Hospital Supplemental add-on.

Proposed new paragraph §355.8052(d)(9) describes the Children's Hospital Supplemental add-on.

Proposed new subparagraph §355.8052(f)(1)(H) specifies updating rural hospital SDAs by first applying inflation factors and then applying a 6.25 percent increase.

Proposed new paragraph §355.8052(f)(2) specifies an alternate SDA for inpatient stays related to labor and delivery in rural hospitals.

Proposed amendment to paragraph §355.8052(f)(2) renumbers the paragraph to §355.8052(f)(3).

The proposed amendments to §355.8052 also include other technical corrections and non-substantive changes to make the rule more understandable.

FISCAL NOTE

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

The effect on state government for each year of the first five years the proposed rule is in effect is an estimated cost of

\$70,001,805 General Revenue (GR) (\$177,985,774 All Funds (AF)) for fiscal year (FY) 2020, \$21,194,995 GR (\$55,586,140 AF) for FY 2021, \$21,194,995 GR (\$55,586,140 AF) for FY 2022, \$21,194,995 GR (\$55,586,140 AF) for FY 2023, and \$21,194,995 GR (\$55,586,140 AF) for FY 2024.

There may also be foreseeable positive fiscal implications to revenues of local governments as a result of enforcing and administering the rule as proposed. Rural hospitals that will benefit from increased Medicaid inpatient rates are owned and operated by local government entities. HHSC does not have sufficient data to determine fiscal impact.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years 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 employee positions;
- (3)implementation of the proposed rule will not require an increase or decrease in future legislative appropriations to the agency;
- (4)the proposed rule will not require an increase or decrease in fees paid to the agency;
- (5)the proposed rule will not create a new rule;
- (6)the proposed rule will expand an existing rule; and
- (7)the proposed rule will not change the number of individuals subject to the rule.
- (8)HHSC has insufficient information to determine the proposed rule's effect on the state's economy.

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

Trey Wood has also determined that there will be no adverse economic impact on small businesses, micro-businesses, or rural communities required to comply with the rule as proposed. There is no requirement for small businesses, micro-businesses, or rural communities to alter current business practices.

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 receive a source of federal funds and is necessary to implement legislation that does not specifically apply §2001.0045 to the rule.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Rate Analysis, has determined that for each year of the first five years the rule is in effect, the public will benefit from adoption of the rule. The public benefit anticipated as a result of enforcing or administering the rule will be increased Medicaid inpatient rates for rural hospitals and children's hospitals.

Trey Wood has determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule. The amendments

update existing reimbursement methodology and do not require providers to alter their current business practices.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing is scheduled for July 8, 2019, at 9:00 a.m. (central time) in the Public Hearing Room in the Brown-Heatly Building at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Kevin Niemeyer at (512) 730-7445.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kevin Niemeyer in HHSC Rate Analysis at (512) 730-7445.

Written comments on the proposal may be submitted to the HHSC Rate Analysis Department, 4900 North Lamar Blvd., Austin, TX 78714-9030 (Mail Code H-400); by fax to (512)-730-7475; or by email to RateAnalysis-Dept@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) faxed or emailed before midnight on the last day of the comment period. If 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 faxing or emailing comments, please indicate "Comments on Proposed Rule 19R050" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed 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; 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, §531.0055, Chapter 531 and Texas Human Resources Code Chapter 32.

§355.8052. *Inpatient Hospital Reimbursement.*

(a) Introduction. The Texas Health and Human Services Commission (HHSC) uses the methodology described in this section to calculate reimbursement for a covered inpatient hospital service.

(b) Definitions.

(1) Adjudicated--The approval or denial of an inpatient hospital claim by HHSC.

(2) Add-on--An amount that is added to the base SDA to reflect high-cost functions and services or regional cost differences.

(3) Base standard dollar amount (base SDA)--A standardized payment amount calculated by HHSC, as described in subsection (d) of this section, for the costs incurred by prospectively-paid hospitals in Texas for furnishing covered inpatient hospital services.

(4) Base year--For the purpose of this section, the base year is a state fiscal year (September through August) to be determined by HHSC.

(5) Base year claims--All Medicaid traditional fee-for-service (FFS) and Primary Care Case Management (PCCM) inpatient hospital claims for reimbursement filed by a hospital that:

(A) had a date of admission occurring within the base year;

(B) were adjudicated and approved for payment during the base year and the six-month grace period that immediately followed the base year, except for such claims that had zero inpatient days;

(C) were not claims for patients who are covered by Medicare;

(D) were not Medicaid spend-down claims;

(E) were not claims associated with military hospitals, out-of-state hospitals, state-owned [state owned] teaching hospitals, and freestanding psychiatric hospitals.

(F) Individual sets of base year claims are compiled for children's hospitals, rural hospitals, and urban hospitals for the purposes of rate setting and rebasing.

(6) Base year cost-per-claim [cost per claim]--The cost for a base year claim that would have been paid to a hospital if HHSC reimbursed the hospital under methods and procedures used in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), without the application of the TEFRA target cap for all hospitals except children's and state-owned teaching hospitals.

(7) Children's hospital--A Medicaid hospital designated by Medicare as a children's hospital and exempted by CMS from the Medicare prospective payment system.

(8) Cost outlier payment adjustment--A payment adjustment for a claim with extraordinarily high costs.

(9) Cost outlier threshold--One factor used in determining the cost outlier payment adjustment.

(10) Day outlier payment adjustment--A payment adjustment for a claim with an extended length of stay.

(11) Day outlier threshold--One factor used in determining the day outlier payment adjustment.

(12) Diagnosis-related group (DRG)--The classification of medical diagnoses as defined in the 3M™ All Patient Refined Diagnosis Related Group (APR-DRG) system or as otherwise specified by HHSC.

(13) Final settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year end cost report performed by HHSC within six months after HHSC receives the cost report audited by a Medicare intermediary or HHSC.

(14) Final standard dollar amount (final SDA)--The rate assigned to a hospital after HHSC applies the add-ons and other adjustments described in this section.

(15) Geographic wage add-on--An adjustment to a hospital's base SDA to reflect geographical differences in hospital wage levels. Hospital geographical areas correspond to the Core-Based Statis-

tical Areas (CBSAs) established by the federal Office of Management and Budget in 2003.

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

(17) Impact file--The Inpatient Prospective Payment System (IPPS) Final Rule Impact File that contains data elements by provider used by the Centers for Medicare and Medicaid Services (CMS) in calculating Medicare rates and impacts. The impact file is publicly available on the CMS website.

(18) Inflation update factor--Cost of living index based on the annual CMS Prospective Payment System Hospital Market Basket Index.

(19) In-state children's hospital--A hospital located within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(20) Interim payment--An initial payment made to a hospital that is later settled to Medicaid-allowable costs, for hospitals reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(21) Interim rate--The ratio of Medicaid allowed inpatient costs to Medicaid allowed inpatient charges filed on a hospital's Medicare/Medicaid cost report, expressed as a percentage. The interim rate established during a cost report settlement for an urban hospital or a rural hospital reimbursed under this section excludes the application of TEFRA target caps and the resulting incentive and penalty payments.

(22) Mean length of stay (MLOS)--One factor used in determining the payment amount calculated for each DRG; for each DRG, the average number of days that a patient stays in the hospital.

(23) Medical education add-on--An adjustment to the base SDA for an urban teaching hospital to reflect higher patient care costs relative to non-teaching urban hospitals.

(24) Military hospital--A hospital operated by the armed forces of the United States.

(25) New Hospital--A hospital that was enrolled as a Medicaid provider after the end of the base year and has no base year claims data.

(26) Out-of-state children's hospital--A hospital located outside of Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(27) Rebasing--Calculation of the base year cost per claim for each Medicaid inpatient hospital.

(28) Relative weight--The weighting factor HHSC assigns to a DRG representing the time and resources associated with providing services for that DRG.

(29) Rural hospital--A hospital enrolled as a Medicaid provider that:

(A) is located in a county with 60,000 or fewer persons according to the 2010 U.S. Census;

(B) is designated by Medicare as a Critical Access Hospital (CAH), a Sole Community Hospital (SCH), or a Rural Referral Center (RRC) that is not located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget; or

(C) meets all of the following:

(i) has 100 or fewer beds;

(ii) is designated by Medicare as a CAH, a SCH, or a RRC; and

(iii) is located in an MSA.

(30) Safety-Net add-on--An adjustment to the base SDA for a safety-net hospital to reflect the higher costs of providing Medicaid inpatient services in a hospital that provides a significant percentage of its services to Medicaid and/or uninsured patients.

(31) Safety-Net hospital--An urban or children's hospital that meets the eligibility and qualification requirements described in §355.8065 of this division (relating to Disproportionate Share Hospital Reimbursement Methodology) for the most recent federal fiscal year for which such eligibility and qualification determinations have been made.

(32) State-owned teaching hospital--The following hospitals: University of Texas Medical Branch (UTMB); University of Texas Health Center Tyler; and M.D. Anderson Hospital.

(33) Teaching hospital--A hospital for which CMS has calculated and assigned a percentage Medicare education adjustment factor under 42 CFR §412.105.

(34) Teaching medical education add-on--An adjustment to the base SDA for a children's teaching hospital with a program approved by the Accreditation Council for Graduate Medical Education (ACGME) to reflect higher patient care costs relative to non-teaching children's hospitals.

(35) TEFRA target cap--A limit set under the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) and applied to a hospital's cost settlement under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). TEFRA target cap is not applied to services provided to patients under age 21, and incentive and penalty payments associated with this limit are not applicable to those services.

(36) Tentative settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year-end cost report performed by HHSC within six months after HHSC receives an acceptable cost report filed by a hospital.

(37) Texas provider identifier--A unique number assigned to a provider of Medicaid services in Texas.

(38) Trauma add-on--An adjustment to the base SDA for a trauma hospital to reflect the higher costs of obtaining and maintaining a trauma facility designation, as well as the direct costs of providing trauma services, relative to non-trauma hospitals or to hospitals with lower trauma facility designations.

(39) Trauma hospital--An inpatient hospital that meets the Texas Department of State Health Services criteria for a Level I, II, III, or IV trauma facility designation under 25 Texas Administrative Code §157.125 (relating to Requirements for Trauma Facility Designation).

(40) Universal mean--Average base year cost per claim for all urban hospitals.

(41) Urban hospital--Hospital located in a metropolitan statistical area and not fitting the definition of rural hospitals, children's hospitals, state-owned teaching hospitals, or freestanding psychiatric hospitals.

(c) Base urban and children's hospital standard dollar amount (SDA) calculations. HHSC will use the methodologies described in this subsection to determine two separate average statewide base SDAs: one for children's hospitals and one for urban hospitals. For each category of hospital:

(1) HHSC calculates the average base year cost per claim as follows:

(A) Use the sum of the base year costs per claim for each hospital.

(B) Sum the amount for all hospitals' base year costs from subparagraph (A) of this paragraph.

(C) For children's hospitals subtract an amount equal to the estimated outlier payment amount for the base year claims for all children's hospitals from subparagraph (B) of this paragraph.

(D) To derive the average base year cost per claim:

(i) for urban hospitals, divide the result from subparagraph (B) of this paragraph by the total number of base year claims; and

(ii) for children's hospitals, divide the result from subparagraph (C) of this paragraph by the total number of base year claims.

(E) The result from subparagraph (D)(i) of this paragraph is the universal mean that is used in calculations described in subsections (g) and (h) of this section.

(2) From the amount determined in paragraph (1)(B) of this subsection for urban hospitals and paragraph (1)(C) of this subsection for children's hospitals, HHSC sets aside an amount to recognize high-cost hospital functions, services and regional wage differences. In determining the amount to set aside, HHSC considers factors including other funding available to reimburse high-cost hospital functions and services, available data sources, historical costs, Medicare practices, and feedback from hospital industry experts.

(A) The costs remaining after HHSC sets aside the amount for high-cost hospital functions and services will be used to determine the base SDA.

(B) The costs HHSC sets aside will determine the funds available for distribution to hospitals that are eligible for one or more add-ons as described in subsection (d) of this section.

(3) HHSC divides the amount in paragraph (2)(A) of this subsection by the total number of base year claims to derive the base SDA.

(d) Add-ons.

(1) A children's hospital may receive increases to the base SDA for any of the following:

(A) Geographic wage add-on, as described in paragraph (4) of this subsection.

(i) For claims with dates of admission beginning September 1, 2013, and continuing until the next rebasing, the geographic wage add-on for children's hospitals will be calculated based on the impact file in effect on September 1, 2011.

(ii) Subsequent add-ons will be based on the impact file available at the time of rebasing.

(B) Teaching medical education add-on, as described in paragraph (5) of this subsection.

(C) Safety-Net add-on, as described in paragraph (8) of this subsection.

(D) Children's Hospital Supplemental add-on, as described in paragraph (9) of this subsection.

(2) An urban hospital may receive increases to the base SDA for any of the following:

(A) Geographic wage add-on, as described in paragraph (4) of this subsection.

(B) Medical education add-on, as described in paragraph (6) of this subsection.

(C) Trauma add-on, as described in paragraph (7) of this subsection.

(D) Safety-Net add-on, as described in paragraph (8) of this subsection.

(3) Add-on amounts will be determined or adjusted based on the following:

(A) Impact files.

(i) HHSC will use the impact file in effect at the last rebasing to calculate add-ons for new hospitals, except as otherwise specified in this section; and

(ii) HHSC will use the most recent finalized impact file from the current Hospital Inpatient Prospective Payment System (PPS) final rule available at the time of rebasing to calculate add-ons.

(B) If a hospital becomes eligible for the geographic wage reclassification under Medicare during the fiscal year, the hospital will become eligible for the adjustment upon the next rebasing.

(C) If a hospital becomes eligible for the teaching medical education add-on, medical education add-on, trauma add-on, or safety-net add-on during the fiscal year, the hospital will receive an increased final SDA to include these newly eligible add-ons, effective for claims that have a date of discharge occurring on or after the first day of the next state fiscal year.

(D) If an eligible children's hospital is new to the Medicaid program and a cost report is not available, the teaching medical education add-on will be calculated at the beginning of the state fiscal year after a cost report is received.

(4) Geographic wage add-on.

(A) Wage index. To determine a children's or urban hospital's geographic wage add-on, HHSC first calculates a wage index for Texas as follows:

(i) HHSC identifies the Medicare wage index factor for each Core Based Statistical Area (CBSA) in Texas.

(ii) HHSC identifies the lowest Medicare wage index factor in Texas.

(iii) HHSC divides the Medicare wage index factor for each CBSA by the lowest Medicare wage index factor identified in clause (ii) of this subparagraph and subtracts one from each resulting quotient to arrive at a percentage.

(iv) HHSC uses the result of the calculations in clause (iii) of this subparagraph to calculate each CBSA's add-on amount described in subparagraph (C) of this paragraph.

(B) County assignment. HHSC will initially assign a hospital to a CBSA based on the county in which the hospital is located. A hospital that has been approved for geographic reclassification under Medicare may request that HHSC recognize its Medicare CBSA reclassification, under the process described in paragraph (10) [(9)] of this subsection.

(C) Add-on amount.

(i) HHSC calculates 62 percent of the base SDA to derive the labor-related portion of that rate, consistent with the Medicare labor-related percentage.

(ii) To determine the geographic wage add-on amount for each CBSA, HHSC multiplies the wage index factor determined in subparagraph (A)(iv) of this paragraph for that CBSA by the percentage labor share of the base SDA calculated in clause (i) of this subparagraph.

(5) Teaching medical education add-on.

(A) Eligibility. A teaching hospital that is a children's hospital is eligible for the teaching medical education add-on. Each children's hospital is required to confirm, under the process described in paragraph (9) of this subsection, that HHSC's determination of the hospital's eligibility for the add-on is correct.

(B) Add-on amount. HHSC calculates the teaching medical education add-on amounts as follows:

(i) For each children's hospital, identify the total hospital medical education cost from each hospital cost report or reports that cross over the base year.

(ii) For each children's hospital, sum the amounts identified in clause (i) of this subparagraph to calculate the total medical education cost.

(iii) For each children's hospital, calculate the average medical education cost by dividing the amount from clause (ii) of this subparagraph by the number of cost reports that cross over the base year.

(iv) Sum the average medical education cost per hospital to determine a total average medical education cost for all hospitals.

(v) For each children's hospital, divide the average medical education cost for the hospital from clause (iii) of this subparagraph by the total average medical education cost for all hospitals from clause (iv) of this subparagraph to calculate a percentage for the hospital.

(vi) Divide the total average medical education cost for all hospitals from clause (iv) of this subparagraph by the total base year cost for all children's hospitals from subsection (c)(1)(B) of this section to determine the overall teaching percentage of Medicaid cost.

(vii) For each children's hospital, multiply the percentage from clause (v) of this subparagraph by the percentage from clause (vi) of this subparagraph to determine the teaching percentage for the hospital.

(viii) For each children's hospital, multiply the hospital's teaching percentage by the base SDA amount to determine the teaching medical education add on amount.

(6) Medical education add-on.

(A) Eligibility. A teaching hospital that is an urban hospital is eligible for the medical education add-on. Each hospital is required to confirm, under the process described in paragraph (10) [(9)] of this subsection, that HHSC's determination of the hospital's eligibility and Medicare education adjustment factor for the add-on is correct.

(B) Add-on amount. HHSC multiplies the base SDA by the hospital's Medicare education adjustment factor to determine the hospital's medical education add-on amount.

(7) Trauma add-on.

(A) Eligibility.

(i) To be eligible for the trauma add-on, a hospital must be designated as a trauma hospital by the Texas Department of State Health Services and be eligible to receive an allocation from the trauma facilities and emergency medical services account under Chapter 780, Health and Safety Code.

(ii) HHSC initially uses the trauma level designation associated with the physical address of a hospital's TPI. A hospital may request that HHSC, under the process described in paragraph (9) of this subsection, use a higher trauma level designation associated with a physical address other than the hospital's TPI address.

(B) Add-on amount. To determine the trauma add-on amount, HHSC multiplies the base SDA:

(i) by 28.3 percent for hospitals with Level 1 trauma designation;

(ii) by 18.1 percent for hospitals with Level 2 trauma designation;

(iii) by 3.1 percent for hospitals with Level 3 trauma designation; or

(iv) by 2.0 percent for hospitals with Level 4 trauma designation.

(C) Reconciliation with other reimbursement for uncompensated trauma care. Subject to the General Appropriations Act and other applicable law:

(i) If a hospital's allocation from the trauma facilities and emergency medical services account administered under Chapter 780, Health and Safety Code, is greater than the total trauma add-on amount estimated to be paid to the hospital under this section during the state fiscal year, the Department of State Health Services will pay the hospital the difference between the two amounts at the time funds are disbursed from that account to eligible trauma hospitals.

(ii) If a hospital's allocation from the trauma facilities and emergency medical services account is less than the total trauma add-on amount estimated to be paid to the hospital under this section during the state fiscal year, the hospital will not receive a payment from the trauma facilities and emergency medical services account.

(8) Safety-Net add-on.

(A) Eligibility. To be eligible for the safety-net add-on, a hospital must meet the definition of a safety-net hospital in subsection (b) of this section.

(B) Add-on amount. HHSC calculates the safety-net add-on amounts as follows:

(i) for each eligible hospital, determine the total allowable Medicaid inpatient days for a period of 12 contiguous months specified by HHSC;

(ii) sum the amounts identified in clause (i) of this subparagraph to calculate the total allowable Medicaid inpatient days for all eligible hospitals;

(iii) for each eligible hospital, divide the amount determined in clause (i) of this subparagraph by the amount determined in clause (ii) of this subparagraph to calculate the hospital's percentage of total allowable Medicaid inpatient days for all eligible hospitals;

(iv) for each eligible hospital, multiply the amount determined in clause (iii) of this subparagraph by the amount of available funds;

(v) for each eligible hospital, sum the relative weights of all inpatient claims for the period of 12 contiguous months indicated in clause (i) of this subparagraph; and

(vi) for each eligible hospital, divide the amount determined in clause (iv) of this subparagraph by the amount determined in clause (v) of this subparagraph to calculate the safety-net add-on amount.

(C) Reconciliation. Effective for costs and revenues accrued on or after September 1, 2015, HHSC may perform a reconciliation for each hospital that received the safety-net add-on to identify any such hospitals with total Medicaid reimbursements for inpatient and outpatient services in excess of their total Medicaid and uncompensated care inpatient and outpatient costs. For hospitals with total Medicaid reimbursements in excess of total Medicaid and uncompensated care costs, HHSC may recoup the difference.

(9) Children's Hospital Supplemental add-on.

(A) Eligibility.

(i) To be eligible for the Children's Hospital Supplemental add-on, a hospital must meet the definition of a children's hospital in subsection (b) of this section on September 1, 2019.

(ii) This add-on will be effective for inpatient hospital discharges occurring after August 31, 2019 and before September 1, 2020.

(B) Add-on amount. Each eligible hospital will receive an SDA add-on equal to \$1122.18.

(10) ~~(9)~~ Add-on status verification.

(A) Notification. HHSC will determine a hospital's initial add-on status by reference to the impact file; the Texas Department of State Health Services' list of trauma-designated hospitals; and Medicaid days and relative weight information from HHSC's fiscal intermediary. HHSC will notify the hospital of the CBSA to which the hospital is assigned, the Medicare education adjustment factor assigned to the hospital for urban hospitals, the trauma level designation assigned to the hospital, the Medicare teaching hospital designation for children's hospitals^[5] as applicable, and any other related information determined relevant by HHSC. For state fiscal years 2017 and after, HHSC will also notify eligible hospitals of the data used to calculate the safety-net add-on. HHSC may post the information on HHSC's website, send the information through the established Medicaid notification procedures used by HHSC's fiscal intermediary, send through other direct mailing, or provide the information to the hospital associations to disseminate to their member hospitals.

(B) HHSC will calculate a hospital's final SDA using the add-on status initially determined by HHSC unless, within 14 calendar days after the date of the notification, HHSC receives notification, in writing by regular mail, hand delivery or special mail delivery, from the hospital (in a format determined by HHSC) that any add-on status determined by HHSC is incorrect and:

(i) the hospital provides documentation of its eligibility for a different trauma designation, medical education percentage, or teaching hospital designation;

(ii) the hospital provides documentation that it is approved by Medicare for reclassification to a different CBSA; or

(iii) for state fiscal years 2017 and after, the hospital provides documentation of different data the hospital contends should be used to calculate the safety-net add-on.

(C) If a hospital fails to notify HHSC within 14 calendar days after the date of the notification that the add-on status as initially determined by HHSC includes one or more add-ons for which the hospital is not eligible, resulting in an overpayment, HHSC will recoup such overpayment and will prospectively reduce the SDA accordingly.

(e) Final urban and children's hospital SDA calculations.

(1) HHSC calculates an urban hospital's final SDA as follows:

(A) Add all add-on amounts for which the hospital is eligible to the base SDA.

(B) Multiply the SDA determined in subparagraph (A) of this paragraph by the hospital's total relative weight of base year claims as calculated in subsection (g)(1) of this section.

(C) Sum the amount calculated in subparagraph (B) of this paragraph for all urban hospitals.

(D) Divide the total funds appropriated for reimbursing inpatient urban hospital services under this section by the amount determined in subparagraph (C) of this paragraph.

(E) Multiply the SDA determined for each hospital in subparagraph (A) of this paragraph by the percentage determined in subparagraph (D) of this paragraph.

(F) For new urban hospitals for which HHSC has no base year claim data, the final SDA is the base SDA plus any add-ons for which the hospital is eligible, multiplied by the percentage determined in subparagraph (D) of this paragraph.

(2) HHSC calculates a children's hospital's final SDA as follows:

(A) Add all add-on amounts for which the hospital is eligible to the base SDA.

(B) For labor and delivery services provided to adults age eighteen or greater in a children's hospital, the final SDA is equal to the base SDA for urban hospitals without add-ons, calculated as described in subsection (c)(3) of this section plus the urban hospital wage add-on for an urban hospital located in the same CBSA as the children's hospital providing the service.

(C) For new children's hospitals that are not teaching hospitals for which HHSC has no base year claim data, the final SDA is the base SDA plus the hospital's geographic wage add-on. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(D) For new children's hospitals that qualify for the teaching medical education add-on described in subsection (b)(33) of this section for which HHSC has no base year claim data, the final SDA is calculated based on one of the following options until rebasing is performed with base year claim data for the hospital. A new children's hospital must notify the HHSC Rate Analysis Department of its selected option within 60 days from the date the hospital is notified of its provider activation by HHSC's fiscal intermediary. If notice of the option is not received, HHSC will assign the hospital the SDA calculated as described in clause (i) of this subparagraph. The SDA calculated based on the selected option will be effective retroactive to the first day of the provider's enrollment.

(i) Children's hospital base SDA plus the applicable geographic wage add-on and the minimum teaching add-on for existing children's hospitals. No settlement of costs is required for services reimbursed under this option. The SDA will be in effect [effective] for the hospital for three years or until the next rebasing when a new SDA

will be determined. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(ii) Children's base SDA plus the applicable geographic wage add-on and the maximum teaching add-on for existing children's hospitals. A cost settlement is required for services reimbursed under this option. The SDA will be in effect for the hospital for three years or until the next rebasing when a new SDA will be determined. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(3) For military and out-of-state hospitals, the final SDA is the urban hospital base SDA multiplied by the percentage determined in paragraph (1)(D) of this subsection.

(f) Final rural hospital SDA calculation.

(1) HHSC calculates a rural hospital's final SDA as follows:

(A) Calculate a hospital-specific full-cost SDA by dividing each hospital's base year cost, calculated as described in subsection (c)(1)(A) of this section, by the sum of the relative weights of the claims in the base year;

(B) Adjust the result from subparagraph (A) of this paragraph by multiplying the hospital-specific full-cost SDA by the inflation update factor to obtain an adjusted hospital-specific SDA;

(C) Calculate an SDA floor based on 1.5 standard deviations below the average adjusted hospital-specific SDA from subparagraph (B) of this paragraph for all rural hospitals with more than 50 claims as calculated in subparagraph (B) of this paragraph;

(D) Calculate an SDA ceiling based on 2.0 standard deviations above the average adjusted hospital-specific SDA from subparagraph (B) of this paragraph for all rural hospitals with more than 50 claims as calculated in subparagraph (B) of this paragraph;

(E) Compare the adjusted hospital-specific SDA for each hospital from subparagraph (B) of this paragraph to the SDA floor from subparagraph (C) of this paragraph. If the adjusted hospital-specific SDA is less than the SDA floor, the hospital is assigned the SDA floor amount as the final SDA;

(F) Compare the adjusted hospital-specific SDA for each hospital from subparagraph (B) of this paragraph to the SDA ceiling from subparagraph (D) of this paragraph. If the adjusted hospital-specific SDA is more than the SDA ceiling, the hospital is assigned the SDA ceiling amount as the final SDA;

(G) Assign the adjusted hospital-specific SDA as the final SDA to each hospital not described in subparagraphs (E) and (F) of this paragraph.

(H) Effective September 1, 2019, the final SDA for each rural hospital will be the final SDA determined in subparagraph (G) of this paragraph, with the following adjustments:

(i) apply CMS Prospective Payment System Hospital Market Basket inflation factors through SFY 2020 and SFY 2021, for each respective year; and

(ii) increase the amount in clause (i) of this subparagraph by 6.25%.

(2) For labor and delivery services provided by rural hospitals on or after September 1, 2019, an alternate SDA is effective, which is equal to the final SDA determined in paragraph (1)(H) of this subsection

tion plus an SDA add-on sufficient to increase paid claims by no less than \$500.

(3) ~~(2)~~ HHSC calculates a new rural hospital's final SDA as follows:

(A) For new rural hospitals for which HHSC has no base year claim data, the final SDA is the mean rural SDA, calculated by dividing the sum of the base year costs per claim for the rural hospital group by the sum of the relative weights for the rural hospital group of claims.

(B) The mean rural SDA remains in effect until the next rebasing using the steps outlined in paragraph (1)(A) - (G) of this subsection, using the SDA floor and SDA ceiling in effect for the fiscal year.

(g) DRG statistical calculations. HHSC recalibrates the relative weights, MLOS and day outlier threshold whenever the base SDAs for urban hospitals are recalculated. The relative weights, MLOS, and day outlier thresholds are calculated using data from urban hospitals and apply to all hospitals. The relative weights that were implemented for urban hospitals on September 1, 2012, apply to all hospitals until the next rebasing.

(1) Recalibration of relative weights. HHSC calculates a relative weight for each DRG as follows:

(A) Base year claims are grouped by DRG.

(B) For each DRG, HHSC:

(i) sums the base year costs per claim as determined in subsection (c) of this section;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG; and

(iii) divides the result in clause (ii) of this subparagraph by the universal mean, resulting in the relative weight for the DRG.

(2) Recalibration of the MLOS. HHSC calculates the MLOS for each DRG as follows:

(A) Base year claims are grouped by DRG.

(B) For each DRG, HHSC:

(i) sums the number of days billed for all base year claims;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG, resulting in the MLOS for the DRG.

(3) Recalibration of day outlier thresholds. HHSC calculates a day outlier threshold for each DRG as follows:

(A) Calculate for all claims the standard deviations from the MLOS in paragraph (2) of this subsection.

(B) Remove each claim with a length of stay (number of days billed by a hospital) greater than or equal to three standard deviations above or below the MLOS. The remaining claims are those with a length of stay less than three standard deviations above or below the MLOS.

(C) Sum the number of days billed by all hospitals for a DRG for the remaining claims in subparagraph (B) of this paragraph.

(D) Divide the result in subparagraph (C) of this paragraph by the number of remaining claims in subparagraph (B) of this paragraph.

(E) Calculate one standard deviation for the result in subparagraph (D) of this paragraph.

(F) Multiply the result in subparagraph (E) of this paragraph by two and add that to the result in subparagraph (D) of this paragraph, resulting in the day outlier threshold for the DRG.

(4) If a DRG has fewer than five base year claims, HHSC will use National Claim Statistics to assign:

(A) a national relative weight recalibrated to a relative weight calculated in paragraph (1) of this subsection; and

(B) an MLOS and a day outlier as described in paragraphs (2) and (3) of this subsection.

(h) Reimbursements.

(1) Calculating the payment amount. HHSC reimburses a hospital a prospective payment for covered inpatient hospital services by multiplying the hospital's final SDA as calculated in subsection (e) or (f) of this section as appropriate by the relative weight for the DRG assigned to the adjudicated claim. The resulting amount is the payment amount to the hospital.

(2) The prospective payment as described in paragraph (1) of this subsection is considered full payment for covered inpatient hospital services. A hospital's request for payment in an amount higher than the prospective payment will be denied.

(3) Day and cost outlier adjustments. HHSC pays a day outlier or a cost outlier for medically necessary inpatient services provided to clients under age 21 in all Medicaid participating hospitals that are reimbursed under the prospective payment system. If a patient age 20 is admitted to and remains in a hospital past his or her 21st birthday, inpatient days and hospital charges after the patient reaches age 21 are included in calculating the amount of any day outlier or cost outlier payment adjustment.

(A) Day outlier payment adjustment. HHSC calculates a day outlier payment adjustment for each claim as follows:

(i) Determine whether the number of medically necessary days allowed for a claim exceeds:

(I) the MLOS by more than two days; and

(II) the DRG day outlier threshold as calculated in subsection (g)(3) of this section.

(ii) If clause (i) of this subparagraph is true, subtract the DRG day outlier threshold from the number of medically necessary days allowed for the claim.

(iii) Multiply the DRG relative weight by the final SDA.

(iv) Divide the result in clause (iii) of this subparagraph by the DRG MLOS described in subsection (g)(2) of this section, to arrive at the DRG per diem amount.

(v) Multiply the number of days in clause (ii) of this subparagraph by the result in clause (iv) of this subparagraph.

(vi) Multiply the result in clause (v) of this subparagraph by 60 percent.

(vii) Multiply the allowed charges by the current interim rate to determine the cost.

(viii) Subtract the DRG payment amount calculated in clause (iii) of this subparagraph from the cost calculated in clause (vii) of this subparagraph.

(ix) The day outlier amount is the lesser of the amount in clause (vi) of this subparagraph or the amount in clause (viii) of this subparagraph.

(x) For urban and rural hospitals, multiply the amount in clause (ix) of this subparagraph by 90 percent to determine the final day outlier amount. For children's hospitals the amount in clause (ix) of this subparagraph is the final day outlier amount.

(B) Cost outlier payment adjustment. HHSC makes a cost outlier payment adjustment for an extraordinarily high-cost claim as follows:

(i) To establish a cost outlier, the cost outlier threshold must be determined by first selecting the lesser of the universal mean of base year claims multiplied by 11.14 or the hospital's final SDA multiplied by 11.14.

(ii) Multiply the full DRG prospective payment by 1.5.

(iii) The cost outlier threshold is the greater of clause (i) or (ii) of this subparagraph.

(iv) Subtract the cost outlier threshold from the amount of reimbursement for the claim established under cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(v) Multiply the result in clause (iv) of this subparagraph by 60 percent to determine the amount of the cost outlier payment.

(vi) For urban and rural hospitals, multiply the amount in clause (v) of this subparagraph by 90 percent to determine the final cost outlier amount. For children's hospitals the amount in clause (v) of this subparagraph is the final cost outlier amount.

(C) Final outlier determination:

(i) If the amount calculated in subparagraph (A)(ix) of this paragraph is greater than zero and the amount calculated in subparagraph (B)(vi) of this paragraph is greater than zero, HHSC pays the higher of the two amounts.

(ii) If the amount calculated in subparagraph (A)(ix) of this paragraph is greater than zero and the amount calculated in subparagraph (B)(vi) of this paragraph is less than or equal to zero, HHSC pays the day outlier amount.

(iii) If the amount calculated in subparagraph (B)(vi) of this paragraph is greater than zero and the amount calculated in subparagraph (A)(ix) of this paragraph is less than or equal to zero, HHSC pays the cost outlier amount.

(iv) If the amount calculated in subparagraph (A)(ix) of this paragraph and the amount calculated in subparagraph (B)(vi) of this paragraph are both less than or equal to zero HHSC will not pay an outlier for the admission.

(D) If the hospital claim resulted in a downgrade of the DRG related to reimbursement denials or reductions for preventable adverse events, the outlier payment will be determined by the lesser of the calculated outlier payment for the non-downgraded DRG or the downgraded DRG.

(4) A hospital may submit a claim to HHSC before a patient is discharged, but only the first claim for that patient will be reimbursed the prospective payment described in paragraph (1) of this subsection. Subsequent claims for that stay are paid zero dollars. When the patient is discharged and the hospital submits a final claim to ensure accurate calculation for potential outlier payments for clients younger than age

21, HHSC recoups the first prospective payment and issues a final payment in accordance with paragraphs (1) and (3) of this subsection.

(5) Patient transfers and split billing. If a patient is transferred, HHSC establishes payment amounts as specified in subparagraphs (A) - (D) of this paragraph. HHSC manually reviews transfers for medical necessity and payment.

(A) If the patient is transferred from a hospital to a nursing facility, HHSC pays the transferring hospital the total payment amount of the patient's DRG.

(B) If the patient is transferred from one hospital (transferring hospital) to another hospital (discharging hospital), HHSC pays the discharging hospital the total payment amount of the patient's DRG. HHSC calculates a DRG per diem and a payment amount for the transferring hospital as follows:

(i) Multiply the DRG relative weight by the final SDA.

(ii) Divide the result in clause (i) of this subparagraph by the DRG MLOS described in subsection (g)(2) of this section, to arrive at the DRG per diem amount.

(iii) To arrive at the transferring hospital's payment amount:

(I) for a patient age 21 or older, multiply the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS, the transferring hospital's number of medically necessary days allowed for the claim, or 30 days; or

(II) for a patient under age 21, multiply the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS or the transferring hospital's number of medically necessary days allowed for the claim.

(C) HHSC makes payments to multiple hospitals transferring the same patient by applying the per diem formula in subparagraph (B) of this paragraph to all the transferring hospitals and the total DRG payment amount to the discharging hospital.

(D) HHSC performs a post-payment review to determine if the hospital that provided the most significant amount of care received the total DRG payment. If the review reveals that the hospital that provided the most significant amount of care did not receive the total DRG payment, an adjustment is initiated to reverse the payment amounts. The transferring hospital is paid the total DRG payment amount and the discharging hospital is paid the DRG per diem.

(i) Cost reports. Each hospital must submit an initial cost report at periodic intervals as prescribed by Medicare or as otherwise prescribed by HHSC.

(1) Each hospital must send a copy of all cost reports audited and amended by a Medicare intermediary to HHSC within 30 days after the hospital's receipt of the cost report. Failure to submit copies or respond to inquiries on the status of the Medicare cost report will result in provider vendor hold.

(2) HHSC uses data from these reports in rebasing rate years to recalculate base SDAs, to calculate interim rates and to complete cost settlements.

(j) Cost Settlement.

(1) The cost settlement process is limited by the TEFRA target cap set pursuant to the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) for children's and state-owned [~~state owned~~] teaching hospitals.

(2) Notwithstanding the process described in paragraph (1) of this subsection, HHSC uses each hospital's final audited cost report, which covers a fiscal year ending during a base year period, for calculating the TEFRA target cap for a hospital.

(3) HHSC may select a new base year period for calculating the TEFRA target cap at least every three years.

(4) HHSC increases a hospital's TEFRA target cap in years in which the target cap is not reset under this paragraph, by multiplying the hospital's target cap by the CMS Prospective Payment System Hospital Market Basket Index adjusted to the hospital's fiscal year.

(5) For a new children's hospital, the base year for calculating the TEFRA target cap is the hospital's first full 12-month cost reporting period occurring after the date the hospital is designated by Medicare as a children's hospital. For each cost reporting period after the hospital's base year, an increase in the TEFRA target cap will be applied as described in paragraph (4) of this subsection, until the TEFRA target cap is recalculated as described in paragraph (3) of this subsection.

(6) After a Medicaid participating hospital is designated by Medicare as a children's hospital, the hospital must submit written notification to HHSC's provider enrollment contact, including documents verifying its status as a Medicare children's hospital. Upon receipt of the written notification from the hospital, HHSC will convert the hospital to the reimbursement methodology described in this subsection retroactive to the effective date of designation by Medicare.

(k) Out-of-state children's hospitals. HHSC calculates the prospective payment rate for an out-of-state children's hospital as follows:

(1) HHSC determines the overall average cost per discharge for all in-state children's hospitals by:

(A) Summing the Medicaid allowed cost from tentative or final cost report settlements for the base year; and

(B) Dividing the result in subparagraph (A) of this paragraph by the number of in-state children's hospitals' base year claims described in subsection (c)(1)(D)(ii) of this section.

(2) HHSC determines the average relative weight for all [of] in-state children's hospitals' base year claims described in subsection (c)(1)(D)(ii) of this section by:

(A) Assigning a relative weight to each claim pursuant to subsection (g)(1)(B)(iii) of this section;

(B) Summing the relative weights for all claims; and

(C) Dividing by the number of claims.

(3) The result in paragraph (1) of this subsection is divided by the result in paragraph (2) of this subsection to arrive at the adjusted cost per discharge.

(4) The adjusted cost per discharge in paragraph (3) of this subsection is the payment rate used for payment of claims.

(5) HHSC reimburses each out-of-state children's hospital a prospective payment for covered inpatient hospital services. The payment amount is determined by multiplying the result in paragraph (4) of this subsection by the relative weight for the DRG [~~Diagnosis Related Group (DRG)~~] assigned to the adjudicated claim.

(l) Merged hospitals.

(1) When two or more Medicaid participating hospitals merge to become one participating provider and the participating provider is recognized by Medicare, the participating provider must

submit written notification to HHSC's provider enrollment contact, including documents verifying the merger status with Medicare.

(2) HHSC will assign to the merged entity the final SDA assigned to the hospital associated with the surviving TPI and will re-process all claims for the merged entity back to the date of the merger or the first day of the fiscal year, whichever is later.

(3) HHSC will not recalculate the final SDA of a hospital acquired in an acquisition or buyout unless the acquisition or buyout resulted in the purchased or acquired hospital becoming part of another Medicaid participating provider. HHSC will continue to reimburse the acquired hospital based on the final SDA assigned before the acquisition or buyout.

(m) Adjustments. HHSC may adjust a hospital's final SDA in accordance with §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

(n) Additional data. HHSC may require a hospital to provide additional data in a format and at a time specified by HHSC. Failure to submit additional data as specified by HHSC may result in a provider vendor hold until the requested information is provided.

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

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Texas Health and Human Services Commission

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



TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 2. RESIDENTIAL MORTGAGE LOAN ORIGINATORS APPLYING FOR LICENSURE WITH THE OFFICE OF CONSUMER CREDIT COMMISSIONER UNDER THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT

SUBCHAPTER B. OPERATIONAL REQUIREMENTS FOR OFFICE OF CONSUMER CREDIT COMMISSIONER LICENSEES

7 TAC §2.201

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 2, concerning Residential Mortgage Loan Originators Applying for Licensure with the Office of Consumer Credit Commissioner Under the Secure and Fair Enforcement for Mortgage Licensing Act.

In general, the purpose of the proposed amendments in 7 TAC, Chapter 2 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stakeholder meeting, and the OCCC received four written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The proposed amendments specify the license term, renewal process, and expiration date for residential mortgage loan originators. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. In addition, the proposed amendments modernize or remove obsolete language.

The individual purposes of the proposed amendments are provided in the following paragraph.

In §2.201, proposed amendments specify the term, renewal process, and expiration date for a residential mortgage loan originator license. The proposed amendments maintain the current one-year term, the current December 31 expiration date, and the current reinstatement period from January 1 through the last day of February, all of which are currently described in §2.104. The title of §2.201 is also amended to state "License Term, Renewal, and Expiration," to ensure that the rule's title clearly conveys its contents, and to ensure consistency with other rules being amended in this proposal. In addition, proposed amendments shorten the titles of Chapter 2 and its two subchapters, in order to make these titles more simple and concise, and to clarify that Chapter 2 applies to residential mortgage loan originators regulated by the OCCC, not just those applying for licensure.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the proposal will be that the commission's rules will be more easily understood by applicants and licensees, will reflect current agency procedures, and will be more easily enforced. Additional benefits of the proposed amendments are increased efficiencies and modernized rule language.

The proposed rule changes would maintain the one-year term and annual renewal requirement for each license or registration, and would not increase any fee amounts currently described in the rules. For this reason, there is no anticipated cost to persons who are required to comply with the rule changes as proposed.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agency. The proposal does not create a new regulation. The proposal does not expand or limit an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments to 7 TAC, Chapter 2 are proposed under Texas Finance Code, §180.004, which authorizes the commission to adopt rules necessary to implement Texas Finance Code, Chapter 180. In addition, the proposed amendments in §2.201 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 180.

§2.201. License Term, Renewal, and Expiration.

(a) License term. A new residential mortgage loan originator license is effective from the date of its issuance until December 31. A license must be renewed annually in order to remain effective. After renewal, a license is effective for a term of one year, from January 1 to December 31.

(b) [(a)] Requirements. A license may be renewed if:

(1) the RMLO submits a completed application for renewal through the NMLS together with the payment of the applicable renewal application fee;

(2) the OCCC determines that the RMLO continues to meet the minimum requirements for license issuance, including financial responsibility, character, and general fitness, as provided in Texas Finance Code, §180.055, and subsection (g) [(d)] of this section; and

(3) the RMLO provides satisfactory evidence that the RMLO has completed the continuing education requirements of Texas Finance Code, §180.060.

(c) Due date for annual fees. Annual renewal fees are due by December 31 of each year.

(d) Expiration. A residential mortgage loan originator license expires on December 31 if the annual renewal fee has not been paid by

December 31. After expiration, a license may be reinstated during the period from January 1 through the last day of February.

(e) [(b)] Rejection of renewal. Renewal of a license may be rejected for reasons provided in Texas Finance Code, §180.201.

(f) [(e)] Additional information. The OCCC may require additional, clarifying, or supplemental information from any applicant for the renewal of a license pursuant to Texas Finance Code, Chapter 180 in order to determine compliance with the law.

(g) [(d)] Additional background checks. After initial issuance of a license, the OCCC may require additional criminal and credit background checks in order to determine an RMLO's continuing compliance with the law.

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 June 21, 2019.

TRD-201901929

Laurie B. Hobbs

Assistant General Counsel

Finance Commission of Texas

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 936-7621



CHAPTER 3. STATE BANK REGULATION

SUBCHAPTER B. GENERAL

7 TAC §3.24

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §3.24 concerning required notice of cybersecurity incidents. The new rule is proposed to require a state bank to notify the banking commissioner promptly if it experiences a material cybersecurity incident in its information system.

Proposed subsection (a) provides definitions. "Cybersecurity incident" is defined in a manner consistent with current federal guidance as essentially an observed irregularity that must be investigated to determine if information has been damaged or stolen. Most cybersecurity incidents will not result in a notice to the commissioner. "Information system" is defined more broadly than current federal guidance, which is limited to systems that handle sensitive customer information. However, there are other types of sensitive data that can have a detrimental impact on a bank if breached, including confidential business information, trade secrets, organizational strategies and financial information. Further, a breach of specialized systems such as electronic banking systems, industrial/process control systems, telephone switching, private branch exchange systems, and environmental control systems can have a material adverse effect on a bank's operations and financial performance.

Subsection (b) as proposed requires a state bank to notify the banking commissioner as soon as practicable but no later than 15 days following a determination that a cybersecurity incident has occurred regarding the bank's information system, whether maintained by the bank or by an affiliate or third party service provider at the direction of the bank, if the incident has a reasonable likelihood of (1) requiring notice to a regulatory agency other than the department, (2) a data breach notification to customers

of the bank under applicable law, or (3) otherwise causing a material adverse effect on the financial performance of the bank or on customers of the bank.

Proposed subsection (c) specifies the information required to be submitted in the notice, to the extent known at the time of submission. The purpose of the notice is not to provide comprehensive information regarding the incident, but rather to provide a confidential early warning to (1) ensure the commissioner is informed of the basic circumstances before receiving related consumer complaints and calls from elected officials, and (2) enable the department to monitor the bank's incident response and provide guidance if appropriate. While examiners with the department have sophisticated expertise and can assist if warranted, the proposed section is not intended to authorize the department to directly conduct or interfere with the bank's incident response.

Subsection (d) as proposed acknowledges that the filing of a suspicious activity report (SAR) under federal law will trigger the notice requirement under the proposed section but cautions that the bank should not mention or discuss any related SAR filing in the submitted notice.

Catherine Reyer, General Counsel, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Reyer also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is enhanced regulatory oversight and resulting public confidence in the safety and soundness of state banks, particularly regarding the ability to protect sensitive customer information. Regulatory oversight of a state bank's remediation and compliance efforts in response to a material cybersecurity incident can better inform the examination process applicable to all state banks, resulting in stronger and more secure protection of sensitive customer information and other confidential information.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will be no adverse economic effect on persons required to comply with the rule as proposed. A state bank will merely add the notice requirement to the written incident response plan the bank is already required to maintain under applicable federal law.

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.

Pursuant to Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rule. During the first five years that the rule will be in effect, the rule will create a new regulation but 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 department, require an increase or decrease in fees paid to the department, expand, limit or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability, or positively or adversely affect this state's economy.

To be considered, comments on the proposed new section must be submitted no later than 5:00 p.m. on August 5, 2019. Com-

ments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rule is proposed under Finance Code, §31.003(a)(2), which authorizes the commission to adopt rules necessary or reasonable to preserve or protect the safety and soundness of state banks. As required by Finance Code, §31.003(b), in proposing the new rule, the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

No state statutes are affected by the proposed new section.

§3.24. Notice of Cybersecurity Incident.

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

(1) "Cybersecurity incident" means any observed occurrence in an information system that:

(A) jeopardizes the cybersecurity of the information system or the information the system processes, stores or transmits; or

(B) violates the security policies, security procedures or acceptable use policies of the information system owner to the extent such occurrence results from unauthorized or malicious activity.

(2) "Information system" means a set of applications, services, information technology assets or other information-handling components organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, including the operating environment as well as any specialized system such as electronic banking systems, industrial/process control systems, telephone switching, private branch exchange systems, and environmental control systems.

(b) Notice required. A state bank shall notify the banking commissioner and submit the information required by subsection (c) of this section as soon as practicable but not later than 15 days following a determination that a cybersecurity incident has occurred regarding the bank's information system, whether maintained by the bank or by an affiliate or third party service provider at the direction of the bank, that will likely:

(1) require submission of a notice to a state or federal regulatory or law enforcement agency or to a self-regulatory body other than the notice required by this section;

(2) require sending a data breach notification to customers of the bank under applicable state or federal law, including Business and Commerce Code, §521.053, or a similar law of another state; or

(3) cause a material adverse effect on the financial performance of the bank or on customers of the bank.

(c) Content of notice. The notice required by subsection (b) of this section must include, to the extent known at the time of submission:

(1) a brief description of the cybersecurity incident, including the approximate date of the incident, the date the incident was discovered, and the nature of any data that may have been illegally obtained or accessed;

(2) subject to subsection (d) of this section, a list of the state and federal regulatory agencies, self-regulatory bodies, and foreign regulatory agencies to whom notice has been or will be provided; and

(3) the name, address, telephone number, and email address of the employee or agent of the bank from whom additional information may be obtained regarding the incident.

(d) Omission of certain information. The filing of a suspicious activity report (SAR) related to the cybersecurity incident under applicable federal law constitutes a notice described by subsection (b)(1) of this section. However, the bank should not reference or mention the filing of a SAR in the notice filed with 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 June 24, 2019.

TRD-201901955

Catherine Reyer

General Counsel

Finance Commission of Texas

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 475-1301



PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 11. MISCELLANEOUS SUBCHAPTER A. GENERAL

7 TAC §§11.10 - 11.12

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §§11.10 - 11.12, concerning complaints. The new rules are proposed to provide consistent procedures for persons to complain about conduct of persons 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 new rules implement the applicable recommendations contained in the Sunset Model.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, 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 rules.

Ms. Newberg 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 rules' 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 new sections must be submitted no later than 5:00 p.m. on August 5, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rules 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.

Other statutes affected by the proposed new rules include Finance Code, §12.108 and §396.304, and Health and Safety Code, §711.048.

§11.10. Definitions.

(a) "Complainant" means a person who files a complaint or inquiry.

(b) "Complaint" means a signed, written communication submitted to the department by a person that alleges misconduct by a person believed to be engaging in an activity that is regulated by the department. For purposes of this subchapter, a complaint shall contain at least the following information:

(1) the complainant's name and contact information;

(2) the name of the entity against whom the complaint is submitted;

(3) the date and place of the alleged violation;

(4) a description of the facts or conduct alleged to violate applicable statutes or rules; and

(5) written documentation supporting the complaint.

(c) "Inquiry" means a communication made to the department about an entity believed to be engaging in an activity that is regulated by the department, but such communication does not include all of the required elements of a complaint.

§11.11. Complaint Processing.

(a) Complaints and inquiries filed with the department are generally considered public information, unless a specific statutory exception applies.

(b) Upon receipt of a complaint or inquiry, the department will make a good faith effort to protect complainant's identity to the extent possible. The department will determine if the complaint or inquiry relates to an activity that the department regulates.

(c) If the department does not regulate the activity that is the subject of the complaint or inquiry, the department shall close the complaint or inquiry, notify the complainant and refer the complaint or inquiry to the appropriate regulatory entity within five business days of receiving the complaint or inquiry, if known.

(d) If the department regulates the activity that is the subject of a complaint, the department shall initiate an investigation into the merits of the complaint by sending, within 10 business days of receiving the complaint, a copy of the complaint and any supporting documentation to the entity that is the subject of the complaint.

(e) The department shall prioritize complaints for purposes of determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

(f) A regulated entity that receives a complaint forwarded by the department shall respond within 30 days from the date the request is mailed by the department.

(g) The banking commissioner may appoint a hearings officer or other subject matter expert to investigate a complaint received by the department.

(h) The department may, at the discretion of the commissioner, arrange for the services of a qualified mediator or subject matter expert to assist in resolving the complaint.

(i) The department shall monitor how long each complaint is open and shall make all reasonable efforts to resolve complaints within 90 days of receipt. The department shall notify the complainant of their complaint status at least quarterly if more than 45 days have elapsed since the complaint was received.

(j) If the department determines that the complaint is not supported by the evidence, or if the complaint is resolved to the satisfaction of the parties, the complaint will be dismissed.

(k) The department shall notify all parties to the complaint within 10 business days of closing the complaint.

(l) A complainant who disagrees with the disposition of a complaint may appeal by filing a petition against the department in a district court in Travis County.

§11.12. Complaint Review and Reporting.

(a) The department shall maintain in accordance with its retention policy records of all complaints received. Such records shall include the information required in Finance Code, §12.108.

(b) A representative sample of complaints closed due to lack of jurisdiction or evidence shall be reviewed quarterly by the head of the division that received the complaint.

(c) At least quarterly, the department shall submit to the Finance Commission a report of the sources, subjects, types, and dispositions of complaint activity during the preceding period.

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 June 24, 2019.

TRD-201901958

Catherine Reyer

General Counsel

Texas Department of Banking

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 475-1301



CHAPTER 17. TRUST COMPANY REGULATION

SUBCHAPTER A. GENERAL

7 TAC §17.5

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §17.5, concerning required notice of cybersecurity incidents. The new rule is proposed to require a state trust company to notify the banking commissioner promptly if it experiences a material cybersecurity incident in its information system.

Proposed subsection (a) provides definitions. "Cybersecurity incident" is defined in a manner consistent with current federal guidance as essentially an observed irregularity that must be investigated to determine if information has been damaged or stolen. Most cybersecurity incidents will not result in a notice to the commissioner. "Information system" is defined more broadly than current federal guidance, which is limited to systems that handle sensitive customer information. However, there are other types of sensitive data that can have a detrimental impact on a trust company if breached, including confidential business information, trade secrets, organizational strategies and financial information. Further, a breach of specialized systems such as telephone switching or exchange systems and environmental control systems can have a material adverse effect on a trust company's operations and financial performance.

Subsection (b) as proposed requires a state trust company to notify the banking commissioner as soon as practicable but no later than 15 days following a determination that a cybersecurity incident has occurred regarding the trust company's information system, whether maintained by the trust company or by an affiliate or third party service provider at the direction of the trust company, if the incident has a reasonable likelihood of (1) requiring notice to a regulatory agency other than the department, (2) a data breach notification to clients of the trust company under applicable law, or (3) otherwise causing a material adverse effect on the financial performance of the trust company or on clients or beneficiaries of trusts and custodial arrangements handled by the trust company.

Proposed subsection (c) specifies the information required to be submitted in the notice, to the extent known at the time of submission. The purpose of the notice is not to provide comprehensive information regarding the incident, but rather to provide a confidential early warning to (1) ensure the commissioner is informed of the basic circumstances before receiving related consumer complaints and calls from elected officials, and (2) enable the department to monitor the trust company's incident response and provide guidance if appropriate. While examiners with the department have sophisticated expertise and can assist if warranted, the proposed section is not intended to authorize the de-

partment to directly conduct or interfere with the trust company's incident response.

Subsection (d) as proposed acknowledges that the filing of a suspicious activity report (SAR) under federal law will trigger the notice requirement under the proposed section but cautions that the trust company should not mention or discuss any related SAR filing in the submitted notice.

Proposed subsection (e) provides an exemption from the proposed rule for a family trust company that is exempt under Finance Code, §182.011.

Catherine Reyer, General Counsel, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Reyer also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is enhanced regulatory oversight and resulting public confidence in the safety and soundness of state trust companies, particularly regarding the ability to protect sensitive information of trust company clients and beneficiaries. Regulatory oversight of a state trust company's remediation and compliance efforts in response to a material cybersecurity incident can better inform the examination process applicable to all state trust companies, resulting in stronger and more secure protection of sensitive customer information and other confidential information.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will be no adverse economic effect on persons required to comply with the rule as proposed. A state trust company will merely add the notice requirement to the written information security program and incident response plan maintained by the trust company.

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.

Pursuant to Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rule. During the first five years that the rule will be in effect, the rule will create a new regulation but will not create or eliminate a government program; will not require the creation of new employee positions or the elimination of existing employee positions; will not require an increase or decrease in future legislative appropriations to the department; will not require an increase or decrease in fees paid to the department; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

To be considered, comments on the proposed new section must be submitted no later than 5:00 p.m. on August 5, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rule is proposed under Finance Code, §181.003(a)(2), which authorizes the commission to adopt rules necessary or reasonable to preserve or protect the safety and soundness of state trust companies.

No state statutes are affected by the proposed new section.

§17.5. Notice of Cybersecurity Incident.

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

(1) "Cybersecurity incident" means any observed occurrence in an information system that:

(A) jeopardizes the cybersecurity of the information system or the information the system processes, stores or transmits; or

(B) violates the security policies, security procedures or acceptable use policies of the information system owner to the extent such occurrence results from unauthorized or malicious activity.

(2) "Information system" means a set of applications, services, information technology assets or other information-handling components organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, including the operating environment as well as any specialized system such as telephone switching or exchange systems and environmental control systems.

(b) Notice required. A state trust company shall notify the banking commissioner and submit the information required by subsection (c) of this section as soon as practicable but not later than 15 days following a determination that a cybersecurity incident has occurred regarding the trust company's information system, whether maintained by the trust company or by an affiliate or third party service provider at the direction of the trust company, that will likely:

(1) require submission of a notice to another state or federal regulatory agency or to a self-regulatory body other than the notice required by this section;

(2) require sending a data breach notification to clients of or beneficiaries of trusts and custodial arrangements handled by the trust company under applicable state or federal law, including Business and Commerce Code, §521.053, or a similar law of another state; or

(3) cause a material adverse effect on:

(A) the financial performance of the trust company; or

(B) clients or beneficiaries of trusts and custodial arrangements handled by the trust company.

(c) Content of notice. The notice required by subsection (b) of this section must include, to the extent known at the time of submission:

(1) a brief description of the cybersecurity incident, including the approximate date of the incident, the date the incident was discovered, and the nature of any data that may have been illegally obtained or accessed;

(2) subject to subsection (d) of this section, a list of the state and federal regulatory agencies, self-regulatory bodies, and foreign regulatory agencies to whom notice has been or will be provided; and

(3) the name, address, telephone number, and email address of the employee or agent of the trust company from whom additional information may be obtained regarding the incident.

(d) Omission of certain information. The filing of a suspicious activity report (SAR) related to the cybersecurity incident under applicable federal law constitutes a notice described by subsection (b)(1) of this section. However, the trust company should not reference or mention the filing of a SAR in the notice filed with the commissioner.

(e) Exemptions. This section does not apply to a state trust company that is exempt under Finance Code, §182.011.

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 June 24, 2019.

TRD-201901959

Catherine Reyer

General Counsel

Texas Department of Banking

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 475-1301



CHAPTER 24. CEMETERY BROKERS

7 TAC §§24.1 - 24.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to repeal Chapter 24 concerning cemetery brokers, in its entirety. Chapter 24 consists of §§24.1 - 24.4.

The commission proposes the repeal of Chapter 24 in response to the legislative directives that persons are no longer required to be licensed or registered to sell a plot in a dedicated cemetery for another person, and Subchapter C-1, Chapter 711, Texas Health and Safety Code concerning cemetery broker registration is repealed in its entirety.

Impact Summary

For each year of the first five years after Chapter 24 is repealed, the elimination of the chapter will:

- decrease fees paid to the agency;
- repeal an existing regulation; and
- decrease the number of individuals subject to the chapter's applicability.

The repeal of Chapter 24 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;
- create a new regulation; or
- positively or adversely affect this state's economy.

Analysis of Fiscal Impact and Public Benefits

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for each of the first five years after Chapter 24 is repealed, there will be minimal fiscal implications for state government and no fiscal implications for local government. Prior to the implementation of the legislative directive, there were 17 cemetery brokers registered with the department. The annual registration fee was \$100 per year. Assuming a stable number of registered brokers, the department's revenue will drop by \$1,700 per year in each of the first five years after Chapter 24 is repealed.

Ms. Newberg has also determined that, for each year of the first five years after Chapter 24 is repealed, the public benefit anticipated as a result of the repeal is a reduction in unnecessary regulation and an increase in operational efficiency.

Analysis of Economic Impact

For each year of the first five years after Chapter 24 has been repealed, there will be a reduction in economic costs to persons previously required to comply with the chapter.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Rather, there will be a \$100 per year reduction in the cost of compliance for entities that were formerly required to register as cemetery brokers.

Comment Requested

To be considered, comments on the proposed repeal of Chapter 24 must be submitted no later than 5:00 p.m. on August 5, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

Statutory Authority

The repeal of Chapter 24 is proposed under Texas Health and Safety Code, §711.012(a), which authorizes the commission to adopt rules for the regulation of perpetual care cemeteries.

Texas Health and Safety Code, Subchapter C-1 and §§711.001(6)(A), 711.038(e), 711.0381(a), 711.052(a), 711.056(a), 711.059(a), and 711.02(a) and (b) are affected by the proposed repeal of Chapter 24.

§24.1. *Registration.*

§24.2. *Responsibilities After Registration.*

§24.3. *Consumer Complaints.*

§24.4. *Appeal of Delay in Registration Processing Times.*

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 June 24, 2019.

TRD-201901963

Catherine Reyer

General Counsel

Texas Department of Banking

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 475-1301



CHAPTER 25. PREPAID FUNERAL CONTRACTS

SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §§25.13, 25.23, 25.24

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §25.13 concerning the annual report filing, §25.23 concerning the annual renewal fee and §25.24 concerning the annual examination fee (annual assessment) for existing permits

to sell prepaid funeral benefits. The commission proposes these amendments in response to a legislative directive that the commission by rule prescribe the term of a permit issued, which may be for more than one year. The proposed amendments provide that a permit to sell prepaid funeral benefits is effective until it is revoked by the department or surrendered by the permit holder, combine the annual renewal fee and annual assessment into one new annual assessment schedule, and allow the values in the new assessment schedule to be adjusted for inflation, not more than annually, beginning September 1, 2020.

Summary of Current Rules

The requirement that an annual report be filed, and the required content of that report, are set forth in §25.13. This section does not currently specify how long a permit issued by the department to sell prepaid funeral benefits remains in effect.

The fees for a permit to sell prepaid funeral benefits set forth in §25.23 include an annual renewal fee. The annual renewal fee is based on the number of outstanding prepaid funeral benefit contracts and must be paid on or before March 1 of each year. Section 25.23(b)(2) includes a Renewal Fee Schedule that specifies the rates for the annual renewal.

Under §25.24, the annual assessment for an existing permit to sell prepaid funeral benefits is also based on the number of outstanding prepaid funeral benefit contracts. The annual assessment may be billed in quarterly or fewer installments each fiscal year. Section 25.24(b)(1) includes an Annual Assessment Schedule that specifies rates for the annual assessment. The annual assessment has advantages over the annual renewal fee for both permit holders and the department because it allows permit holders to calculate and accrue for amounts due to the department in support of the department's supervisory functions; provides for an equitable structure by which permit holders pay for the cost of supervision; allows the department to more accurately predict and manage its cash flows; and prevents the accumulation of excess funds.

Proposed Amendments

The proposed amendment to §25.13 adds the definition of a valid permit to clarify that a permit issued by the department to sell prepaid funeral benefits remains in effect until it is revoked by the department or surrendered by the permit holder.

The proposed amendment to §25.23 eliminates the annual renewal fee, including the Renewal Fee Schedule. The new definition of a valid permit makes existing permits perpetual rather than requiring that they be renewed each year. This supports the legislative directive that the commission by rule prescribe the term of a permit issued, which may be for more than one year. Existing permits will still be subject to revocation due to violations of state law.

The proposed amendment to §25.24 combines the current Renewal Fee Schedule in §25.23(b)(2) and the current Annual Assessment Schedule in §25.24(b)(1) into one new annual assessment schedule based on the number of outstanding prepaid funeral benefit contracts. The new annual assessment rates will still be billed in quarterly or fewer installments to preserve the advantages of the assessment system over the annual fee system as described above. Combining the two current schedules into one new assessment schedule also preserves the revenue to the department with little or no impact to existing permit holders.

To eliminate the need for large, one-time increases in annual assessments, the proposed amendment to §25.24 would also allow the department to escalate the new assessment rates based on the percentage change in an inflation index beginning September 1, 2020. The proposed inflation index is the Gross Domestic Product Implicit Price Deflator (GDPIPD), published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. While the Consumer Price Index (CPI) published by the Bureau of Labor Statistics, United States Department of Labor, is the most well-known measure, it measures only the prices of goods and services typically purchased by urban consumers. These goods and services constitute only about 60% of the economy's total production. In contrast, the GDPIPD captures the overall level of inflation in everything that an economy produces and is typically used to calculate inflation at the corporate or governmental level.

Each September 1, the assessment rates set forth in the proposed amendment to §25.24 will be reviewed by the department to determine if they should be revised upward (or downward) by an amount equal to the percentage change in the GDPIPD index values from the first quarter value of the previous calendar year (the previous March-to-March period). An increase in the GDPIPD can result in an increase in assessment rates if adopted by the department.

As provided by §25.24(c)(1), the department may periodically forgive a portion of assessments otherwise due in a year when the additional funds are not needed to fund the department's operations. Over the past five fiscal years, the department has discounted or forgiven a portion of the permit holders' annual assessments because the forgiven revenue was not needed to cover the department's regular operations. In fiscal years 2014, 2015, 2016, 2017 and 2018, the department reduced total billable annual assessments by 19%, 30%, 30%, 13% and 18%, respectively. Therefore, an increase in assessment rates will not necessarily result in a proportionate increase in assessments collected.

Impact Summary

For each year of the first five years the proposed amendments are in effect, the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rules' applicability; or
- positively or adversely affect this state's economy.

Analysis of Fiscal Impact and Public Benefits

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that, for the first five-year period the proposed amendments are in effect, there could be some fiscal implications for state government (but not for local government) as a result of enforcing or administering the amended rules. However, as discussed above, the department anticipates

it will forgive a portion of the assessments otherwise due. Thus, it is anticipated that the proposed amendments will be revenue neutral for the first five-year period the amendments are in effect.

Assuming there are a stable number of permit holders and an annual inflation of 1.58% (based on the average percentage change in the GDPIPD index for the past five years) applied annually after the first year, and in the event no assessments are forgiven, Ms. Newberg estimates that, for each year of the first five years the proposed amendments are in effect, the increased assessments could generate additional revenue of \$17,346 in year one, \$17,620 in year two, \$17,898 in year three, \$18,181 in year four and \$18,468 in year five. Although the five-year revenue estimate is required by Texas Government Code, §2001.024(a)(4), it is more understandable in the present context if presented by fiscal year (September through August). Assuming an effective date of September 1, 2019, Ms. Newberg estimates that the new assessment fees could generate additional revenue in fiscal years 2019 through 2023 as follows:

Figure: 7 TAC Chapter 25--Preamble

Ms. Newberg has also determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the amendments is better matching of the actual cost of regulation with the service provided while achieving economic self-sufficiency for the supervision of prepaid funeral benefit sellers.

Analysis of Economic Impact

For each year of the first five fiscal years the proposed amendments are in effect, there could be some minimal economic impact. However, as discussed above, the department anticipates that it will forgive a portion of assessments otherwise due. Thus, it is anticipated that the amendments will have no actual economic impact. In the event no assessments are forgiven, the anticipated costs to all persons required to comply with the rules as proposed would be an average of \$47.98 per fiscal year, or 1.78%. This is well below the historical reductions in billable assessments as outlined above.

There will be no adverse economic effect on rural communities. There could be some minimal adverse economic effect on small businesses and micro-businesses. However, as discussed above, the department anticipates that it will forgive a portion of assessments otherwise due. Thus, it is anticipated that the proposed amendments will have no actual economic effect on either small businesses or micro-businesses. In the event no assessments are forgiven, the adverse economic effect on small businesses would be an average of \$47.18 per fiscal year, or 2.0%. The adverse economic effect on micro-businesses would be an average of \$17.20 per fiscal year, or 2.1%. The adverse economic effect on large businesses would be an average of \$79.13 per fiscal year, or 1.7%.

Comment Requested

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on August 5, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

Statutory Authority

The amendments are proposed under Texas Finance Code (Finance Code), §154.051(b) and §154.054, which authorize the

commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting reasonable fees.

Finance Code, §§154.108, 154.109(b) and 154.110 are affected by the proposed amendments.

§25.13. Annual Report Filing.

(a) Valid permit. A permit issued by the department to sell prepaid funeral benefits remains in effect until it is revoked by the department or surrendered by the permit holder.

(b) [(a)] Date of filing. Each permit holder with outstanding prepaid funeral benefit contracts must file an annual report with the department [Department] by March 1 of each year for the preceding calendar year.

(c) [(b)] Contents of filing. The Annual Report filing must be sworn to by an authorized agent or corporate officer of the permit holder before a notary and must provide:

(1) - (7) (No change.)

§25.23. Application [and Renewal] Fees.

(a) Definitions.

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

(b) Application fees. The application fees set forth in this subsection have been set in accordance with the Finance Code, Chapter 154, for the purpose of defraying the cost of administering the Finance Code, Chapter 154. Except as otherwise provided in this subsection, all fees are due at the time the application is filed and are nonrefundable. An application submitted without the appropriate filing fee will be deemed incomplete and will not be considered.

(1) (No change.)

[(2) Renewal fee. The renewal fee for an existing permit is based on the number of outstanding contracts as reflected on the most recent annual report you have filed with the department, as specified in the Renewal Fee Schedule following this paragraph. You must pay the renewal fee by ACH debit on or before March 1 of each year, or by another method if directed to do so by the department. At least 15 days prior to the scheduled ACH transfer, the department will send you a notice specifying the amount of the renewal fee and the date the department will initiate payment of the fee by ACH debit, which will be March 1 of each year or, if March 1 is a holiday, the last business day immediately preceding March 1.]
[Figure: 7 TAC §23(b)(2)]

(2) [(3)] Conversion application fee. If you apply to convert a trust-funded prepaid funeral benefits operation to an insurance-funded prepaid funeral benefits operation, you must pay a \$1,000 fee per application. In the event additional processing time is required because the application is incomplete, you must pay the additional processing costs incurred in excess of the filing fee originally submitted, at the rate of \$600 per eight-hour employee day, provided that the total fee cannot exceed \$2,000. Until you have paid any such additional fee, the application will be deemed incomplete and will not be considered.

§25.24. What Fees Must I Pay for an Examination?

(a) Definitions.

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

(b) As a prepaid funeral benefits seller, what fees must I pay for department examinations?

(1) An annual assessment must be paid as an examination fee and as a renewal fee to the department to defray the cost of administering Chapter 154 [§154.054] of the Finance Code. The amount of

your annual assessment is based on the number of outstanding contracts as reflected on your most recent annual report filed with the department. You must pay the annual assessment specified in the following table:

Figure: 7 TAC §25.24(b)(1)

[Figure: 7 TAC §25.24(b)(1)]

(2) - (3) (No change.)

(c) How will the department bill me for the examination fees and when must I pay them?

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

(d) Adjustments for inflation. In this section, "GDPIPD" means the Gross Domestic Product Implicit Price Deflator, published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The "annual GDPIPD factor" is equal to the percentage change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

(1) Beginning September 1, 2020, and each September 1 thereafter, the table in subsection (b)(1) of this section, as most recently revised before such date pursuant to this subsection, may be revised as follows:

(A) the base assessment amount listed in column three of the table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to whole dollars; and

(B) each factor listed in column three of the table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to two decimal places.

(2) If the table in subsection (b)(1) of this section is revised for inflation (or deflation), then not later than August 1 of each year, the department shall calculate and prepare a revised table reflecting the inflation-adjusted values to be applied effective the following September 1 and will provide each permit holder with notice of and access to the revised table.

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 June 24, 2019.

TRD-201901961

Catherine Reyer

General Counsel

Texas Department of Banking

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 475-1301



CHAPTER 26. PERPETUAL CARE CEMETERIES

7 TAC §26.1

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §26.1 concerning the fees for a certificate of authority (certificate) to operate a perpetual care cemetery. The commission proposes this amendment in response to a legislative

directive that the commission by rule prescribe the term of a certificate issued, which may be for more than one year. The proposed amendment provides that a certificate to operate a perpetual care cemetery is effective until it is revoked by the department or surrendered by the certificate holder, combines the annual renewal fee and annual assessment into one new annual assessment schedule, and allows the values in the new assessment schedule to be adjusted for inflation, not more than annually, beginning September 1, 2020.

Summary of Current Rule

The fees for a certificate to operate a perpetual care cemetery set forth in §26.1 include an annual renewal fee. The annual renewal fee is based on the fund balance shown on the statement of funds in the most recent annual renewal report filed with the department and must be paid on or before March 1 of each year. Section §26.1(b)(2) includes an Annual Fee Schedule that specifies the rates for the annual renewal.

The fees set forth in §26.1 also include an annual assessment for existing certificate holders. As with the annual renewal fee, the annual assessment is also based on the fund balance shown on the statement of funds in the most recent annual renewal report. The annual assessment may be billed in quarterly or fewer installments each fiscal year. Section 26.1(b)(4) includes an Annual Assessment Schedule that specifies rates for the annual assessment. The annual assessment has advantages over the annual renewal fee for both certificate holders and the department because it allows certificate holders to calculate and accrue for amounts due to the department in support of the department's supervisory functions; provides for an equitable structure by which certificate holders pay for the costs of supervision; allows the department to more accurately predict and manage its cash flows; and prevents the accumulation of excess funds.

Proposed Amendment

First, the proposed amendment to §26.1 adds the definition of a "certificate of authority" to clarify that a certificate issued by the department to operate a perpetual care cemetery remains in effect until it is revoked by a district court or the department, or surrendered by the certificate holder. It also eliminates the word "renewal" from all references to the report that must be filed with the department each year.

Second, the proposed amendment to §26.1 eliminates the annual renewal fee, including the Annual Fee Schedule. The new definition of a "certificate of authority" makes existing certificates perpetual rather than requiring that they be renewed each year. This supports the legislative directive that the commission by rule prescribe the term of a certificate issued, which may be for more than one year. Existing certificates will still be subject to revocation due to violations of state law.

Third, the proposed amendment to §26.1 combines the current Annual Fee Schedule in §26.1(b)(2) and the current Annual Assessment Schedule in §26.1(b)(4) into one new annual assessment schedule based on the fund balance shown on the statement of funds in the most recent annual report. The new annual assessment rates will still be billed in quarterly or fewer installments to preserve the advantages of the assessment system over the annual fee system as described above. Combining the two current schedules into one new assessment schedule also preserves the revenue to the department with little or no impact to existing certificate holders.

Finally, to eliminate the need for large, one-time increases in annual assessments, the proposed amendment to §26.1 would also allow the department to escalate the new assessment rates based on the percentage change in an inflation index beginning September 1, 2020. The proposed inflation index is the Gross Domestic Product Implicit Price Deflator (GDPIPD), published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. While the Consumer Price Index (CPI) published by the Bureau of Labor Statistics, United States Department of Labor, is the most well-known measure, it measures only the prices of goods and services typically purchased by urban consumers. These goods and services constitute only about 60% of the economy's total production. In contrast, the GDPIPD captures the overall level of inflation in everything that an economy produces and is typically used to calculate inflation at the corporate or governmental level.

Each September 1, the assessment rates set forth in the proposed amendment to §26.1 will be reviewed by the department to determine if they should be revised upward (or downward) by an amount equal to the percentage change in the GDPIPD index values from the first quarter value of the previous calendar year (the previous March-to-March period). An increase in the GDPIPD can result in an increase in assessment rates if adopted by the department.

As provided by §26.1(c)(1), the department may periodically forgive a portion of assessments otherwise due in a year when the additional funds are not needed to fund the department's operations. Over the past five fiscal years, the department has discounted or forgiven a portion of the certificate holders' annual assessments because the forgiven revenue was not needed to cover the department's regular operations. In fiscal years 2014, 2015, 2016, 2017 and 2018, the department reduced total billable annual assessments by 22%, 30%, 30%, 13% and 18%, respectively. Therefore, an increase in assessment rates will not necessarily result in a proportionate increase in assessments collected.

Impact Summary

For each year of the first five years the proposed amendments are in effect, the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rules' applicability; or
- positively or adversely affect this state's economy.

Analysis of Fiscal Impact and Public Benefits

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that, for the first five-year period the proposed amendment is in effect, there could be some fiscal implications for state government (but not for local government) as a result of enforcing or administering the amended rule. However, as discussed above, the department anticipates it will for-

give a portion of the assessments otherwise due. Thus, it is anticipated that the proposed amendment will be revenue neutral for the first five-year period the amendment is in effect.

Assuming there are a stable number of certificate holders and an annual inflation of 1.58% (based on the average percentage change in the GDPIPD index for the past five years) applied annually after the first year, and in the event no assessments are forgiven, Ms. Newberg estimates that, for each year of the first five years the proposed amendment is in effect, the increased assessments could generate additional revenue of \$14,533 in year one, \$14,763 in year two, \$14,996 in year three, \$15,233 in year four and \$15,473 in year five. Although the five-year revenue estimate is required by Texas Government Code, §2001.024(a)(4), it is more understandable in the present context if presented by fiscal year (September through August). Assuming an effective date of September 1, 2019, Ms. Newberg estimates that the new assessment fees could generate additional revenue in fiscal years 2019 through 2023 as follows:

Figure: 7 TAC Chapter 26--Preamble

Ms. Newberg has also determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of the amendment is better matching of the actual cost of regulation with the service provided while achieving economic self-sufficiency for the supervision of perpetual care cemeteries.

Analysis of Economic Impact

For each year of the first five fiscal years the proposed amendment is in effect, there could be some minimal economic impact. However, as discussed above, the department anticipates that it will forgive a portion of assessments otherwise due. Thus, it is anticipated that the amendment will have no actual economic impact. In the event no assessments are forgiven, the anticipated costs to all persons required to comply with the rule as proposed would be an average of \$60.66 per fiscal year, or 1.71%. This is well below the historical reductions in billable assessments as outlined above.

There will be no adverse economic effect on rural communities. There could be some minimal adverse economic effect on small businesses and micro-businesses. However, as discussed above, the department anticipates that it will forgive a portion of assessments otherwise due. Thus, it is anticipated that the proposed amendment will have no actual economic effect on either small businesses or micro-businesses. In the event no assessments are forgiven, the adverse economic effect on small businesses would be an average of \$79.99 per fiscal year, or 1.7%. The adverse economic effect on micro-businesses would be an average of \$18.77 per fiscal year, or 1.0%. The adverse economic effect on large businesses would be an average of \$101.04 per fiscal year, or 2.0%.

Comment Requested

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on August 5, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

Authority

The amendments are proposed under Texas Finance Code (Finance Code), §712.008(a) which authorizes the commission to

adopt rules necessary or reasonable to defray the cost of supervision and regulation by imposing and collecting reasonable fees.

Finance Code, §712.0036 and §712.0037 are affected by the proposed amendments.

§26.1. What Fees Must I Pay to Operate a Perpetual Care Cemetery?
[What fees must I pay to operate a perpetual care cemetery?]

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

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

(6) Certificate of authority--a certificate issued by the department to operate a perpetual care cemetery, which remains in effect until it is revoked by a district court or the department, or surrendered by the certificate holder.

(b) If I want to operate a perpetual care cemetery, what fees must I pay to the department?

(1) (No change.)

~~(2) An annual renewal fee must be paid as required by Section 712.0037 of the Act. This annual renewal fee is based on your fund balance as reflected on the statement of funds in the most recent annual renewal report you have filed with the department. Your annual renewal fee will be calculated according to the following table:~~
~~[Figure: 7 TAC §26.1(b)(2)]~~

~~(2) [(3)] If the department does not receive your completed annual report [both your completed renewal report and renewal fee] by the due date, a late fee of \$100 per day for each business day after the due date that the department does not receive your completed annual report [renewal report and renewal fee] may be imposed. You must pay this fee immediately upon receipt of the department's written invoice.~~

~~(3) [(4)] An annual assessment will be imposed as an examination fee and as a renewal fee on a perpetual care cemetery corporation to defray the cost of administering the Act, as required by Sections 712.0037, 712.042 and 712.044(b) of the Act. The annual assessment will be collected pursuant to 7 TAC §26.1(c)(1). The amount of your annual assessment is based on your fund balance as reflected on the statement of funds in the most recent annual [renewal] report you have filed with the department. You must pay the annual assessment specified in the following table:~~

~~Figure: 7 TAC §26.1(b)(3)~~
~~[Figure: 7 TAC §26.1(b)(4)]~~

~~(4) [(5)] If you are a new certificate holder and have not yet filed your first annual [renewal] report, which includes the statement of funds required by Section 712.041 of the Act, you must pay an examination fee of \$75.00 per hour for each examiner and all associated travel expenses. Your subsequent annual assessments will be calculated in accordance with paragraph (3) [(4)] of this subsection.~~

(c) How will the department bill me for the annual assessment [and the annual fees] and when must I pay it? [them?]

(1) (No change.)

~~(2) Your annual fee must be paid with the filing of your annual statement of funds by ACH debit on or before March 1st of each year.]~~

(2) [(3)] The annual assessment [A fee] is considered paid as of the date the department receives payment.

(d) Adjustments for inflation. In this section, "GDPIPD" means the Gross Domestic Product Implicit Price Deflator, published

quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The "annual GDPIPD factor" is equal to the percentage change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

(1) Beginning September 1, 2020, and each September 1 thereafter, the table in subsection (b) of this section, as most recently revised before such date pursuant to this subsection, may be revised as follows:

(A) The base assessment amount listed in column three of the table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to whole dollars; and

(B) Each factor listed in column three of the table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to four decimal places for fund balances not over \$499,999.99 and five decimal places for fund balances of \$500,000.00 or more.

(2) If the table in subsection (b) of this section is revised for inflation (or deflation), then not later than August 1 of each year, the department shall calculate and prepare a revised table reflecting the inflation-adjusted values to be applied effective the following September 1 and will provide each certificate holder with notice of and access to the revised table.

(e) ~~[(d)]~~ Must I pay for additional examinations and if so how much and when?

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

(f) ~~[(e)]~~ Are any fees refundable? Fees paid under this section are nonrefundable.

(g) ~~[(f)]~~ What will happen if a fee is deemed unlawful or in excess of the department's authority? If a fee or reimbursement imposed or required by this section or the manner of its calculation is determined to be unlawful or to exceed the department's authority to adopt and impose, the remainder of the section is unaffected.

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 June 24, 2019.

TRD-201901962

Catherine Reyer

General Counsel

Texas Department of Banking

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 475-1301



CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.30

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §33.30 concerning required notice of cybersecurity incidents. The new rule is proposed to require a money transmission licensee to notify the banking commissioner promptly if

it experiences a material cybersecurity incident in its information system.

Proposed subsection (a) provides definitions of "cybersecurity incident" and "information system." The term "you" is also defined to mean a holder of a license issued under Texas Finance Code, Chapter 151.

"Cybersecurity incident" is defined in a manner consistent with currently applicable federal guidance as essentially an observed irregularity that must be investigated to determine if information has been damaged or stolen. Most cybersecurity incidents will not result in a notice to the commissioner.

"Information system" is defined more broadly than current federal guidance, which is limited to systems that handle sensitive customer information. However, there are other types of sensitive data that can have a detrimental impact on a licensee if stolen or compromised, including confidential business information, trade secrets, organizational strategies and financial information. Further, a breach of specialized systems such as electronic payment systems, industrial/process control systems, telephone switching, private branch exchange systems and environmental control systems can have a material adverse effect on a licensee's operations and financial performance.

Subsection (b) as proposed requires a licensee to notify the banking commissioner as soon as practicable following a determination that a cybersecurity incident has occurred regarding the licensee's information system, whether maintained by the licensee or by an affiliate or third party service provider at the direction of the licensee, if the incident has a reasonable likelihood of (1) requiring notice to a regulatory or law enforcement agency other than the department, (2) a data breach notification to customers of the licensee under applicable law, or (3) otherwise causing a material adverse effect on the financial performance of the licensee or on its customers.

Proposed subsection (c) specifies the information required to be submitted in the notice, to the extent known at the time of submission. The purpose of the notice is not to provide comprehensive information regarding the incident, but rather to provide a confidential early warning to (1) ensure the commissioner is informed of the basic circumstances before receiving related consumer complaints and calls from elected officials, and (2) enable the department to monitor the licensee's incident response and provide guidance if appropriate. While examiners with the department have sophisticated expertise and can assist if warranted, the proposed section is not intended to authorize the department to directly conduct or interfere with the licensee's incident response.

Subsection (d) as proposed acknowledges that the filing of a suspicious activity report (SAR) under federal law will trigger the notice requirement under the proposed section but cautions that the licensee should not mention or discuss any related SAR filing in the submitted notice.

Some have questioned whether licensees in other states or foreign countries should have to comply with the notice requirement if a cybersecurity incident does not affect Texas customers. The commissioner believes that a serious data breach usually implicates systemic problems that can easily spread to other information systems of the licensee and has the potential to cause significant financial harm which, in some cases, may endanger a licensee as a going concern. Further, this simple notice requirement is not onerous in terms of the information required to be in the notice. A licensee will merely add the notice require-

ment to its written incident response plan maintained as part of the licensee's information security program.

Catherine Reyer, General Counsel, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Reyer also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is enhanced regulatory oversight and resulting public confidence in the safety and soundness of Texas-licensed money services businesses, particularly regarding the ability to protect sensitive customer information. Regulatory oversight of a licensee's remediation and compliance efforts in response to a material cybersecurity incident can better inform the examination process applicable to all such licensees, resulting in stronger and more secure protection of sensitive customer information and other confidential information.

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

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.

Pursuant to Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rule. During the first five years that the rule will be in effect, the rule will create a new regulation but 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 department, require an increase or decrease in fees paid to the department, expand, limit or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability, or positively or adversely affect this state's economy.

To be considered, comments on the proposed new section must be submitted no later than 5:00 p.m. on August 5, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rule is proposed under Finance Code, §151.102(a), which authorizes the commission to adopt rules necessary or appropriate to preserve and protect the safety and soundness of money services businesses and protect the interests of purchasers of money services and the public.

No state statutes are affected by the proposed new section.

§33.30. Notice of Cybersecurity Incident.

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

(1) "Cybersecurity incident" means any observed occurrence in an information system that:

(A) jeopardizes the cybersecurity of the information system or the information the system processes, stores or transmits; or

(B) violates the security policies, security procedures or acceptable use policies of the information system owner to the extent such occurrence results from unauthorized or malicious activity.

(2) "Information system" means a set of applications, services, information technology assets or other information-handling components organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, including the operating environment as well as any specialized system such as electronic payment systems, industrial/process control systems, telephone switching, private branch exchange systems and environmental control systems.

(3) "You" means a holder of a money transmission or currency exchange license issued under Finance Code, Chapter 151.

(b) Notice required. You must notify the banking commissioner and submit the information required by subsection (c) of this section within 15 days following a determination that a cybersecurity incident has occurred regarding your information system, whether maintained by you or by your affiliate or a third party service provider at your direction, that will likely:

(1) require you to submit a notice of the incident to another state or federal regulatory or law enforcement agency or to a self-regulatory body, other than the notice required by this section;

(2) require you to provide a data breach notification to any of your customers under applicable state or federal law, including Business and Commerce Code, §521.053, or a similar law of another state; or

(3) cause a material adverse effect on your financial performance or on any of your customers.

(c) The notice required by subsection (b) of this section must include, to the extent known at the time of submission:

(1) a brief description of the cybersecurity incident, including the approximate date of the incident, the date the incident was discovered, and the nature of any data that may have been illegally obtained or accessed;

(2) a list of the state and federal regulatory agencies, self-regulatory bodies, and foreign regulatory agencies to whom you have provided or will provide notice of the incident; and

(3) the name, address, telephone number, and email address of your employee or agent from whom additional information may be obtained regarding the incident.

(d) Omission of certain information. The filing of a suspicious activity report (SAR) related to the cybersecurity incident under applicable federal law constitutes a notice described by subsection (b)(1) of this section. However, the licensee should not reference or mention the filing of a SAR in the notice filed with 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 June 24, 2019.

TRD-201901960

Catherine Reyer

General Counsel

Texas Department of Banking

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 475-1301



PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 52. DEPARTMENT ADMINISTRATION

SUBCHAPTER A. COMPLAINTS AND APPEALS

7 TAC §§52.10 - 52.13

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes a new Chapter 52, new Subchapter A, Complaints and Appeals, new §§52.10 - 52.13, concerning complaints. The new rules are proposed to provide consistent procedures for persons to complain about conduct of entities and individuals 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 new rules 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:

1. create or eliminate a government program;
2. require the creation of new employee positions or the elimination of existing employee positions;
3. require an increase or decrease in future legislative appropriations to the agency;
4. require an increase or decrease in fees paid to the agency;
5. increase or decrease the number of individuals subject to the rule's applicability;
6. expand, limit, or repeal existing regulation; or
7. 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 new sections 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 new rules 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, Finance Code §96.002, which provides that the finance commission may adopt rules necessary to supervise and regulate savings banks and to protect public investment in savings banks, 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, Finance Code §157.0023, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 157, 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, and Finance Code §180.004, which provides that the finance commission may implement rules necessary to comply with Chapter 180.

Other statutes affected by the proposed new rules are found in Finance Code Title 3, Subtitles B and C, and also Finance Code Chapters 13, 156, 157, 158, and 180.

§52.10. Definitions.

- (a) "Complainant" means a person who files a complaint.
- (b) "Complaint" means a signed, written communication submitted to the department by a person expressing a grievance against an entity or individual believed to be engaging in an activity that is regulated by the department. For purposes of this subchapter, complaints shall contain at least the following information:
 - (1) The complainant's name and contact information;
 - (2) The name of the entity or individual against whom the complaint is submitted;
 - (3) The date and place of the alleged violation;
 - (4) A description of the facts or conduct alleged to violate applicable statutes or rules; and
 - (5) Written documentation supporting the complaint.
- (c) "Inquirer" means a person who files an inquiry.
- (d) "Inquiry" means a communication made to the department about an individual or entity believed to be engaging in an activity that is regulated by the department, but such communication does not include all of the required elements of a complaint.

§52.11. Complaint Processing.

(a) Complaints and inquiries filed with the department are generally considered public information, unless a specific statutory exception applies.

(b) Upon receipt of an inquiry, the department will refer the inquirer to the department's website, or otherwise facilitate the filing of a complaint.

(c) Upon the receipt of a complaint, the department will determine if the complaint relates to an activity that the department regulates.

(1) If the department does not regulate the activity that is the subject of the complaint, the department shall close the complaint, notify the complainant and refer the complainant to the appropriate regulatory authority, if known, within ten (10) business days of determining that the department does not have jurisdiction.

(2) If the department regulates the activity that is the subject of a complaint, the department shall initiate an investigation into the merits of the complaint by sending, within ten (10) business days of receiving the complaint, a copy of the complaint and any supporting documentation to the entity or individual that is the subject of the complaint.

(d) The department will make a good faith effort to protect complainants' identity to the extent possible.

(e) The department shall prioritize complaints for purposes of determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

(f) A regulated entity or individual that receives a complaint forwarded by the department shall respond within fourteen (14) days from the date the request is mailed by the department.

(g) The commissioner may appoint an investigator, enforcement staff, or other subject matter expert to investigate a complaint received by the department.

(h) The department shall monitor how long each complaint is open, and shall make all reasonable efforts to resolve complaints within ninety (90) days of receipt. The department shall notify the complainant of their complaint status if more than forty-five (45) days has elapsed since the complaint was received, and shall continue to notify the complainant of the status at least quarterly until final disposition, unless such notice would jeopardize an investigation.

§52.12. Complaint Resolution and Disposition.

(a) If the department determines that the complaint is not supported by the evidence, or if the complaint is resolved to the satisfaction of the parties, the complaint will be closed.

(b) The department shall notify all parties to the complaint within ten (10) business days of closing the complaint.

(c) If the department determines that the complaint is sufficiently supported by the evidence, the complaint shall be referred to enforcement for adjudication.

(d) A complainant who disagrees with the disposition of a complaint by the department may appeal by requesting to have their file reviewed by another qualified employee of the department. Unless such review results in a new determination by the department, this review shall be considered final and, with the exception of 7 Texas Administrative Code §52.12(f), may not be further appealed.

(e) An entity or individual who is the subject of a complaint that has been referred to enforcement, and receives an order, may appeal by requesting a hearing. Such request shall be done in writing,

which includes email. Such hearing shall be held in accordance with Chapter 9 of this title and with Government Code, Chapter 2001.

(f) A complainant, entity, or individual who disagrees with the disposition of a complaint by the department may appeal by filing a petition against the department in a district court in Travis County.

§52.13. Complaint Review and Reporting.

(a) The department shall maintain in accordance with its retention policy records of all complaints received. Such records shall include the information required in Finance Code §13.011.

(b) A representative sample of all complaints closed due to lack of jurisdiction or evidence shall be reviewed quarterly by the head of the division that received the complaint.

(c) The department shall submit to the Finance Commission a report of the sources, subjects, types, and dispositions of complaint activity for each fiscal year quarter.

(d) The department shall make available on its website information describing procedures for complaint investigation and disposition.

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

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Ernest C. Garcia

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: August 4, 2019

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



CHAPTER 61. HEARINGS

7 TAC §61.1

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes an amendment to 7 TAC §61.1, concerning hearings. The amendment is proposed to provide consistent procedures for persons to complain about conduct of entities regulated by the department. The amendment is 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 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, and Finance Code §§13.007 and 13.011, which provide that the savings and mortgage lending commissioner shall supervise and regulate the organization, operation, and liquidations of state savings associations and prepare information concerning the department's regulatory functions and consumer complaint procedures.

Other statutes affected by the proposed amendments are found in Finance Code Title 3, Subtitle B, and also Finance Code Chapter 13.

§61.1. Hearings Officer.

Chapter 11 of the Texas Finance Code, provides that the Finance Commission may employ a hearings officer, who for purposes of Texas Government Code, §2003.021, is an employee of the Department of Savings and Mortgage Lending, Texas Department of Banking and the Office of the Consumer Credit Commissioner. As determined by the Commissioner, the [The] Finance Commission hearing officer or an Administrative Law Judge at the State Office of Administrative Hearings (SOAH) may [shall] conduct hearings under the provisions 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.

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Ernest C. Garcia

General Counsel

Department of Savings and Mortgage Lending

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



CHAPTER 76. MISCELLANEOUS SUBCHAPTER E. HEARINGS

7 TAC §76.71

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes an amendment to §76.71 concerning hearings, an amendment to the name of Subchapter H of Chapter 76, and an amendment to the name of §76.122, concerning complaints. 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 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 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 §§13.007 and 13.011, which provide that the savings and mortgage lending commissioner shall supervise and regulate the organization, operation, and liquidations of state savings banks and prepare information concerning the department's regulatory functions and consumer complaint procedures, and Finance Code §96.002, which provides that the finance commission may adopt rules necessary to supervise and regulate savings banks and to protect public investment in savings banks.

Other statutes affected by the proposed amendments are found in Finance Code Title 3, Subtitle C, and also Finance Code Chapter 13.

§76.71. Hearings Officer.

Chapter 11 of the Texas Finance Code [The Texas Banking Act, §1-011(b), House Bill 1543, Acts, 74th Legislature], provides that the Finance Commission may employ a hearings officer, who for purposes of Government Code, §2003.21, is an employee of the Department of Savings and Mortgage Lending, Texas Department of Banking and the Office of the Consumer Credit Commissioner. As determined by the Commissioner, the [The] Finance Commission hearings officer or an Administrative Law Judge at the State Office of Administrative Hearings (SOAH) may shall conduct hearings under provisions 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.

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Ernest C. Garcia

General Counsel

Department of Savings and Mortgage Lending

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



CHAPTER 81. MORTGAGE BANKERS
AND RESIDENTIAL MORTGAGE LOAN
ORIGINATORS
SUBCHAPTER D. COMPLIANCE AND
ENFORCEMENT

7 TAC §81.301, §81.302

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes an amendment to §81.301, concerning complaints and investigations, and to 7 TAC §81.302, concerning hearings and appeals. 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 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; Texas 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; Texas Finance Code §157.0023, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 157; and Texas Finance Code §180.004, which provides that the finance commission may implement rules necessary to comply with Chapter 180.

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

§81.301. *[Complaints and] Investigations.*

(a) *Investigations* [~~Upon receipt of a written complaint alleging acts or omissions of a person as defined under Finance Code, §180.002(14) required to be licensed or a mortgage banker required to be registered under Finance Code, Chapter 157, the Commissioner or the Commissioner's designee will make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation:~~]

~~[(+) [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 circumstances then known. Such investigation may include any or all of the following:~~

- (1) review of documentary evidence;
- (2) interviews with complainants, licensees, and third parties;
- (3) obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies;
- (4) 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 157 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 157.

(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 157.

§81.302. *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 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 June 24, 2019.

TRD-201901968

Ernest C. Garcia

General Counsel

Department of Savings and Mortgage Lending

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



PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 82. ADMINISTRATION

The Finance Commission of Texas (commission) proposes new §82.4, and proposes the repeal of §82.4, in 7 TAC, Chapter 82, concerning Administration.

In general, the purpose of the proposed rule changes in 7 TAC, Chapter 82 is to implement provisions related to administration in HB 1442, the Sunset legislation for the Office of Consumer Credit

Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill simplifies statutory provisions regarding complaint processing, in order to meet the Sunset Advisory Commission's across-the-board requirements.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stakeholder meeting, and the OCCC received four written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

Section 82.4 is proposed for repeal and replacement with a new rule, to specify procedures for complaint processing. The proposed new rule is based on Texas Finance Code, §14.062 (as amended by HB 1442), which provides that the OCCC will maintain a system to act efficiently on complaints, will make information available describing complaint procedures, and will periodically notify complaint parties of the status of the complaint. The new rule is also proposed in response to a recommendation of the Sunset Advisory Commission, which directed the OCCC and the commission to develop an updated complaint process in rule. The Sunset Advisory Commission identified the following best practices that should be included in the complaint procedure rule: details on the phrases of the complaint process; overall timeline goals; intervals for notifying parties of the status of the complaint; a process for providing a summary of complaint resolution to the parties; information about appealing the OCCC's resolution of a complaint; procedures governing administrative dismissal of complaints; procedures for defining, counting, and reporting types of complaints; and definitions of how the OCCC distinguishes between complaints and inquiries. Sunset Advisory Commission, Finance Agencies Report with Staff Decisions, p. 57 (Sept. 2018).

In proposed new §82.4, subsection (a) defines the terms "complainant," "complaint," "inquiry," and "OCCC." The rule distinguishes between a complaint and an inquiry by defining a complaint to refer to a communication that expresses dissatisfaction with a transaction or alleges wrongful conduct, and by defining an inquiry to refer to a communication other than a complaint. In the precomment draft, the OCCC had included communications requesting assistance with a transaction in the definition of "complaint." The OCCC received an informal precomment that recommended against including requests for assistance in the definition, and pointed to a definition used by the Consumer Financial Protection Bureau. Based on this input, the OCCC believes that the proposed definition appropriately captures the sense of the term "complaint," and will help ensure that the OCCC accurately counts complaints.

Proposed §82.4(b) describes the procedures by which the OCCC processes complaints. The subsection explains that it will send a summary of the complaint and supporting documentation to the person who is the subject of the complaint, and that the person must respond by the deadline identified by the OCCC. The subsection explains that the OCCC will make reasonable efforts to resolve the complaint within 90 days. The subsection also describes circumstances where the OCCC may close complaints, including situations where the complaint is not supported by the evidence, is not within the OCCC's jurisdiction,

contains no violation, or is resolved to the satisfaction of the parties. The subsection describes the process for appealing a complaint determination to senior staff of the OCCC consumer protection department. In response to a precomment, the subsection explains that the OCCC will notify the complaint parties of a request to appeal a complaint determination. One precommenter expressed concern about whether the complaint appeal process conflicted with Chapter 2001 of the Texas Government Code (the Administrative Procedure Act). If a complaint results in an enforcement action against a person, the rule's complaint appeal process would not affect that person's due process rights to appeal the enforcement action under the Administrative Procedure Act. For this reason, the OCCC does not believe that the complaint appeal process creates any inconsistency with the due process rights provided under the Administrative Procedure Act.

Proposed new §82.4(c) explains that the OCCC will quarterly review certain closed complaints, that the OCCC will quarterly report complaint activity to the commission, and that the OCCC will make complaint procedure information available on its website.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the proposal will be that the commission's rules will be more easily understood by applicants and licensees, will reflect current agency procedures, and will be more easily enforced. Additional benefits of the proposed rule changes are increased efficiencies and modernized rule language.

There is no anticipated cost to persons who are required to comply with the rule changes as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agency. The proposal repeals §82.4 and replaces it with a new rule regarding complaint processing, in order to implement recommendations of the Texas Sunset Advisory Commission. The proposal does not expand or limit an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the

proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

7 TAC §82.4

The repeal in 7 TAC, Chapter 82 is proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapters 14, 180, 342, 345, 347, 348, 351, 352, 353, 354, 393, and 394; and Texas Occupations Code, Chapter 1956.

§82.4. Consumer Complaint Process.

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

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Laurie B. Hobbs

Assistant General Counsel

Office of Consumer Credit Commissioner

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7 TAC §82.4

The rule changes in 7 TAC, Chapter 82 are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14, 180, 342, 345, 347, 348, 351, 352, 353, 354, 393, and 394; and Texas Occupations Code, Chapter 1956.

§82.4. Consumer Complaint Process.

(a) Definitions.

(1) "Complainant" means a person who files a complaint with the OCCC.

(2) "Complaint" means a communication received by the OCCC consumer assistance department that expresses dissatisfaction with a transaction or alleges wrongful conduct. For purposes of this section, the OCCC will collect the following items and information regarding a complaint, if available:

(A) the complainant's name and contact information;

(B) the name of the person against whom the complaint is submitted;

(C) the date and place of the alleged misconduct, violation, or transaction;

(D) a description of the facts or conduct alleged to violate applicable statutes or rules, and the transaction; and

(E) any written documentation supporting the complaint.

(3) "Inquiry" means a communication received by the OCCC consumer assistance department that is not a complaint.

(4) "OCCC" means the Office of Consumer Credit Commissioner of the State of Texas.

(b) Complaint processing.

(1) Complaints and inquiries filed with the OCCC are generally considered public information, unless a specific statutory exception applies.

(2) Upon receipt of a complaint and at the request of the complainant, the OCCC will make a good faith effort to protect the complainant's identity to the extent possible.

(3) The OCCC will determine whether the complaint or inquiry relates to an activity that the OCCC regulates.

(4) If the OCCC does not regulate the activity that is the subject of the complaint or inquiry, the OCCC will close the complaint or inquiry and refer the person making the complaint or inquiry to the appropriate regulatory entity, if known.

(5) If the OCCC regulates the activity that is the subject of a complaint, the OCCC will send a summary of the complaint and appropriate supporting documentation to the person that is the subject of the complaint.

(6) The OCCC will prioritize complaints for purposes of determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

(7) A person that receives a complaint forwarded by the OCCC must respond by the deadline identified by the OCCC when it forwards the complaint.

(8) The OCCC will monitor how long each complaint is open, and will make all reasonable efforts to resolve complaints within 90 days of receipt. The OCCC will notify the complainant of their complaint status at least quarterly until final disposition, unless such notice would jeopardize an ongoing complaint analysis, a field investigation, or a pending enforcement action.

(9) If the OCCC determines that the complaint is not supported by the evidence, is not within the OCCC's jurisdiction, contains no violation, or is resolved to the satisfaction of the parties, the complaint will be closed. Upon closure, the OCCC will promptly send a closure summary outlining the results of the complaint analysis to all parties to the complaint.

(10) The OCCC will notify all parties to the complaint within 10 business days of closing the complaint.

(11) A complainant who disagrees with the disposition of a complaint may appeal by sending a written appeal request to the OCCC consumer assistance department within 30 calendar days after the date of the closure summary. Upon receipt of an appeal request, the OCCC will notify the complaint parties of the request, and a senior member of the OCCC consumer protection department will review all information and make a determination regarding the complaint. The OCCC will send a letter of its final findings to the complaint parties.

(c) Complaint review and reporting.

(1) The OCCC will maintain records of all complaints received in accordance with its retention policy. These records will include the information required in Texas Finance Code, §14.062.

(2) Complaints closed administratively, due to lack of jurisdiction, or due to lack of evidence will be reviewed quarterly by the consumer assistance manager.

(3) At least quarterly, the OCCC will submit to the Finance Commission a report of the sources, subjects, types, and dispositions of complaint activity during the preceding period.

(4) The OCCC will make available on its website information describing procedures for complaint receipt, investigation, and closure.

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

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Laurie B. Hobbs

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CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 83, concerning Regulated Lenders and Credit Access Businesses.

In general, the purpose of the proposed amendments in 7 TAC, Chapter 83 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stakeholder meeting, and the OCCC received four written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The proposed amendments specify the license term, renewal process, and expiration date for regulated lenders and credit access businesses. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. In addition, the proposed amendments modernize or remove obsolete language.

The individual purposes of the proposed amendments are provided in the following paragraphs.

In §83.309, concerning License Status, a proposed amendment removes a subsection dealing with the date of license expiration

for regulated lenders, because expiration is addressed in separate proposed amendments at §83.403. In addition, a proposed amendment changes the title of §83.309 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section. Throughout §83.309 and other sections in this proposal, proposed amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. Proposed amendments to the section also update a citation and simplify references to filing a license amendment.

In §83.403, concerning Notice of Delinquency in Payment of Annual Assessment Fee, proposed amendments specify the term, renewal process, and expiration date for a regulated lender license. The proposed amendments maintain the current one-year term and the current December 31 expiration date. New subsection (e) also explains that an expired license may be reinstated during the 180-day period described in Texas Finance Code, Chapter 349. The OCCC received an informal precomment explaining that regulated lenders under Chapter 342, Subchapter F of the Texas Finance Code favor a one-year license period, and that this period may help avoid confusion that could occur if the OCCC used a two-year licensing period.

In §83.3009, concerning License Status, a proposed amendment removes a subsection dealing with the date of license expiration for credit access businesses, because expiration is addressed in separate proposed amendments at §83.4002. In addition, a proposed amendment changes the title of §83.3009 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

In §83.4002, concerning Notice of Delinquency in Payment of Annual Assessment Fee, proposed amendments specify the term, renewal process, and expiration date for a credit access business license. The proposed amendments maintain the current one-year term and the current December 31 expiration date.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the proposal will be that the commission's rules will be more easily understood by applicants and licensees, will reflect current agency procedures, and will be more easily enforced. Additional benefits of the proposed amendments are increased efficiencies and modernized rule language.

The proposed rule changes would maintain the one-year term and annual renewal requirement for each license or registration, and would not increase any fee amounts currently described in the rules. For this reason, there is no anticipated cost to persons who are required to comply with the rule changes as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of exist-

ing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agency. The proposal does not create a new regulation. The proposal does not expand or limit an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

SUBCHAPTER A. RULES FOR REGULATED LENDERS

DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.309

The amendments in 7 TAC, Chapter 83, Subchapter A are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. The amendments to 7 TAC, Chapter 83, Subchapter B are proposed under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G. In addition, the proposed amendments in §83.403 and §83.4002 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14, 342, and 393.

§83.309. License Inactivation or Voluntary Surrender [Status].

(a) Inactivation of active license. A licensee may cease operating under a regulated loan license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment [filed on the Amendment to a License] or an approved electronic submission as prescribed by the OCCC [~~commissioner~~]. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §83.310 of this title (relating to Fees), or the license will expire as described by §83.403 of this title (relating to License Term and Annual Renewal).

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment [filed on the Amendment to a License] or an approved electronic submission as prescribed by the OCCC [~~commissioner~~]. The notice must include the contemplated new address of the licensed office, the approximate date of acti-

vation, and the fee for amending the license as outlined in §83.310 of this title.

(c) (No change.)

~~[(d) Expiration. A license will expire on the later of December 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due date for license renewal. A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued.]~~

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

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Laurie B. Hobbs

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Office of Consumer Credit Commissioner

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DIVISION 4. LICENSE

7 TAC §83.403

The amendments to 7 TAC, Chapter 83, Subchapter A, are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, the proposed amendments in §83.403 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 342.

§83.403. License Term, Renewal, and Expiration [Notice of Delinquency in Payment of Annual Assessment Fee].

(a) License term and renewal. A new license is effective from the date of its issuance until December 31. A license must be renewed annually to remain effective. After renewal, a license is effective for a term of one year, from January 1 to December 31.

(b) Due date for annual assessment fee. The annual assessment fee is due by December 1 of each year.

(c) Notice of delinquency. If a licensee does not pay the annual assessment fee, the OCCC will send a notice of delinquency. Notice [For purposes of Texas Finance Code, §342.155, and §83.309(d) of this title (relating to License Status); notice] of delinquency [in the payment of an annual assessment fee] is given when the OCCC sends the [delinquency] notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(d) Expiration. If a licensee does not pay the annual assessment fee, the license will expire on the later of:

(1) December 31 of each year; or

(2) the 16th day after notice of delinquency is given under subsection (c) of this section.

(e) Reinstatement. As provided by Texas Finance Code, §349.301 and §349.303(a), if a license was in good standing when it expired, a person may reinstate the expired license not later than the 180th day after its expiration date by paying the annual assessment fee and a \$1,000 late filing fee.

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

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Laurie B. Hobbs

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Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7621



SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.3009

The amendments to 7 TAC, Chapter 83, Subchapter B are proposed under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 393.

§83.3009. License Inactivation or Voluntary Surrender [Status].

(a) Inactivation of active license. A licensee may cease operating under a credit access business license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC [commissioner]. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §83.3010 of this title (relating to Fees), or the license will expire as described by §83.4002 of this title (relating to License Term and Annual Renewal).

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC [commissioner]. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §83.3010 of this title.

(c) (No change.)

~~[(d) Expiration. A license will expire on the later of December 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due date for license renewal. A licensee that pays the annual assessment~~

fees will automatically be renewed even though a new license may not be issued.]

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

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Laurie B. Hobbs

Assistant General Counsel

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7621



DIVISION 4. LICENSE

7 TAC §83.4002

The amendments to 7 TAC, Chapter 83, Subchapter B are proposed under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G. In addition, the proposed amendments in §83.4002 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 393.

§83.4002. License Term, Renewal, and Expiration [Notice of Delinquency in Payment of Annual Assessment Fee].

(a) License term and renewal. A new license is effective from the date of its issuance until December 31. A license must be renewed annually to remain effective. After renewal, a license is effective for a term of one year, from January 1 to December 31.

(b) Due date for annual assessment fee. The annual assessment fee is due by December 1 of each year.

(c) Notice of delinquency. If a licensee does not pay the annual assessment fee, the OCCC will send a notice of delinquency. Notice [For purposes of Texas Finance Code, §393.613, notice] of delinquency [in the payment of an annual assessment fee] is given when the OCCC sends the [delinquency] notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(d) Expiration. If a licensee does not pay the annual assessment fee, the license will expire on the later of:

(1) December 31 of each year; or

(2) the 16th day after notice of delinquency is given under subsection (c) of this section.

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

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Laurie B. Hobbs

Assistant General Counsel

Office of Consumer Credit Commissioner

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CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 84, §84.309 and §84.610, concerning Motor Vehicle Installment Sales. Additionally, the commission proposes new §84.617, in 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales.

In general, the purpose of the proposed amendments and new rule in 7 TAC, Chapter 84 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill addresses two issues that are relevant to this proposal. First, the bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years. Second, the bill removes current provisions from the Texas Finance Code stating that certain matters may be appealed to the commission, while maintaining a respondent's opportunity for judicial review in district court under the Administrative Procedure Act.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stakeholder meeting, and the OCCC received four written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

In general, this proposal is intended to fulfill two purposes. First, proposed amendments specify the license term, renewal process, and expiration date for motor vehicle sales finance licensees. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. Second, a proposed amendment specifies procedures for appealing the denial of a debt cancellation agreement. In addition, the proposed amendments modernize or remove obsolete language.

The individual purposes of the proposed amendments and new rule are provided in the following paragraphs.

In §84.309, proposed amendments specify the procedure for appealing the denial of a debt cancellation agreement in a contested case. The amendments remove references to appealing a denial to the commission. This is based on Texas Finance Code, §354.005(d) (as amended by HB 1442), which specifies that the denial of a debt cancellation agreement may be appealed to district court after an opportunity for a hearing, and removes references to appealing the denial to the commission.

In §84.610, a proposed amendment removes a subsection dealing with the date of license expiration for motor vehicle sales finance licensees, because expiration is addressed separately in proposed new §84.617. Proposed amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. In addition, a proposed amendment changes the title of §84.610 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

Proposed new §84.617 specifies the term, renewal process, and expiration date for a motor vehicle sales finance license. The new rule maintains the current one-year term, and changes the expiration date from July 31 to October 31. Subsection (e) also explains that an expired license may be reinstated during the 180-day period described in Texas Finance Code, Chapter 349. A temporary provision explains that licenses obtained or renewed in 2019 will be effective until October 31, 2020.

Based on an initial analysis, the OCCC believes that the October 31 date will better align with the OCCC's fiscal year, and will better enable the OCCC to enjoy the operational efficiencies associated with staggering different types of license and registration renewals throughout the year. As an alternative to the rule changes as proposed, the OCCC is also considering moving to the October 31 renewal date in phrases, where the motor vehicle sales finance licensees would be divided into two groups, one of which would be required to renew by July 31, 2020, and the other of which would be required to renew by October 31, 2020. The OCCC invites comments on this issue.

The OCCC received two precomments recommending a staggered two-year renewal cycle for motor vehicle sales finance licensees. While the OCCC is open to considering two-year renewal in the future, the OCCC has several concerns. Currently, the motor vehicle sales finance licensee population sees a large amount of yearly turnover, with many new licensees coming into business each year and many other licenses expiring. Based on this turnover, the OCCC is concerned that a two-year renewal period would create additional complex and difficult situations pertaining to communications between licensees who have experienced changes in status or location and the OCCC. The OCCC is also concerned that the process of sending notifications to different portions of the licensed population on different dates would create confusion for licensees, who are most familiar with yearly renewal occurring on a common date for each license type. In addition, the OCCC is concerned about the additional costs that would result for the agency, including costly system modifications and fundamental changes to budget structure.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed rule changes are in effect there will be fiscal implications for state government as a result of administering the rules. During the first fiscal year, FY 2020, the OCCC will experience decreased revenue as a result of shifting the license fee renewal period for motor vehicle sales finance licensees from a July 31 deadline to an October 31 deadline. As a result of moving this deadline, licensees that renew in June or July of 2019 will not be required to renew until October 2020. Consequently, during FY 2020, the OCCC will not receive any renewal fees from the vast majority of motor vehicle sales finance licensees, for an estimated revenue reduction of \$3.4 million. During the following four fiscal years (FY 2021-2024), there

will be no fiscal implications for state government as a result of administering the rules. Because motor vehicle sales finance license renewal will resume in September and October of 2020, the OCCC's revenue from license renewals in FY 2021 through 2024 is anticipated to be unaffected. However, revenue from renewing motor vehicle sales finance licensees will be received earlier during each of these years. The OCCC does not anticipate an impact on the costs to the state as a result of administering the rules. Additionally, Ms. Cuellar Hoke has determined that for the first five-year period the proposed rule changes are in effect there will be no fiscal implications for local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the proposal will be that the commission's rules will be more easily understood by applicants and licensees, will reflect current agency procedures, and will be more easily enforced. Additional benefits of the proposed rule changes are increased efficiencies and modernized rule language.

The proposed rule changes would maintain the one-year term and annual renewal requirement for each license or registration, and would not increase any fee amounts currently described in the rules. For this reason, there is no anticipated cost to persons who are required to comply with the rule changes as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. As discussed earlier, the proposed rule changes would result in a decrease in fees paid to the agency for the first year, but not for subsequent years. The proposal creates new rule §84.617 as part of the implementation of HB 1442. The proposal does not expand or limit an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

SUBCHAPTER C. INSURANCE AND DEBT CANCELLATION AGREEMENTS

7 TAC §84.309

The amendments in 7 TAC, Chapter 84 are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14

of the Texas Finance Code. In addition, proposed new §84.617 is authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14, 348, 353, and 354.

§84.309. Debt Cancellation Agreements Requiring Insurance.

(a) Purpose and scope. This section applies to a debt cancellation agreement described by Texas Finance Code, Chapter 354, that includes insurance coverage as part of the retail buyer's responsibility to the holder. Debt cancellation agreements must be submitted to the OCCC for approval, as provided by Texas Finance Code, §354.005(a). The denial of a debt cancellation agreement may be appealed in a contested case [to the Finance Commission of Texas], as provided by Texas Finance Code, §354.005(d). This section describes the requirements for submitting a debt cancellation agreement to the OCCC and the requirements for appealing the denial of a debt cancellation agreement [to the commission].

(b) - (f) (No change.)

(g) Proposal for decision. In connection with a contested case under this section, the administrative law judge will issue a proposal for decision to the commissioner [commissioner]. The proposal for decision will include a recommendation regarding whether the OCCC's denial of the agreement should be affirmed or reversed. The proposal for decision may include a recommendation that costs be assigned to a party, to the extent authorized by law.

(h) Final [Commission's final] order. The commissioner [commissioner] will issue a final order after review of the administrative law judge's proposal for decision. The final order will include a statement of whether the OCCC's denial of the agreement is affirmed or reversed. The final order may include an assignment of costs to a party, to the extent authorized by law.

(i) Judicial review of [commissioner's] final order. A final order [of the commissioner] under subsection (h) of this section may be appealed to a Travis County district court, as provided by Texas Government Code, §2001.176.

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

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SUBCHAPTER F. LICENSING

7 TAC §84.610, §84.617

The amendments and new rule in 7 TAC, Chapter 84 are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, proposed new §84.617 is authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14, 348, 353, and 354.

§84.610. License Inactivation or Voluntary Surrender [Status].

(a) Inactivation of active license. A licensee may cease operating under a motor vehicle sales finance license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 10 calendar days prior to the anticipated inactivation date. Registered offices will be designated as closed when a license is inactivated. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC [commissioner]. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §84.611 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 10 calendar days prior to the anticipated activation date. Registered offices must be listed and appropriate fees paid upon activation of a license. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC [commissioner]. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §84.611 of this title.

(c) (No change.)

~~[(d) Expiration. A license will expire the later of July 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due date for license renewal. A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued. For purposes of this subsection, notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice.]~~

~~[(1) by mail to the address on file with the OCCC as a master file address; or]~~

~~[(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.]~~

~~(d) [(e)] Surrendering to avoid administrative action. A licensee may not surrender a license after an administrative action has been initiated without the written agreement of the OCCC.~~

§84.617. License Term, Renewal, and Expiration.

(a) License term and renewal. A new license is effective from the date of its issuance until October 31. A license must be renewed annually to remain effective. After renewal, a license is effective for a term of one year, from November 1 of a calendar year to October 31 of the next calendar year.

(b) Due date for annual assessment fee. The annual assessment fee is due by October 1 of each year.

(c) Notice of delinquency. If a licensee does not pay the annual assessment fee, the OCCC will send a notice of delinquency. Notice of delinquency is given when the OCCC sends the notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(d) Expiration. If a licensee does not pay the annual assessment fee, the license will expire on the later of:

(1) October 31 of each year; or

(2) the 16th day after notice of delinquency is given under subsection (c) of this section.

(e) Reinstatement. As provided by Texas Finance Code, §349.301 and §349.303(a), if a license was in good standing when it expired, a person may reinstate the expired license not later than the 180th day after its expiration date by paying the annual assessment fee and a \$1,000 late filing fee.

(f) Temporary provision. Notwithstanding subsections (a) and (d) of this section, if a licensee renews a license during 2019, or obtains a new license on or after August 1, 2019, then the license will be effective until October 31, 2020. The license must be renewed in order to remain in effect after October 31, 2020. This subsection expires on January 1, 2021.

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

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CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS SUBCHAPTER A. RULES OF OPERATION FOR PAWNSHOPS

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 85, Subchapter A, §§85.102, 85.104, 85.202, 85.206, 85.210, 85.302 - 85.304, 85.306, 85.308, 85.601, 85.603, 85.604, 85.701, and 85.702, concerning Rules of Operation for Pawnshops.

The proposed amendments affect rules contained in Division 1, concerning General Provisions; Division 2, concerning Pawnshop License; Division 3, concerning Pawnshop Employee License; Division 6, concerning License Revocation, Suspension, and Surrender; and Division 7, concerning Enforcement; Penalties.

In general, the purpose of the proposed amendments to 7 TAC, Chapter 85, Subchapter A is to implement the pawnshop-related provisions of HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill's amendments to Chapter 371 relate mainly to four issues. First, the bill provides that pawnshops may, but are not required to, participate in the pawnshop employee license program. Second, the bill removes provisions stating that pawnshop and pawnshop employee license applicants must be of "good moral character." Third, the bill au-

thorizes the commission to set the term of pawnshop and pawnshop employee licenses for a period up to two years. Fourth, the bill authorizes the commission to set pawnshop employee license fee amounts in accordance with Texas Finance Code, §14.107, replacing current statutory provisions containing a \$25 initial fee and a \$15 annual renewal fee.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal written precomments on the rule text draft, although several stakeholders provided verbal feedback during the stakeholder meeting. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The proposed amendments are intended to fulfill the following purposes: (1) to implement the optional pawnshop employee license program; (2) to amend pawnshop employee license fees to \$50 for a new license and \$25 for a renewal; (3) to clarify provisions on license term, renewal, and expiration, while maintaining the current June 30 expiration date for pawnshops and pawnshop employees; and (4) to remove references to "good moral character" as a licensing standard, while maintaining the OCCC's review of an applicant's character and fitness. In addition, the proposed amendments modernize or remove obsolete language.

The individual purposes of the proposed amendments to each section are provided in the following paragraphs.

In §85.102, a proposed amendment to the definition of "pawnbroker" removes a statement that a pawnbroker may include a pawnshop employee, and adds a reference to the statutory reference of "pawnbroker" in Texas Finance Code, §371.003(6). Another proposed amendment in §85.102 adds a definition of the term "pawnshop employee license program," explaining that this term refers to the optional licensing program under Texas Finance Code, Chapter 371, Subchapter C.

Proposed amendments to §85.104 specify license terms and expiration dates for pawnshops and pawnshop employees. These amendments implement Texas Finance Code, §14.112, as added by HB 1442. Section 14.112 provides that the commission shall prescribe the licensing period for licenses issued under Chapter 371, not to exceed two years. The proposed amendments to §85.104 maintain the current one-year license period, as well as the current June 30 expiration date, for pawnshops and pawnshop employees. A proposed amendment at §85.104(c), sets the due date for the annual license fee at May 31. This is based on Texas Finance Code, §371.064 and §371.106, as amended by HB 1442, which require licensees to pay a license fee not later than the 30th day before expiration of the license. Proposed §85.104(e) explains that at the time of renewal, a pawnshop may provide written notification to participate in the pawnshop employee license program. This is based on Texas Finance Code, §371.101(a-1), as amended by HB 1442, which explains that a pawnbroker may provide written notification to participate at the time of renewal. In §85.104, other proposed amendments provide additional clarity to the rule text.

In §85.202, a proposed amendment explains that a pawnshop may provide a notification to participate in the pawnshop employee license program at the time of the license application.

Proposed amendments to §85.206 remove references to "good moral character" as a licensing standard for pawnshops, while

maintaining references to the OCCC's review of an applicant's character and fitness. These proposed amendments implement HB 1442's amendments to Texas Finance Code, §371.052, which remove provisions stating that pawnshop license applicants must be of "good moral character," while maintaining references to review of character and fitness. The statutory amendment is based on a recommendation of Sunset Advisory Commission staff, which stated that "good moral character" is a subjective standard that should be removed from the statute. A proposed amendment at §85.206(f)(1)(A)(iv) explains that the OCCC will review an applicant's criminal history as part of its review of character and fitness. Throughout §85.206, proposed amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

In §85.210, a proposed amendment removes a subsection dealing with the date of license expiration, because expiration is addressed in the separate rule at §85.104. In addition, a proposed amendment changes the title of §85.210 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

In §85.302, a proposed amendment specifies that the requirement for a pawnshop to notify the OCCC of a pawnshop employee's termination applies if the pawnshop participates in the pawnshop employee license program.

In §85.303, a proposed amendment specifies that the requirement for a pawnshop to notify the OCCC of a pawnshop employee's hiring applies if the pawnshop participates in the pawnshop employee license program.

Proposed amendments to §85.304 remove references to "good moral character" as a licensing standard for pawnshop employees, while maintaining references to the OCCC's review of an applicant's character and fitness. These proposed amendments implement HB 1442's amendments to Texas Finance Code, §371.102, which remove provisions stating that pawnshop employee license applicants must be of "good moral character," while maintaining references to review of character and fitness. The proposed amendments to §85.304 are similar to the amendments to §85.206 described earlier in this proposal.

Proposed amendments to §85.306 update fee amounts for pawnshop employee licenses. For the initial investigation and annual fee, a proposed amendment contains a \$50 fee. For the annual renewal fee, a proposed amendment contains a \$25 fee. These proposed amendments implement HB 1442's amendments to Texas Finance Code, §371.103 and §371.106, which authorize the commission to set pawnshop employee license fee amounts in accordance with Texas Finance Code, §14.107 in an amount necessary to recover the costs of administration.

The OCCC has determined that the proposed fee changes in §85.306 are necessary in order to ensure that pawnshop employee license fees appropriately fund the pawnshop employee license program. The commission is authorized to establish reasonable and necessary fees for the OCCC to carry out its functions under Chapter 371, and to set licensing fees under Chapter 371 at amounts necessary to recover the costs of administering the chapter. Tex. Fin. Code §14.107(a)-(b). As a self-directed, semi-independent agency, the OCCC is responsible for all direct and indirect costs of its operation, and is authorized to set fee

amounts as necessary to carry out its functions. Tex. Fin. Code §16.003(b)-(c).

The OCCC performed an analysis of its current costs, determining how much cost should be allocated to each regulated license and registration type. This analysis showed that \$285,000 of yearly costs are currently associated with licensing and regulation of pawnshop employees. The OCCC also estimates that 30% of pawnshops will opt to participate in the optional pawnshop employee license program, and therefore, as a result of HB 1442, the total number of pawnshop employees is estimated to decrease by approximately 70%. Some costs of the pawnshop employee license program will stay the same, while others will decrease. The OCCC's initial analysis suggests that annual costs for pawnshop employees will decrease to approximately \$120,000. Based on this estimate, the OCCC has determined that a \$50 investigation and annual fee, with a \$25 annual renewal fee, would help ensure that revenues cover the cost of the pawnshop employee license program over time.

A proposed amendment at §85.306(d) specifies that a pawnshop employee must provide relocation notice to the OCCC in accordance with the OCCC's instructions.

In §85.308, proposed amendments specify that the requirement to maintain pawnshop employee records applies if the pawnshop participates in the pawnshop employee license program.

In §85.601, which describes denial, suspension, or revocation based on criminal history, proposed amendments remove references to "good moral character." As with the proposed amendments to §85.206 and §85.304, the proposed amendments to §85.601 maintain references to the OCCC's review of character and fitness.

In §85.603, a proposed amendment updates a reference to §85.104 as amended by this proposal.

In §85.604, which describes enforcement actions that the OCCC may take against a pawnbroker or pawnshop employee, proposed amendments explain that the requirements imposed on pawnbrokers apply to all pawnbrokers, and the requirements imposed on pawnshop employees apply to employees of pawnbrokers that participate in the pawnshop employee license program.

In §85.701, which describes enforcement actions that the OCCC may take for failure to file a timely pawnshop employee license application, proposed amendments explain that the requirements imposed on pawnbrokers apply to all pawnbrokers, and the requirements imposed on pawnshop employees apply to employees of pawnbrokers that participate in the pawnshop employee license program.

In §85.702, which describes enforcement actions that the OCCC may take for accepting prohibited merchandise, proposed amendments explain that the requirements imposed on pawnbrokers apply to all pawnbrokers, and the requirements imposed on pawnshop employees apply to employees of pawnbrokers that participate in the pawnshop employee license program.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed amendments are in effect there will be fiscal implications for state government as a result of administering the rules, and as a result of pawnshop employee licensing becoming optional under HB 1442. The OCCC estimates that 30% of pawnshops will opt to participate in the optional pawnshop employee license program, and therefore, the total number of pawnshop employees is estimated to decrease by approximately 70%. The OCCC estimates that for each of

the first five fiscal years the rule is in effect, as a result of pawnshop employee licensing becoming optional, yearly costs for the pawnshop employee license program will decrease by approximately \$165,000. The OCCC estimates that for each of the first five fiscal years the rule is in effect, as a result of the proposed amendments and pawnshop employee licensing becoming optional, yearly revenues for the pawnshop employee license program will decrease by approximately \$92,000. Additionally, Ms. Cuellar Hoke has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of the proposal will be that the commission's rules will be more easily understood by applicants and licensees, will reflect current agency procedures, and will be more easily enforced. The proposed amendments will also implement pawnshop employee licensing as an optional program in accordance with HB 1442, enabling pawnshops to determine whether to participate in pawnshop employee licensing based on their own needs. Additional benefits of the proposed amendments are increased efficiencies and modernized rule language.

The OCCC does not anticipate any cost to persons who are required to comply with the rule changes as proposed. Although the proposed amendments would adjust pawnshop employee license fee amounts, the licensing program is optional. Generally, pawnshop employee license fees have been paid by pawnshops. Under the proposed amendments, a pawnshop that chooses to participate in the program would experience a \$50 cost for each new pawnshop employee, and a \$25 per year cost to renew the license for each previously licensed employee. However, because this participation is not required, the OCCC does not anticipate costs to persons who are required to comply with the rule changes as proposed.

The OCCC does not anticipate any adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. The OCCC anticipates that approximately 350 pawnshops will participate in the pawnshop employee license program, and the OCCC believes that these pawnshops are small businesses or micro-businesses. Based on testimony provided to the Texas Legislature regarding HB 1442, the OCCC understands that many of these small businesses and micro-businesses wish to participate in pawnshop employee licensing because of the OCCC's review of the criminal history of pawnshop employee applicants. Because the program is optional, a pawnshop may choose not to participate in the program. The OCCC considered alternative methods of amending the rules to implement the pawnshop employee license program, including different pawnshop employee license fee amounts. However, the OCCC determined that these alternative methods would not meet the statutory objective of ensuring that licensing fees are set at amounts necessary to recover the costs of administering Chapter 371, as described by Texas Finance Code, §14.107. In order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, micro-businesses, or rural communities, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. As discussed earlier, the proposed rule changes, combined with the pawnshop employee license program becoming optional, will result in a decrease in fees paid to the agency. The proposal does not create a new regulation. The proposal does not expand or repeal an existing regulation. As discussed earlier, the proposal limits certain regulations regarding pawnshop employees to specify that they apply only to employees of pawnshops participating in the pawnshop employee license program, and to remove references to "good moral character" as a licensing standard, in accordance with HB 1442. The proposed rule changes decrease the number of individuals subject to rules governing pawnshop employees. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

DIVISION 1. GENERAL PROVISIONS

7 TAC §85.102, §85.104

These amendments are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 of the Texas Finance Code. Texas Finance Code, §371.006 also authorizes the commission to adopt rules for enforcement of Chapter 371 (the Texas Pawnshop Act). The proposed changes in §85.104 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license terms. The proposed fee changes in §85.306 are authorized under Texas Finance Code, §§14.107, 371.103, and 371.106 (as amended by HB 1442), which authorize the commission to set license fees for pawnshop employee licenses.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 371.

§85.102. *Definitions.*

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 371, have the same meanings as defined in that chapter unless the context clearly indicates otherwise. The following words and terms, when used in this subchapter, will have the following meanings unless the context clearly indicates otherwise.

(1) - (9) (No change.)

(10) Pawnbroker--Has the meaning provided by Texas Finance Code, §371.003(6), and includes a [A] person who has an ownership interest in a pawnshop as shown in an application for a pawnshop license filed with the OCCC. [~~When general duties and prohibitions are~~]

described; pawnbroker also includes a pawnshop employee unless the context indicates otherwise.]

(11) Pawnshop employee license program--The optional program for licensing pawnshop employees described by Texas Finance Code, Chapter 371, Subchapter C.

(12) ~~[(11)]~~ Pledged goods--Tangible personal property held by a pawnbroker as collateral for a pawn loan and that has not become the property of the pawnbroker by a taking into inventory due to non-payment of the loan.

(13) ~~[(12)]~~ Principal party--An adult individual with a substantial relationship to the proposed business of the applicant. The following individuals are principal parties:

- (A) a proprietor;
- (B) general partners;

(C) officers of privately held corporations, including the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with the Texas Pawnshop Act;

(D) directors of privately held corporations;

(E) individuals associated with publicly held corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation was privately held); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by the Texas Pawnshop Act. One of the persons designated must be responsible for assembling and providing the information required on behalf of the applicant and must sign the application for the applicant;

(F) voting members of a limited liability corporation;

(G) shareholders owning 5% or more of the outstanding voting stock;

(H) trustees and executors; and

(I) individuals designated as a principal party where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§85.104. License Term, Renewal, and Expiration [Renewal Dates of Licenses].

(a) License term and renewal [Licensing period and renewal due date]. A new pawnshop license or pawnshop employee license is effective from the date of its issuance until June 30. A pawnshop license and a pawnshop employee license must be renewed annually in order to remain effective. After renewal, a pawnshop license or pawnshop employee license is effective for a term of one year, from July 1 of one calendar year to June 30 of the next calendar year [are effective from July 1 through June 30 of each year].

(b) Due date for annual fees. The annual fees for pawnshop licenses and pawnshop employee licenses are due by May 31 [on June 1] of each year for the following July 1 through June 30 term.

(c) ~~[(b)]~~ Notice of delinquency. If a licensed pawnshop or pawnshop employee does not pay the annual fees ~~[by June 1]~~, the OCCC will send a written notice of delinquency [will be sent] by June 15.

(1) If a pawnshop has provided a master file e-mail address to the OCCC, then the OCCC will:

(A) send any notice of delinquency for the pawnshop to the master file e-mail address on file for the pawnshop; and

(B) send any notice of delinquency for an employee of the pawnshop to the employee through the master file e-mail address on file for the pawnshop.

(2) If a pawnshop has not provided a master file e-mail address to the OCCC, then the OCCC will:

(A) send any notice of delinquency for the pawnshop by mail to the master file address on file for the pawnshop; and

(B) send any notice of delinquency for an employee of the pawnshop to the employee by mail through the master file address on file for the pawnshop.

(d) ~~[(e)]~~ Expiration of license. A pawnshop license and a pawnshop employee license will expire on the later of June 30 of each year or the 16th day after the written notice of delinquency is given unless the annual fees for the following term have been paid. To be accepted [considered timely paid], the fees must be postmarked or submitted by June 30. June 30 is the end of the license term for each year. For purposes of this subsection ~~[and §85.210(d) of this title (relating to License Status)]~~, notice of delinquency is given when the OCCC sends the ~~[delinquency]~~ notice by the method described in subsection ~~(c) [(b)]~~ of this section.

(e) Pawnshop employee license program. At the time of the annual renewal, a pawnshop may provide a written notification to participate in the pawnshop employee license program.

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DIVISION 2. PAWNSHOP LICENSE

7 TAC §§85.202, 85.206, 85.210

These amendments are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 of the Texas Finance Code. Texas Finance Code, §371.006 also authorizes the commission to adopt rules for enforcement of Chapter 371 (the Texas Pawnshop Act).

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 371.

§85.202. Filing of New Application.

(a) An application for issuance of a new pawnshop license must be submitted in a format prescribed by the OCCC at the date of filing and in accordance with the OCCC's instructions. The OCCC may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) - (J) (No change.)

(2) Other required filings.

(A) - (H) (No change.)

(I) Pawnshop employee license program. At the time of the application, the applicant may provide a written notification to participate in the pawnshop employee license program.

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

§85.206. *Processing of Application.*

(a) - (e) (No change.)

(f) Decision on application. The OCCC may approve or deny an application.

(1) Approval. The OCCC will approve the application upon payment of the appropriate fees and a finding of the eligibility and statutory location requirements.

(A) Eligibility requirements.

~~[(i) Good moral character. In evaluating an applicant's moral character the commissioner will consider criminal history information and the applicant's conduct and activities as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal History).]~~

~~[(i) [(ii)] A belief that the pawnshop will be operated lawfully and fairly. In evaluating this standard, the OCCC [commissioner] will consider an applicant's background and history. If the OCCC [commissioner] questions the applicant's ability to meet this standard, the OCCC [commissioner] may require further conditions, such as probation, to favorably consider an applicant for a license.~~

~~[(ii) [(iii)] Financial responsibility. In evaluating the financial responsibility of an applicant, the OCCC [commissioner] may investigate the history of an applicant and the principal parties of the applicant as to the payment of debts, taxes, and judgments, if any, and handling of financial affairs generally.~~

~~[(iii) [(iv)] Experience. In evaluating experience, the OCCC [commissioner] will consider the applicant's background and history as well as the personnel that the applicant plans to use in the operation and management of the pawnshop.~~

~~[(iv) [(v)] Character and [General] fitness [to command the confidence of the public]. In evaluating an applicant's character and fitness to command the confidence of the public, the OCCC will consider the [The] applicant's overall background and history, including the applicant's criminal history as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal History) [will be considered]. Providing misleading information on the application or failing to disclose information to the OCCC may be grounds for denial.~~

~~[(v) [(vi)] Net assets. Net assets are calculated by taking the sum of current assets and subtracting all liabilities either secured by those current assets or unsecured. Liabilities not included in the calculation are those liabilities that are secured by assets other than current assets including subordinated debt. Debt that is either unsecured or secured by current assets may be subordinated to the net asset requirement pursuant to an agreement of the parties providing that assets other than current assets are sufficient to secure the debt.~~

(B) (No change.)

(2) (No change.)

(g) - (h) (No change.)

§85.210. *License Inactivation or Voluntary Surrender [Status].*

(a) Inactivation of active license. A licensee may cease operating a pawnshop and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Written notification must be submitted by filing a license amendment or an approved electronic submission as prescribed by the OCCC [commissioner]. The notice must include the new mailing address for the license, the effective date of the inactivation, the fee for amending the license, a certification that no loans will be made or collected under the license until it is activated, a notice to pledgors that pawn loans are being relocated, and a plan ensuring pledged goods are made available for redemption. If an active license is not being used for the active operation of a pawnshop, the OCCC [commissioner] may unilaterally place the license in inactive status. A licensee must continue to pay the annual assessment fees for an inactive license as outlined in §85.211 of this title (relating to Fees), or the license will expire as described by §85.104 of this title (relating to License Term, Renewal, and Expiration).

(b) Activation of inactive license. To activate an inactive license the holder of the inactive license must comply with the relocation requirements set forth in §85.203 of this title (relating to Relocation).

(c) (No change.)

~~[(d) Expiration. A license will expire on the later of June 30 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees are paid as per §85.104 of this title (relating to Renewal Dates of Licenses). A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued.]~~

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

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DIVISION 3. PAWNSHOP EMPLOYEE LICENSE

7 TAC §§85.302 - 85.304, 85.306, 85.308

These amendments are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 of the Texas Finance Code. Texas Finance Code, §371.006 also authorizes the commission to adopt rules for enforcement of Chapter 371 (the Texas Pawnshop Act). The proposed fee changes in §85.306 are authorized under Texas Finance Code, §§14.107, 371.103, and 371.106 (as amended by HB 1442), which authorize the commission to set license fees for pawnshop employee licenses.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 371.

§85.302. *Notification of Termination.*

If a pawnshop employee ceases working at a pawnshop that participates in the pawnshop employee license program, then the pawnbroker must [It is the responsibility of a pawnshop to] notify the OCCC of the termination [within a reasonable period of time when an employee ceases working at a pawnshop. A reasonable period of time is] within one week from the issuance of the final wage payment or in accordance with a standard preapproved reporting schedule.

§85.303. *Notification of Hiring.*

If a licensed pawnshop employee begins working at a pawnshop participating in the pawnshop employee license program, and the pawnshop is different from the pawnshop on file for the employee's license, then the hiring pawnbroker must [It is the responsibility of a pawnshop to] notify the OCCC of the hiring [within a reasonable period of time when a licensed employee begins working at a different pawnshop entity from that printed on the employee's license. A reasonable period of time is] within one week from the issuance of the initial wage payment or in accordance with a standard preapproved reporting schedule.

§85.304. *Processing of Application.*

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

(c) Decision on application. The OCCC may approve or deny an application.

(1) Approval. The OCCC will approve the application upon payment of the appropriate fees and finding of the eligibility requirements. A license is the personal property of the employee and may not be retained by a pawnshop when an employee terminates employment with the pawnshop.

~~[(A) Good moral character. In evaluating an applicant's moral character the commissioner will consider criminal history information and the applicant's conduct and activities as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal History).]~~

~~(A) [(B)] Good business repute. In evaluating an applicant's business repute, the OCCC [eommissioner] will consider the applicant's background and history.~~

~~(B) [(C)] Character and fitness [to warrant belief that pawnshop will be operated lawfully and fairly]. In evaluating the applicant's character and fitness to warrant the belief that the pawnshop will be operated lawfully and fairly, the OCCC will consider the [The] applicant's overall background and history, including the applicant's criminal history as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal History) [will be considered]. Providing misleading information on the application or failing to disclose information to the OCCC may be grounds for denial.~~

(2) (No change.)

(d) - (f) (No change.)

§85.306. *Fees.*

(a) New licenses. A \$50 [~~\$25~~] nonrefundable investigation and annual fee is assessed each time an application for a new license is filed.

(b) (No change.)

(c) Annual renewal fees. The annual renewal fee for a pawnshop employee license is \$25 [~~\$15~~]. The fee must be paid by May 31 [~~June 30~~] each year. A pawnshop employee license will expire on the later of June 30 or the 16th day after the written notice of delinquency is given unless the annual renewal fee has been paid.

(d) License amendments. An employee seeking to amend a license by changing the name of the licensee or relocating to another

pawnshop is not required to pay an additional fee. Any relocation requires notice to the OCCC in accordance with the OCCC's instructions [the format prescribed by the commissioner].

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

§85.308. *Availability of Pawnshop Employee License Information.*

(a) Maintaining records. If a pawnbroker participates in the pawnshop employee license program, then the pawnbroker [A pawnbroker] must maintain adequate written documents demonstrating that all pawnshop employees are either properly licensed pursuant to Texas Finance Code, §371.101 or have applied for a pawnshop employee license.

(b) Availability of records. If a pawnbroker participates in the pawnshop employee license program, then during [During] an examination by the OCCC [eommissioner or the commissioner's representative,] or an inspection by a peace officer, copies of the pawnshop employee licenses or copies of records relating to any pending applications for pawnshop employee licenses must be readily available.

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

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DIVISION 6. LICENSE REVOCATION, SUSPENSION, AND SURRENDER

7 TAC §§85.601, 85.603, 85.604

These amendments are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 of the Texas Finance Code. Texas Finance Code, §371.006 also authorizes the commission to adopt rules for enforcement of Chapter 371 (the Texas Pawnshop Act).

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 371.

§85.601. *Denial, Suspension, or Revocation Based on Criminal History.*

(a) - (c) (No change.)

(d) Crimes related to [~~moral~~] character and fitness.

(1) The OCCC may deny a pawnshop license application [if the applicant is not of good moral character,] if the applicant does not show that the business will be operated lawfully and fairly, or if the applicant does not show that the applicant or the applicant's owners have the financial responsibility, experience, character, and general fitness to command the confidence of the public, as provided by Texas Finance Code, §371.052(a).

(2) The OCCC may deny a pawnshop employee license if the applicant is not of [good moral character and] good business repute, or if the applicant does not possess the character and general fitness necessary to warrant the belief that the individual will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.102(a).

(3) In conducting its review of [moral] character and fitness, the OCCC will consider the criminal history of the applicant and any principal parties. [The OCCC considers the offenses described by subsections (c)(1) and (f)(2) of this section to be crimes involving moral character.] If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's [moral] character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of [moral] character and fitness.

(e) (No change.)

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3) - (4);

(3) a conviction of a pawnshop licensee or a principal party for an offense directly related to the licensed occupation, as provided by Texas Finance Code, §371.251(a)(6);

(4) errors or incomplete information in the license application;

(5) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §371.251(a)(3) and §371.255(2);

(6) a finding by the OCCC that the financial responsibility, experience, character, or general fitness of a pawnshop licensee or a principal party do not command the confidence of the public or warrant the belief that the business will be operated lawfully, fairly, and within the purposes of this chapter, as provided by Texas Finance Code, §371.251(a)(7); and

(7) a finding by the OCCC that the [moral] character, business reputation, and general fitness of a pawnshop employee license holder do not warrant belief that the license holder will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.255(3).

§85.603. Reinstatement of an Expired Pawnshop License.

If a pawnshop license expires as prescribed by §85.104 of this title (relating to License Term, Renewal, and Expiration [Renewal Dates of Licenses]) for failure to pay annual assessment fees, the OCCC will notify the pawnshop license holder by mailing notice to the current registered agent on file via certified mail that the license has expired and that the licensee may not make or renew a pawn loan. The holder of the expired license may elect to reinstate the license by submitting the fees required by §85.211(d) of this title (relating to Fees) and a \$1,000 reinstatement fee postmarked on or before December 27 of that same year. An expired pawnshop license holder may not conduct any licensed business at the formerly licensed location during the time the

license is expired. Any unlicensed acts are subject to enforcement action by the OCCC should the holder of the expired license not cease operations upon expiration of the license on July 1. An expired license is considered an operating pawnshop location for the duration of the period of reinstatement right for the purpose of statutory distance requirements.

§85.604. Enforcement Action Against Pawnshop License or Pawnshop Employee License.

(a) Applicability. In this section:

(1) the requirements imposed on a pawnbroker apply to all pawnbrokers; and

(2) the requirements imposed on a pawnshop employee apply only to employees of pawnbrokers that participate in the pawnshop employee license program.

(b) ~~[(a)]~~ Generally. For the reasons in subsection (c) ~~[(b)]~~ of this section, the OCCC may take one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371:

- (1) an injunction;
- (2) an administrative penalty;
- (3) a suspension; or
- (4) a revocation.

(c) ~~[(b)]~~ Basis for enforcement actions.

(1) - (9) (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.

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DIVISION 7. ENFORCEMENT; PENALTIES

7 TAC §85.701, §85.702

These amendments are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 of the Texas Finance Code. Texas Finance Code, §371.006 also authorizes the commission to adopt rules for enforcement of Chapter 371 (the Texas Pawnshop Act).

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 371.

§85.701. Failure to Timely File a Pawnshop Employee Application.

(a) Applicability. This section applies only to pawnbrokers that participate in the pawnshop employee license program and employees of these pawnbrokers.

(b) ~~[(a)]~~ Reasonable ground for denial. Failure to file a pawnshop employee application with the OCCC within 75 calendar days of the first day the employee participated or trained in a transaction subject to Texas Finance Code, §371.101(c), will be a reasonable ground for denial of the license. Should the OCCC find that no other ground is

present on which to base a denial of the license, the OCCC may grant the license and take an enforcement action as provided in subsection (c) [(b)] of this section.

(c) [(b)] Enforcement actions. Failure to file a pawnshop employee application with the OCCC within 75 calendar days of the first day the employee participated or trained in a transaction subject to Texas Finance Code, §371.101(c), may subject both the pawnbroker [pawnshop] and the pawnshop employee to one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371:

- (1) an injunction;
- (2) an administrative penalty;
- (3) a suspension; or
- (4) a revocation.

(d) [(e)] Pattern of violations. A pattern of violations may result in an additional enforcement action or denial.

§85.702. *Accepting Prohibited Merchandise.*

(a) Applicability. In this section:

(1) the requirements imposed on a pawnbroker apply to all pawnbrokers; and

(2) the requirements imposed on a pawnshop employee apply only to employees of pawnbrokers that participate in the pawnshop employee license program.

(b) [(a)] Reasonable ground for revocation. Reasonable ground for revocation of the license exists when a pawnbroker or pawnshop employee, knowingly or without exercising due care, fails to prevent a transaction of stolen property, in violation of Texas Finance Code, Chapter 371.

(c) [(b)] Enforcement actions. The acceptance of prohibited merchandise in violation of §85.418(a)(1) or (3) of this title (relating to Acceptance of Goods), may subject the pawnbroker [pawnshop] and pawnshop employee to one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371:

- (1) an injunction;
- (2) an administrative penalty;
- (3) a suspension; or
- (4) a revocation.

(d) [(e)] Multiple violations. Multiple violations may result in an additional enforcement action.

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

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SUBCHAPTER B. RULES FOR CRAFTED PRECIOUS METAL DEALERS

DIVISION 1. REGISTRATION PROCEDURES

7 TAC §85.1007

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 85, concerning Pawnshops and Crafted Precious Metal Dealers.

In general, the purpose of the proposed amendments in 7 TAC, Chapter 85, Subchapter B is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stakeholder meeting, and the OCCC received four written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The proposed amendments specify the registration term, renewal process, and expiration date for crafted precious metal dealers. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. In addition, the proposed amendments modernize or remove obsolete language.

The individual purposes of the proposed amendments are provided in the following paragraphs.

In §85.1007, proposed amendments specify the term, renewal process, and expiration date for a crafted precious metal dealer registration. The proposed amendments maintain the current one-year term and the current December 31 expiration date. Additional proposed amendments specify that December 31 is the due date for renewal fees, and that a registration for a temporary location is effective from the date of its issuance until it expires on December 31.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the proposal will be that the commission's rules will be more easily understood by applicants and licensees, will reflect current agency procedures, and will be more easily enforced. Additional benefits of the proposed amendments are increased efficiencies and modernized rule language.

The proposed rule changes would maintain the one-year term and annual renewal requirement for each license or registration, and would not increase any fee amounts currently described in the rules. For this reason, there is no anticipated cost to persons who are required to comply with the rule changes as proposed.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agency. The proposal does not create a new regulation. The proposal does not expand or limit an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments to 7 TAC, Chapter 85 are proposed under Texas Occupations Code, §1956.0611, which authorizes the commission to adopt rules necessary to implement Texas Occupations Code, Chapter 1956, Subchapter B. In addition, the proposed amendments in §85.1007 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 14; and Texas Occupations Code, Chapter 1956.

§85.1007. Registration Term, [Annual] Renewal, and Expiration.

(a) Generally. An initial registration for a permanent location is effective from the date of its issuance until December 31. For each calendar year following the initial registration for a permanent registered location, a crafted precious metal dealer must renew the registration annually. A registration for a permanent registered location expires on December 31 of each year. After renewal, a registration is effective for a term of one year, from January 1 to December 31.

(b) Renewal procedure. A crafted precious metal dealer may renew its registration for a permanent registered location by providing the following:

(1) the fees required by §85.1011 of this title (relating to Fees); and

(2) any information required by the OCCC.

(c) Due date for renewal fees and information. The fees and information described by subsection (b) of this section are due by December 31 of each year.

(d) [(e)] Late renewal.

(1) If a crafted precious metal dealer renews its registration on or before the 30th day following expiration (i.e., on or before January 30), then there is no late renewal fee.

(2) If a crafted precious metal dealer renews its registration after the 30th day following expiration, but on or before the 180th day following expiration, then the dealer must pay a late renewal fee of \$50 for each permanent registered location, in addition to the fees described by §85.1011 of this title.

(3) A registration for a permanent registered location may not be renewed after the 180th day following expiration. In order to obtain a registration, the crafted precious metal dealer must reapply under §85.1002 of this title (relating to Filing of New Application).

(e) [(d)] Administrative penalty. If a person has engaged in the purchase of crafted precious metal while its registration was not effective, the person may be subject to an administrative penalty under Texas Occupations Code, §1956.0615.

(f) [(e)] Temporary locations. A registration for a temporary location is effective from the date of its issuance until it expires on December 31. A registration for a temporary location is not renewable.

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

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Laurie B. Hobbs

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CHAPTER 86. RETAIL CREDITORS

SUBCHAPTER A. REGISTRATION OF RETAIL CREDITORS

7 TAC §86.102, §86.103

The Finance Commission of Texas (commission) proposes amendments to §86.102 in 7 TAC, Chapter 86, concerning Retail Creditors. Additionally, the commission proposes new §86.103 in 7 TAC, Chapter 86, concerning Retail Creditors.

In general, the purpose of the proposed amendments and new rule in 7 TAC, Chapter 86 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stakeholder meeting, and the OCCC received four written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The proposed amendments specify the registration term, renewal process, and expiration date for registered creditors. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC.

The individual purposes of the proposed amendments and new rule are provided in the following paragraphs.

In §86.102, a proposed amendment removes a paragraph stating that the registration fee must be paid within 60 days of commencing operations, while another proposed amendment adds a statement that a person must pay a \$250 late filing fee under Chapter 349 of the Texas Finance Code. These proposed amendments would ensure that the rule provides a clear reference to the statutory process for late registration under Chapter 349. Another proposed reference removes a reference to the October 31 due date for the annual registration fee, because the due date is addressed separately in proposed new §86.103.

Proposed new §86.103 specifies the term, renewal process, and expiration date for registered creditors. The new rule maintains the current one-year term, and specifies that registrations expire on November 30. Proposed §86.103 also specifies the process for late renewal of an expired registration.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the proposal will be that the commission's rules will be more easily understood by applicants and licensees, will reflect current agency procedures, and will be more easily enforced. Additional benefits of the proposed rule changes are increased efficiencies and modernized rule language.

The proposed rule changes would maintain the one-year term and annual renewal requirement for each license or registration, and would not increase any fee amounts currently described in the rules. For this reason, there is no anticipated cost to persons who are required to comply with the rule changes as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agency. The proposal creates new rule §86.103 as part of the implementation of HB 1442. The proposal does not expand or limit an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit

Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments and new rule in 7 TAC, Chapter 86 are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, proposed new §86.103 is authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14, 345, and 347.

§86.102. [Annual Registration] Fees.

(a) (No change.)

(b) Annual fee. An annual fee is required under the provisions of Texas Finance Code, §345.351 or §347.451 and will be payable as follows:

(1) A retail seller, creditor, holder, or assignee must pay a registration fee for every chapter under which business is conducted.

~~{(2) A retail seller, holder, creditor, or assignee who begins business under Texas Finance Code, Chapter 345 or 347 must pay the annual fee within 60 days after the first day of commencing regulated operations.}~~

~~{(3) The annual fee for each subsequent calendar year will be due and payable by October 31 of each year.}~~

(2) ~~{(4)}~~ The registration is not transferable between locations. A retail seller, creditor, holder, or assignee must obtain a registration for each new location. [Each new location must comply with the provisions in paragraph (2) of this subsection.]

(3) ~~{(5)}~~ No annual fee is required for a location operated by a retail seller, creditor, holder, or assignee operating under the provisions of Texas Finance Code, Chapter 345 or 347, provided the personnel at the location are not conducting regulated business with the consumer (e.g., storage, web-hosting, or data processing facility).

(c) Late filing fee. As provided by Texas Finance Code, §349.302(b), a person must pay a \$250 late filing fee for each registered location if the person:

(1) obtains a new registration after the person has begun engaging in business under Texas Finance Code, Chapter 345 or 347;
or

(2) obtains a renewal more than 30 days after expiration.

(d) ~~{(e)}~~ Evidence of registration. The Office of Consumer Credit Commissioner (OCCC) will issue a certificate evidencing registration under the provisions of Texas Finance Code, Chapter 345 or 347, and this section. A registrant may print a copy of its registration certificate through the OCCC's online licensing portal.

(e) ~~{(d)}~~ Registration duplicates sent by mail. If a registrant does not print its registration certificate online, the registrant may request that the OCCC mail a registration duplicate for a fee of \$10 per certificate mailed.

§86.103. Registration Term, Renewal, and Expiration.

(a) Registration term and renewal. An initial registration is effective from the date of its issuance until November 30. A registration must be renewed annually to remain effective. After renewal, a registration is effective for a term of one year, from December 1 of a calendar year to November 30 of the next calendar year.

(b) Due date for annual fee. The annual fee is due by November 30 of each year.

(c) Expiration. If a registrant does not pay the annual fee, the registration will expire on November 30.

(d) Late renewal. A person may renew an expired registration by December 30 by paying the annual fee. In order to renew an expired registration after December 30, a person must pay any registration fee for a prior year and the late filing fee described by §86.102 of this title (relating to Fees).

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

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CHAPTER 87. TAX REFUND ANTICIPATION LOANS

SUBCHAPTER A. REGISTRATION PROCEDURES

7 TAC §87.107

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 87, concerning Tax Refund Anticipation Loans.

In general, the purpose of the proposed amendments in 7 TAC, Chapter 87 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stakeholder meeting, and the OCCC received four written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The proposed amendments specify the registration term, renewal process, and expiration date for tax refund anticipation loan facilitators. These amendments implement Texas Finance

Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. In addition, the proposed amendments modernize or remove obsolete language.

The individual purposes of the proposed amendments are provided in the following paragraphs.

In §87.107, proposed amendments specify the term, renewal process, and expiration date for a refund anticipation loan facilitator registration. The proposed amendments maintain the current one-year term and the current December 31 expiration date. In addition, proposed amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the proposal will be that the commission's rules will be more easily understood by applicants and licensees, will reflect current agency procedures, and will be more easily enforced. Additional benefits of the proposed amendments are increased efficiencies and modernized rule language.

The proposed rule changes would maintain the one-year term and annual renewal requirement for each license or registration, and would not increase any fee amounts currently described in the rules. For this reason, there is no anticipated cost to persons who are required to comply with the rule changes as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agency. The proposal does not create a new regulation. The proposal does not expand or limit an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments in 7 TAC, Chapter 87 are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, the proposed amendments in §87.107 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 352.

§87.107. Registration Term, ~~Annual~~ Renewal, and Expiration.

(a) Registration term and renewal. An initial registration is effective from the date of its issuance until December 31. A registration must be renewed annually to remain effective. After renewal, a registration is effective for a term of one year, from January 1 to December 31.

(b) ~~(a)~~ Renewal requirements. A registered tax refund anticipation loan facilitator may renew its registration by providing the following:

- (1) the renewal fees required by §87.105(c) of this title (relating to Fees);
- (2) any late filing fees required by §87.105(d) of this title; and
- (3) any other information required by the OCCC ~~[commissioner]~~.

(c) Due date for renewal fee. The annual renewal fee and information described by subsection (b) of this section are due by December 31 of each year.

(d) ~~(b)~~ Expiration. If a facilitator does not pay the annual renewal fee, the registration will expire on December 31. A facilitator may not renew a registration that has been expired for more than one year. If a facilitator's registration has been expired for more than one year, then the facilitator must apply for a new registration under §87.102 of this title (relating to Filing of New Application) in order to obtain a registration.

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

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Laurie B. Hobbs

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For further information, please call: (512) 936-7621



CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES

SUBCHAPTER B. ANNUAL REQUIREMENTS

7 TAC §88.201

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 88, concerning Consumer Debt Management Services.

In general, the purpose of the proposed amendments in 7 TAC, Chapter 88 is to implement provisions related to licensing and

administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stakeholder meeting, and the OCCC received four written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The proposed amendments specify the registration term, renewal process, and expiration date for debt management services providers. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC.

The individual purposes of the proposed amendments are provided in the following paragraphs.

In §88.201, proposed amendments specify the term, renewal process, and expiration date for a debt management services provider registration. The proposed amendments maintain the current one-year term, and specify that a registration expires on January 31.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the proposal will be that the commission's rules will be more easily understood by applicants and licensees, will reflect current agency procedures, and will be more easily enforced. Additional benefits of the proposed amendments are increased efficiencies and modernized rule language.

The proposed rule changes would maintain the one-year term and annual renewal requirement for each license or registration, and would not increase any fee amounts currently described in the rules. For this reason, there is no anticipated cost to persons who are required to comply with the rule changes as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agency. The proposal does not create a new regulation. The proposal does not expand or limit an existing regulation. The proposed rule changes

do not increase or decrease the number of individuals subject to the rules' applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments to 7 TAC, Chapter 88 are proposed under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C. In addition, the proposed amendments in §88.201 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 394.

§88.201. Registration Term, [Annual] Renewal, and Expiration.

(a) Registration term and renewal. An initial registration is effective from the date of its issuance until January 31. A registration must be renewed annually to remain effective. After renewal, a registration is effective for a term of one year, from February 1 of a calendar year to January 31 of the next calendar year.

(b) Renewal requirements. A [Not later than February 1, a] registered debt management services provider may renew its registration by providing the following:

- (1) an annual report, according to §88.202 of this title (relating to Annual Report);
- (2) the annual fee [fees] required by §88.107(f) [§88.107(e)] of this title (relating to Fees); and
- (3) any other information required by the OCCC.

(c) Due date for renewal fee. The annual fee and information described by subsection (b) of this section are due by January 31 of each year.

(d) Expiration. If a provider does not renew its registration, the registration will expire on January 31.

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

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Laurie B. Hobbs

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For further information, please call: (512) 936-7621



CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 89, concerning Property Tax Lenders, §89.309 and §89.403.

In general, the purpose of the proposed amendments in 7 TAC, Chapter 89 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stakeholder meeting, and the OCCC received four written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The proposed amendments specify the license term, renewal process, and expiration date for property tax lenders. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. In addition, the proposed amendments modernize or remove obsolete language.

The individual purposes of the proposed amendments are provided in the following paragraphs.

In §89.309, a proposed amendment removes a subsection dealing with the date of license expiration for property tax lenders, because expiration is addressed in separate proposed amendments at §89.403. Proposed amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. In addition, a proposed amendment changes the title of §89.309 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

In §89.403, proposed amendments specify the term, renewal process, and expiration date for a property tax lender license. The proposed amendments maintain the current one-year term and the current December 31 expiration date. New subsection (e) also explains that an expired license may be reinstated during the 180-day period described in Texas Finance Code, Chapter 349.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the proposal will be that the commission's rules will be more easily understood by applicants and licensees, will reflect current agency procedures, and will be more easily enforced. Additional benefits of the proposed amendments are increased efficiencies and modernized rule language.

The proposed rule changes would maintain the one-year term and annual renewal requirement for each license or registration, and would not increase any fee amounts currently described in the rules. For this reason, there is no anticipated cost to persons who are required to comply with the rule changes as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agency. The proposal does not create a new regulation. The proposal does not expand or limit an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §89.309

The amendments in 7 TAC, Chapter 89 are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, the proposed amendments in §89.403 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 351.

§89.309. *License Inactivation or Voluntary Surrender [Status].*

(a) Inactivation of active license. A licensee may cease operating under a license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC [commissioner]. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §89.310 of this title (relating to Fees), or the license will expire as described by §89.403 of this title (relating to License Term, Renewal, and Expiration).

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than

30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC [commissioner]. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §89.310 of this title.

(c) (No change.)

~~[(d) Expiration. A license will expire on the later of December 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due date for license renewal. A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued.]~~

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

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Laurie B. Hobbs

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For further information, please call: (512) 936-7621



SUBCHAPTER D. LICENSE

7 TAC §89.403

The amendments in 7 TAC, Chapter 89 are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, the proposed amendments in §89.403 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 351.

§89.403. *License Term, Renewal, and Expiration [Notice of Delinquency in Payment of Annual Assessment Fee].*

(a) License term and renewal. A new license is effective from the date of its issuance until December 31. A license must be renewed annually to remain effective. After renewal, a license is effective for a term of one year, from January 1 to December 31.

(b) Due date for annual assessment fee. The annual assessment fee is due by December 1 of each year.

(c) Notice of delinquency. If a licensee does not pay the annual assessment fee, the OCCC will send a notice of delinquency. Notice [For purposes of Texas Finance Code, §351.155, and §89.309(d) of this title (relating to License Status); notice] of delinquency [in the payment of an annual assessment fee] is given when the OCCC sends the [delinquency] notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(d) Expiration. If a licensee does not pay the annual assessment fee, the license will expire on the later of:

(1) December 31 of each year; or

(2) the 16th day after notice of delinquency is given under subsection (c) of this section.

(e) Reinstatement. As provided by Texas Finance Code, §349.301 and §349.303(a), if a license was in good standing when it expired, a person may reinstate the expired license not later than the 180th day after its expiration date by paying the annual assessment fee and a \$1,000 late filing fee.

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

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 129. STUDENT ATTENDANCE

SUBCHAPTER AA. COMMISSIONER'S

RULES

19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance. The amendment would adopt by reference the *2019-2020 Student Attendance Accounting Handbook*.

BACKGROUND INFORMATION AND JUSTIFICATION: The TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the foundation school program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to 19 TAC §129.1025 would adopt by reference the student attendance accounting handbook for the 2019-2020 school year. The proposed version of the handbook does not reflect legislation from the 86th Texas Legislature,

2019, that may impact student attendance accounting. An updated version of the *2019-2020 Student Attendance Accounting Handbook* may be proposed at a later date to provide additional guidance.

Significant changes to the *2019-2020 Student Attendance Accounting Handbook* from the *2018-2019 Student Attendance Accounting Handbook* include the following.

Section 3, General Attendance Requirements

Texas Education Code (TEC), §25.081, and Chapter 42, specifically §42.005, establish the general parameters for attendance and school operation. The following changes would implement reporting requirements for attendance and funding.

Language would be added to include recess, breakfast, and lunch as instructional time for purposes of funding and the two-through-four-hour rule for prekindergarten-only programs.

Language would be added to clarify the definition of *overtime* to include students who are 26 years old on September 1 of the current school year and are not enrolled in an adult high school diploma and industry certification charter school pilot program.

Language would be added to define the official attendance taking time as any time selected during the instructional day instead of a time selected during the second or fifth instructional hour.

Language would be added to include students enrolled in a TEA-designated Pathways in Technology Early College High School (P-TECH) as a funding eligibility exception.

Language would be added to clarify the definition of *academic year* for determining whether a student should have an immigrant indicator code when establishing a student's residency.

Language would be added to change general education diploma (GED) to Texas Certificate of High School Equivalency (Tx-CHSE).

Language would be added to clarify the requirements for para-professionals who take attendance during the official attendance taking time.

Language would be revised to clarify that funding may be received for a student who is temporarily absent because of a documented medical appointment for the student or the student's child with a health care professional licensed, certified, or registered to practice in the United States.

Section 4, Special Education

TEC, Chapter 42, specifically §42.151, authorizes funding for special education in certain circumstances. TEC, §42.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for special education to account for attendance and funding.

Language would be added to change preschool program for children with disabilities (PPCD) to early childhood special education (ECSE) service program to clarify and promote understanding that any child age three through five years who is eligible for and receiving special education and related services through a school district must be served in the least restrictive environment specified in the child's individualized education program (IEP). References to PPCD are being phased out of the student attendance accounting handbook, and students will instead be considered to be receiving ECSE services.

Language would be added to clarify that if a student's admission, review, and dismissal (ARD) committee determines that instruction through remote conferencing is appropriate for a student, that determination does not mean that the student's instructional setting code will change.

Section 5, Career and Technical Education (CTE)

TEC, Chapter 42, including §42.154, authorizes funding for career and technical education (CTE) in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §42.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following change would implement reporting for CTE to account for attendance and funding.

Language would be added to include state-approved technology applications courses in a cybersecurity pathway for the science, technology, engineering, and mathematics (STEM) endorsement in the 2019-2020 school year as eligible for funding.

Section 6, Bilingual/English as a Second Language (ESL)

TEC, Chapter 42, specifically §42.153, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §42.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes would implement reporting for bilingual and special language programs to account for attendance and funding.

Language would be added to clarify the difference between the use of the terms "reclassification" and "exit" in alignment with 19 TAC Chapter 89, Subchapter BB, Commissioner's Rules Concerning State Plan for Educating English Learners. "Reclassification" is the process for English learners (ELs) who have met criteria to be identified as non-limited English proficient/English proficient, and "exit" describes the process for reclassified students to no longer participate in a bilingual or ESL program.

Language would be added to clarify the procedures for identifying a student as an EL and enrolling the EL in the bilingual or ESL education program for the first time in a Texas public school.

Language would be added to include Vietnamese as one of the languages in the home language survey for prekindergarten eligibility if the student is eligible for prekindergarten because the student does not speak and comprehend the English language.

Section 7, Prekindergarten (PK)

TEC, Chapter 29, Subchapter E, establishes special general parameters for prekindergarten programs. TEC, Chapter 42, including §42.005, establishes average daily attendance (ADA) requirements and authorizes funding for certain circumstances. TEC, §42.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for prekindergarten to account for attendance and funding:

Language would be revised and added to include recess, breakfast, and lunch as instructional time for purposes of funding and the two-through-four-hour rule for prekindergarten-only programs.

Language would be added to clarify documentation requirements for districts preregistering prekindergarten students to determine and plan for the size of the next school year's prekindergarten program.

Section 11, Nontraditional Programs

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 42, including §42.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §42.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for nontraditional programs to account for attendance and funding.

Terminology would be added to permit a student enrolled in a TEA-designated P-TECH, Industry Cluster Innovative Academy, or Texas Science, Technology, Engineering and Mathematics Academy to enroll in dual credit courses if the student demonstrates college readiness by achieving the minimum passing standard(s) on a qualifying assessment instrument.

A chart would be added to specify the minimum passing standards to demonstrate college readiness for students' eligibility in dual credit courses.

ADA eligibility would increase from 55 to 60 minutes each day for each virtual course taken through the Texas Virtual School Network (TXVSN).

Language would be added to define successful completion of the TXVSN education program for Grades 3-8 as completion of the TXVSN education program and demonstrated academic proficiency with passing grades sufficient for promotion to the next grade level.

Section 13, Appendix: Average Daily Attendance (ADA) and Funding

Glossary

The definition of *two-through-four-hour-rule* would be revised for prekindergarten-only programs.

The definition of *age* would be revised.

A definition for *early childhood special education services (ECSE)* would be added.

A definition for *English learner (EL)* would be added.

A definition for *English proficient (EP)* would be added.

The definition of *expulsion* would be revised.

The definition of *homeless student* would be revised.

The definition of *juvenile justice alternative education program (JJAEP)* would be revised.

The definition for *preschool program for children with disabilities (PPCD)* would be deleted.

A definition for *reclassification* would be added.

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

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

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural commu-

nities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand and limit an existing regulation. The proposed changes to the *2019-2020 Student Attendance Accounting Handbook* would amend requirements and provide clarity regarding student attendance accounting procedures. In some instances the proposed changes would add information, and in some instances information would be removed.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be informing the public of the existence of annual publications specifying attendance accounting procedures for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

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

PUBLIC COMMENTS: The public comment period on the proposal begins July 5, 2019, and ends August 5, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on July 5, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), which §7.055(b)(35), states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by the TEC, Chapter 42; TEC, §25.081, which states that for each school

year, each school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students. TEC, §25.081(d), authorizes the commissioner to adopt rules to implement the section. TEC, §25.081(f), states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, which requires that a school district excuse a student who is 17 years of age or older from attending school to pursue enlistment in a branch of the armed services of the United States or the Texas National Guard, provided that (1) the district may not excuse for this purpose more than four days of school during the period the student is enrolled in high school; and (2) the district verifies the student's activities related to pursuing enlistment in a branch of the armed services or the Texas National Guard. The statute requires each school district to adopt procedures to verify a student's activities as described by TEC, §25.087(b-5); TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online; TEC, §30A.153, which states that, subject to the limitation imposed under the TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under the TEC, Chapter 42, or in accordance with the terms of a charter granted under the TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course; TEC, §42.004, which states that the commissioner, in accordance with the rules of the State Board of Education, shall take such action and require such reports consistent with the TEC, Chapter 42, as may be necessary to implement and administer the FSP; TEC, §42.005, which states that average daily attendance is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under the TEC, §25.081(a), divided by the minimum number of days of instruction; TEC, §42.151, which states that for each student in average daily attendance in a special education program under the TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.1. For each full-time equivalent student in average daily attendance in a special education program under the TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §42.152, which states that for each student who is educationally disadvantaged or who is a student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal

to the adjusted basic allotment multiplied by 0.2, and by 2.41 for each full-time equivalent student who is in a remedial and support program under the TEC, §29.081, because the student is pregnant; TEC, §42.153, which states that for each student in average daily attendance in a bilingual education or special language program under the TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1; and TEC, §42.154, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 9-12 or in career and technology education programs for students with disabilities in Grades 7-12, a district is entitled to weighted funding.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(35), 25.081, 25.0812, 25.087, 29.0822, 30A.153, 42.004, 42.005, 42.151-42.153, and 42.154.

§129.1025. Adoption by Reference: Student Attendance Accounting Handbook.

(a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and the Texas Education Code, §42.004, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.

(b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2019-2020 [~~2018-2019~~] are described in the official Texas Education Agency (TEA) publication 2019-2020 [~~2018-2019~~] *Student Attendance Accounting Handbook*, dated September 2019 [~~March 2018~~], which is adopted by this reference as the agency's official rule. A copy of the 2019-2020 [~~2018-2019~~] *Student Attendance Accounting Handbook*, dated September 2019 [~~March 2018~~], is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner will amend the 2019-2020 [~~2018-2019~~] *Student Attendance Accounting Handbook*, dated September 2019 [~~March 2018~~], and this subsection adopting it by reference, as needed.

(c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

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 June 24, 2019.

TRD-201901970

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: August 4, 2019

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



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING

SUBCHAPTER G. EXAMINATIONS

22 TAC §133.69

The Texas Board of Professional Engineers (Board) proposes an amendment to §133.69, concerning waiver of examinations.

The examination on the Fundamentals of Engineering (FE exam) is considered a foundational qualification in the licensure of an engineer. The Board has the authority to waive the exam for applicants who possess sufficient education and experience credentials. Section 133.69(d) currently states that an applicant is not eligible to request a waiver of the FE exam if the applicant has taken and failed any FE exam in any jurisdiction within the previous two years. The proposed amendment limits an applicant from applying for an FE exam waiver if the applicant has failed the exam three or more times in any jurisdiction. This amendment does not prohibit an applicant from retaking the exam to achieve a passing score.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS. David Howell, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed amendments are in effect, there are no foreseeable implications relating to cost or revenues of state or local governments under Government Code §2001.024(a)(4) as a result of enforcing or administering these amendments as proposed. The proposed change is related to individuals and not government, businesses or local economies.

PUBLIC BENEFIT/COST NOTE. Mr. Howell has determined under Government Code §2001.024(a)(5) that for the first five-year period the amended rules are in effect, there are no foreseeable negative implications relating to the public benefit. The rule change would result in fewer deviations from the standard, expected licensure process. He further has determined there will be no probable economic cost to persons required to comply with the rule since it adds no new fees or requirements.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no effect on local economy for the first five years that the proposed amendments are in effect because it adds no new fees or requirements. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

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

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Howell has also determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and, therefore, no regulatory flexibility anal-

ysis, as specified in Texas Government Code §2006.002 is required. The proposed change is related to individuals and not government, businesses or local economies.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the Board has prepared a government growth impact statement. During the first five years the proposed rule is in effect, this proposed amendment: (1) will not create or eliminate a government program; (2) will not result in an increase or decrease in the number of agency employees; (3) will not require an increase or decrease in future legislative appropriations to the agency because the agency, which is a self-directed, semi-independent agency, receives no legislative appropriations; (4) will not lead to an increase or decrease in fees paid to a state agency because the affected rule does not require any fees to be paid to the agency; (5) will not create a new regulation; (6) will not repeal an existing regulation; (7) will not result in an increase or decrease in the number of individuals subject to the rule because the proposed change would only result in fewer deviations from the standard, expected licensure process; and (8) the proposed amendment will not positively or adversely affect the state's economy. The proposed change is related to individuals and not government, businesses or local economies.

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

REQUEST FOR PUBLIC COMMENT. Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@engineers.texas.gov.

STATUTORY AUTHORITY. The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state, and Occupations Code §1001.305, which authorizes the Board to by rule waive all or part of examination requirements for licensure.

No other statutes, articles or codes are affected by the proposed amendments.

§133.69. *Waiver of Examinations.*

(a) - (c) (No change.)

(d) An applicant is not eligible to request a waiver of the examination on the fundamentals of engineering if the applicant has taken and failed any examination on the fundamentals of engineering in any jurisdiction within the previous two years. An applicant is not eligible to request a waiver of the examination on the fundamentals of engineering if the applicant has taken and failed any examination on the fundamentals of engineering in any jurisdiction three or more times.

(e) - (f) (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 June 21, 2019.

TRD-201901952

Lance Kinney, Ph.D., P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 440-0417



PART 9. TEXAS MEDICAL BOARD

CHAPTER 165. MEDICAL RECORDS

22 TAC §165.5

The Texas Medical Board (Board) proposes amendments to 22 TAC §165.5, relating to Transfer and Disposal of Medical Records.

The amendments to §165.5 update and modernize the notice requirements when a physician leaves from or relocates a practice. The rule as amended will allow for use of electronic communications for notice to patients. The rule also provides exceptions from notice provisions for certain types of medical practices, including locum tenens and hospital-based practitioners.

The public benefit anticipated as a result of enforcing this section will be to provide additional methods for practitioners providing adequate notice to patients regarding the closing of their practice or leaving a practice and how to obtain their medical records and continuity of care.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing this proposal will be as stated above.

Mr. Freshour has determined that, for the first five-year period this rule is in effect, the effect to individuals required to comply with these rules as proposed will be None. The effect on small businesses, micro businesses, or rural communities will be None.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and determined that for each year of the first five years the proposed amendments will be in effect:

(1) there will be no effect on small businesses, micro businesses, or rural communities; and

(2) the agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that, for each year of the first five years these rule amendments, as proposed, are in effect:

(1) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule is *none*;

(2) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule is *none*;

(3) the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule is *none*; and

(4) there are *no* foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

(1) The proposed rule does not create or eliminate a government program.

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

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

(4) The proposed rule does not require an increase or decrease in fees paid to the agency.

(5) The proposed rule does not create a new regulation.

(6) The proposed rule does not expand, limit, or repeal an existing regulation.

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

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

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

§165.5. Transfer and Disposal of Medical Records.

(a) Required Notification of Discontinuance of Practice. Except as provided for in subsection (f) of this section, when a physician retires, terminates employment, or otherwise leaves a medical practice, he or she is responsible for:

(1) ensuring that patients receive reasonable notification and are given the opportunity to obtain copies of their records or arrange for the transfer of their medical records to another physician; and

(2) notifying the board when they are terminating practice, retiring, or relocating, and therefore no longer available to patients, specifying who has custodianship of the records, and how the medical records may be obtained.

(3) Employers of the departing physician as described in §165.1(b)(6) of this chapter are not required to provide notification, however, the departing physician remains responsible[.] for providing notification consistent with this section.

(b) Method of Notification.

(1) Except as provided for in subsection (f) of this section, when a physician retires, terminates employment, or otherwise leaves a medical practice, he or she shall provide notice to patients of when the physician intends to terminate the practice, retire or relocate, and will no longer be available to patients, and offer patients the opportunity to obtain a copy of their medical records or have their records transferred.

(2) Notification shall be accomplished by:

(A) either:

(i) posting such notice on the physician's or practice website; or

(ii) publishing notice in the newspaper of greatest general circulation in each county in which the physician practices or practiced and in a local newspaper that serves the immediate practice area; and

(B) placing written notice in the physician's office; and

(C) [sending letters to patients seen in the last two years] notifying [them]patients seen in the last two years of the physician's discontinuance of practice by either:[-]

(i) sending a letter to each patient; or

(ii) sending an email to each patient.

(3) A copy of the posted notices [notice] shall be submitted to the Board within 30 days from the date of termination, sale, or relocation of the practice.

(4) Notices placed in the physician's office shall be placed in a conspicuous location in or on the facade of the physician's office, a sign, announcing the termination, sale, or relocation of the practice. The sign shall be placed at least thirty days prior to the termination, sale or relocation of practice and shall remain until the date of termination, sale or relocation.

(c) Prohibition Against Interference.

(1) Other licensed physicians remaining in the practice may not prevent the departing physician from posting notice and the sign, unless the departing physician is excepted from providing notice of his or her departure under subsection (f) of this section.

(2) A physician, physician group, or organization described in §165.1(b)(6) of this title (relating to Medical Records) may not withhold information from a departing physician that is necessary for notification of patients, unless the departing physician is excepted from providing notice of his or her departure under subsection (f) of this section.

(d) Voluntary Surrender or Revocation of Physician's License.

(1) Except as provided for in subsection (f) of this section, physicians who have voluntarily surrendered their licenses or have had their licenses revoked by the board must notify their patients, consistent with subsection (b) of this section, within 30 days of the effective date of the voluntary surrender or revocation.

(2) Physicians who have voluntarily surrendered their licenses or have had their licenses revoked by the board must obtain a custodian for their medical records to be approved by the board within 30 days of the effective date of the voluntary surrender or revocation.

(e) Criminal Violation. A person who violates any provision of this chapter is subject to criminal penalties pursuant to §165.151 of the Act.

(f) Exceptions to Required Notification of Discontinuance of Practice. A physician is not required to provide notice of his or her discontinuation of practice to patients as required in subsection (b) of this section if the physician:

(1) [A physician is not required to provide notice of his or her discontinuation of practice to patients] treated the patient while in [pursuant to] a locum tenens position at a practice location[; if the physician was treating such patients during] for a period of no longer than six months at that location. For the purpose of this section, "locum tenens" is defined as a position in which a physician is employed or contracted on a temporary or substitute basis to provide physician services;

(2) only treated the patient in the following settings:

(A) a hospital, as defined under Texas Occupations Code Section 157.051(6);

(B) an emergency room;

(C) a birthing center; or

(D) an ambulatory surgery center; or

(3) only provided the following:

(A) anesthesia services in a setting described in paragraph (2) of this subsection; or

(B) radiology services based on an order by a treating physician or in a setting described in paragraph (2) of this subsection.

~~[(2) For the purpose of this section, "locum tenens" is defined as a position in which a physician is employed or contracted on a temporary or substitute basis to provide physician services.]~~

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 June 21, 2019.

TRD-201901923

Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 305-7016



CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.8

The Texas Medical Board (Board) proposes to repeal Chapter 193, relating to Standing Delegation Orders, §193.8.

Section 193.8, relating to Prescriptive Authority Agreements: Minimum Requirements, is being repealed in its entirety.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing this proposal will be as stated above.

Mr. Freshour has determined that for the first five-year period this repeal is in effect, the effect to individuals required to comply with the proposal will be none. The effect on small businesses, micro businesses, or rural communities will be none.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed repeal and determined that for each year of the first five years the proposal will be in effect:

(1) there will be no effect on small businesses, micro businesses, or rural communities; and

(2) the agency has considered alternative methods of achieving the purpose of the proposed repeal and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that, for each year of the first five years this proposal is in effect:

(1) the additional estimated cost to the state and to local governments expected as a result of repealing the rule is none;

(2) the estimated reductions in costs to the state and to local governments as a result of repealing the rule is none;

(3) the estimated loss or increase in revenue to the state or to local governments as a result of repealing the rule is none; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to repealing the rule.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed repeal. For each year of the first five years the proposed repeal will be in effect, Mr. Freshour has determined the following:

(1) The proposed repeal does not create or eliminate a government program.

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

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

(4) The proposed repeal does not require an increase or decrease in fees paid to the agency.

(5) The proposed repeal does not create a new regulation.

(6) The proposed repeal does not expand or limit an existing regulation.

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

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

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The repeal is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

No other statutes, articles or codes are affected by this proposal.

§193.8. *Prescriptive Authority Agreements: Minimum 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 June 21, 2019.

TRD-201901924

Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 305-7016



22 TAC §193.17

The Texas Medical Board (Board) proposes amendments to Chapter 193, relating to Standing Delegation Orders, §193.17.

The amendment to §193.17, relating to Nonsurgical Medical Cosmetic Procedures, requires providing notice to patients of the identity and license number of the physician supervisor at a facility providing nonsurgical cosmetic procedures. It also requires posting notice of how and where to file a complaint against a physician or physician assistant involved at one of these facilities.

The public benefit anticipated as a result of repeal is the elimination of an unnecessary rule §193.8 related to Prescriptive Authority Agreements. The rules for §193.17 enhance patient safety and awareness through increased transparency concerning provider information and accountability of the medical professionals involved in these types of medical procedures.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing this proposal will be as stated above.

Mr. Freshour has determined that for the first five-year period this rule is in effect, the effect to individuals required to comply with these rules as proposed will be None. The effect on small businesses, micro businesses, or rural communities will be None.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule and determined that for each year of the first five years the proposed rule will be in effect:

(1) there will be no effect on small businesses, micro businesses, or rural communities; and

(2) the agency has considered alternative methods of achieving the purpose of the proposed rule and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that, for each year of the first five years this new rule as proposed is in effect:

(1) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule is *none*;

(2) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule is *none*;

(3) the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule is *none*; and

(4) there are *no* foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed rule will be in effect, Mr. Freshour has determined the following:

(1) The proposed rule does not create or eliminate a government program.

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

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

(4) The proposed rule does not require an increase or decrease in fees paid to the agency.

(5) The proposed rule does not create a new regulation.

(6) The proposed rule does not expand, limit, or repeal an existing regulation.

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

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

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

No other statutes, articles or codes are affected by this proposal.

§193.17. *Nonsurgical Medical Cosmetic Procedures.*

(a) Purpose. The purpose of this section is to establish the duties and responsibilities of a physician who performs or who delegates the performance of a nonsurgical medical cosmetic procedure (hereafter referred to as "Procedure"). These procedures can result in complications and the performance of these procedures is the practice of medicine. This rule shall not be interpreted to allow individuals to perform procedures without either a physician or midlevel practitioner being onsite, or a physician being available for emergency consultation or appointment in the event of an adverse outcome.

(b) Definitions.

(1) (1) Midlevel practitioner--A physician assistant or advanced practice registered nurse.

(2) Prescription medical device--A device that the federal Food and Drug Administration has designated as a prescription medical device, and can be sold only to persons with prescriptive authority in the state in which they reside.

(3) Procedure--A nonsurgical medical cosmetic procedure, including but not limited to the injection of medication or substances for cosmetic purposes, the administration of colonic irrigations, and the use of a prescription medical device for cosmetic purposes.

(c) Applicability. This section does not apply to:

(1) surgery as defined under Texas Occupations Code, §151.002(a)(14);

(2) the practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(3) the use of nonprescription devices;

(4) intravenous therapy;

(5) procedures performed at a physician's practice by the physician or midlevel practitioners acting under the physician's supervision; or

(6) laser hair removal procedures performed in accordance with Texas Health and Safety Code, Chapter 401, Subchapter M.

(d) Physician Responsibilities.

(1) A physician must be appropriately trained, including hands-on training, in a Procedure prior to performing the Procedure or delegating the performance of a Procedure. The physician must keep a record of his or her training in the office and have it available for review upon request by a patient or a representative of the board.

(2) Prior to authorizing a Procedure, a physician, or a midlevel practitioner acting under the delegation of a physician, must:

(A) take a history;

(B) perform an appropriate physical examination;

(C) make an appropriate diagnosis;

(D) recommend appropriate treatment;

(E) develop a detailed and written treatment plan;

(F) obtain the patient's informed consent;

(G) provide instructions for emergency and follow-up care;

(H) prepare and maintain an appropriate medical record;

(I) have signed and dated written protocols as described in paragraph (7) of this subsection that are detailed to a level of specificity that the person performing the Procedure may readily follow; and

(J) have signed and dated written standing orders.

(K) The performance of the items listed in subparagraphs (A) - (J) of this paragraph must be documented in the patient's medical record.

(3) After a patient has been evaluated and diagnosed, as described in paragraph (2) of this subsection, qualified unlicensed personnel may perform a procedure only if:

(A) a physician or midlevel practitioner is onsite during the procedure; or

(B) a delegating physician is available for emergency consultation in the event of an adverse outcome, and if the physician considers it necessary, be able to conduct an emergency appointment with the patient.

(4) Regardless of who performs the Procedure, the physician is ultimately responsible for the safety of the patient and all aspects of the Procedure.

(5) Regardless of who performs the Procedure, the physician is responsible for ensuring that each Procedure is documented in the patient's medical record. A Procedure performed by unlicensed personnel must be timely co-signed by a supervising physician.

(6) The physician must ensure that the facility at which Procedures are performed, there is a quality assurance program pertaining to Procedures that includes the following:

(A) a mechanism to identify complications and adverse effects of treatment and to determine their cause;

(B) a mechanism to review the adherence to written protocols by all health care personnel;

(C) a mechanism to monitor the quality of treatments;

(D) a mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols; and

(E) ongoing training to maintain and improve the quality of treatment and performance of Procedures by health care personnel.

(7) A physician may delegate Procedures only at a facility at which the physician has either:

(A) approved in writing the facility's written protocols pertaining to the Procedures; or

(B) developed his own protocols for the Procedures as described in paragraph (2)(I) of this subsection.

(8) The physician must ensure that a person performing a Procedure has appropriate training in, at a minimum:

(A) techniques for each Procedure;

(B) cosmetic or cutaneous medicine;

(C) indications and contraindications for each Procedure;

(D) pre-procedural and post-procedural care;

(E) recognition and acute management of potential complications that may result from the Procedure; and

(F) infectious disease control involved with each treatment.

(9) The physician has a written office protocol for the person performing the Procedure to follow in performing Procedure delegated. A written office protocol must include, at a minimum, the following:

(A) the identity of the physician responsible for the delegation of the Procedure;

(B) selection criteria to screen patients by the physician or midlevel practitioner for the appropriateness of treatment;

(C) a description of appropriate care and follow-up for common complications, serious injury, or emergencies;

(D) a statement of the activities, decision criteria, and plan the physician, or midlevel practitioner, shall follow when performing or delegating the performance of a Procedure, including the method for documenting decisions made and a plan for communication or feed-

back to the authorizing physician or midlevel practitioner concerning specific decisions made; and

(E) a description of what information must be documented by the person performing the Procedure.

(10) The physician ensures that each person performs each Procedure in accordance with the written office protocol.

(11) Each patient signs a consent form prior to treatment that lists potential side effects and complications, and the identity and titles of the individual who will perform the Procedure.

(12) Each person performing a Procedure must be readily identified by a name tag or similar means that clearly delineates the identity and credentials of the person.

(13) Any time a Procedure is performed, at least one person trained in basic life support must be onsite.

(e) Notice Provisions.

(1) Each facility providing Nonsurgical Medical Cosmetic Procedures must post a Notice Concerning Complaints in compliance with 22 TAC Chapter 178.

(2) Each facility providing Nonsurgical Medical Cosmetic Procedures must post in each public area and treatment room or area a Notice in the format found in Rule §178.3 of this title (relating to Complaint Notification), including the name(s) of the delegating physician(s) for that facility including their Texas Medical License Number.

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 June 21, 2019.

TRD-201901925

Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 305-7016



PART 15. PHARMACISTS

CHAPTER 295. TEXAS STATE BOARD OF PHARMACY

22 TAC §295.5

The Texas State Board of Pharmacy proposes amendments to §295.5, concerning Pharmacist License or Renewal Fees. The amendments, if adopted, will increase pharmacist license fees based on expected expenses.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue Increase

FY2020 = \$955,980

FY2021 = \$982,300

FY2022 = \$1,007,680

FY2023 = \$1,033,060

FY2024 = \$1,058,440

There are no anticipated fiscal implications for local government.

Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to assure that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The economic cost to large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the fee for the individual. The economic cost to individuals who are required to comply with the amended rule will be an increase of \$44 for an initial license and an increase of \$47 for the renewal of a license. An economic impact statement and regulatory flexibility analysis are not required because the proposed rule will have a de minimis economic effect on Texas small businesses or rural communities.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz has determined the following:

(1) The proposed rule does not create or eliminate a government program;

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

(3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed rule does 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 limit or expand an existing regulation;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., August 4, 2019.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§295.5. Pharmacist License or Renewal Fees.

(a) Biennial Registration. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacist licenses provided under the Pharmacy Act, §559.002.

(b) Initial License Fee.

(1) The fee for the initial license shall be \$328 [~~\$284~~] for a two-year [~~two year~~] registration.

(2) New pharmacist licenses shall be assigned an expiration date and initial fee shall be prorated based on the assigned expiration date.

(c) **Renewal Fee.** The fee for biennial renewal of a pharmacist license shall be \$328 [~~\$284~~] for a two-year [~~two year~~] registration.

(d) **Exemption from fee.** The license of a pharmacist who has been licensed by the Texas State Board of Pharmacy for at least 50 years or who is at least 72 years old shall be renewed without payment of a fee provided such pharmacist is not actively practicing pharmacy. The renewal certificate of such pharmacist issued by the board shall reflect an inactive status. A person whose license is renewed pursuant to this subsection may not engage in the active practice of pharmacy without first paying the renewal fee as set out in subsection (c) of this section.

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

Filed with the Office of the Secretary of State on June 21, 2019.

TRD-201901922

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 305-8010



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. OPERATIONAL RULES

SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

31 TAC §675.20, §675.25

The Texas Low-Level Radioactive Waste Disposal Compact Commission (Commission) proposes to amend §675.20 and proposes new §675.25.

In enacting the Texas Low-Level Radioactive Waste Disposal Compact Consent Act (Act), the United States Congress acknowledged the public value of the party states' cooperation in the protection of the health, safety, and welfare of their citizens and the environment of the party states (Public Law 105-236, 112 Stat. 1542). In furtherance of this policy, the Congress provided for the economic management of low-level radioactive waste to distribute the costs, benefits, and obligations among the party states (Public Law 105-236, 112 Stat. 1542). By adopting the Act in Texas Health and Safety Code (THSC), Chapter 403, the Texas Legislature authorized the Commission to enter into agreements with any person for the importation of low-level radioactive waste into the compact for disposal (THSC, §403.006). The Commission recognizes a public benefit in making a reser-

vation of capacity at the Andrews, Texas compact facility for certain generators of low-level radioactive waste.

The Texas Legislature has placed an annual limit on the total number of curies of low-level radioactive waste that may be imported from non-party states (THSC, §401.207(e)). The proposed amendment and new rule will better serve the public by ensuring that small quantity generators of low-level radioactive waste will have available capacity from the total annual allotment for the disposal of that waste. It is critical that all generators of low-level radioactive waste have a pathway for disposal, however, because of their size, small quantity generators may not have the same resources to arrange for disposal as their larger counterparts. Further, the disposal of small quantity generator waste is often coordinated through brokers. The proposed amendment and new rule will give brokers regulatory certainty that disposal space will be available when they solicit agreements to dispose of small quantity generator waste on behalf of those entities. Accordingly, the proposed amendment and new rule implement the policy directives of the Act. The Commission proposes to amend the term "small quantity generator" in proposed amended §675.20 to align with proposed new §675.25 concerning capacity reservation for entities that meet the requirements of the defined term.

FISCAL IMPACT STATEMENT AND LOCAL EMPLOYMENT IMPACT

Leigh Ing, the Commission's Executive Director, estimates that for the first five-year period the amendment and new rule are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment and new rule. This is because it is not anticipated that the new rule will affect the overall capacity available to all entities that dispose of low-level radioactive waste at the compact facility. Ms. Ing has also determined that for each of the first five years the amendment and new rule are in effect, the public benefit anticipated is that small quantity generators will have reserved space for disposal, which reduces risks associated with on-site storage of low-level radioactive waste. The proposed amendment and rule will not affect local employment because they will not impact the overall amount of waste going to the Andrews, Texas compact facility. The proposed amendment and new rule do not impose a cost on regulated persons or other entities.

NO MAJOR ENVIRONMENTAL RULE

The proposed amendment and new rule do not constitute a major environmental rule because the proposal does not have the potential to adversely affect the economy, productivity, competition, jobs, the environment, or the public health and safety of the state.

IMPACT ON SMALL BUSINESSES, MICRO BUSINESSES, AND RURAL COMMUNITIES

The Commission does not anticipate that the proposed amendment and new rule will have any impact on small businesses or microbusinesses because it will not affect the operation of any business. The compact facility is located near Andrews, Texas, which qualifies as a rural community, however, the proposed amendment and new rule will not affect operations at the compact facility.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed amendment and rule are in effect: 1) there will be no creation or elimination of a government program; 2) there will be no need to create or elimi-

nate employee positions; 3) there will be no need for either an increase or decrease in future legislative appropriations to the Commission or fees paid to the Commission; 4) there will be a new regulation that requires the reservation of disposal capacity for small quantity generators of low-level radioactive waste; 5) there will be no expansion, limitation, or repeal of an existing regulation; 6) the proposed amendment will clarify the number of entities that qualify as small quantity generators because it sets a curie limit for generators who may qualify; and 7) there will be no positive or adverse effect to the state's economy.

NO TAKING

The Commission has determined that the proposed rule 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 proposed amendment and new rule may be submitted to Leigh Ing, Executive Director, Texas Low-Level Radioactive Waste Disposal Compact Commission, 919 Congress Avenue, Suite 830, Austin, Texas 78701 or by email at comments@tllrwdcc.org. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The Commission proposes the amendment and new rule under authority granted in THSC, §403.006, which includes specific rulemaking authority in the Act, Section 3.05. The Commission interprets this section as allowing for the implementation of rules regarding the management of low-level radioactive waste from non-party states.

§675.20. Definitions.

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

(1) - (17) (No Change.)

(18) A "small quantity generator" is a generator of low-level radioactive waste that [who] generates no more than 200 [±00] cubic feet or no more than 100 curies of such waste per year, and does not include nuclear power generation facilities, electric utilities, or the United States Department of Defense [provided that the curie level of such waste is minimal as compared to the curie limit in the Compact Facility's license as determined by the Commission].

(19) - (21) (No Change.)

§675.25. Capacity Reservation for Small Quantity Generators.

(a) This section applies to non-party compact waste imported into the host state.

(b) Of the annual statutory allotment for the disposal compact waste established in Texas Health and Safety Code, §401.207, the Commission shall reserve 2,000 curies per fiscal year for the disposal of non-party compact waste at the compact facility by small quantity generators.

(c) By majority vote, the Commission may increase the reserved amount in subsection (b) of this section if the Commission determines that national demand for disposal of low-level radioactive waste warrants an increase in the capacity reservation for small quantity generators. A Commission decision to increase the reservation amount under this subsection only applies to the fiscal year in which the Commission approves the reservation increase. If the Commission decides

to increase the reserved amount in subsection (b) of this section, then it will post the increased reservation amount on its website for the duration of the fiscal year in which it applies.

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 June 18, 2019.

TRD-201901853

Leigh Ing

Director

Texas Low-Level Radioactive Waste Disposal Compact Commission

Earliest possible date of adoption: August 4, 2019

For further information, please call: (512) 217-8045

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.25

The Texas Board of Criminal Justice proposes amendments to §151.25, concerning the Texas Department of Criminal Justice Tobacco Policy. The amendments are proposed in conjunction with a proposed rule review of §151.25 as published in another section of the *Texas Register*. The proposed amendments are necessary to update the language in light of changing technology, to add interns and volunteers to the scope of the rule, and to update formatting.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the rule, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The rule will have no impact on government growth; no creation or elimination of employee positions; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code §§492.013, 494.010.

Cross Reference to Statutes: None.

§151.25. *[Texas Department of Criminal Justice] Tobacco and Vapor Products [Policy].*

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

(1) A correctional facility is a secure facility operated by or under contract with the Texas Department of Criminal Justice (TDCJ).

~~[(1) TDCJ--Texas Department of Criminal Justice.]~~

(2) A designated outdoor use area is a location where the use of tobacco and vapor products is authorized.

~~[(2) TBCJ--Texas Board of Criminal Justice.]~~

(3) An employee is a person employed by the TDCJ on a full-time, part-time, or temporary basis, including contract employees.

~~[(3) Tobacco Products--Cigars, e-cigarettes, snuff, or any similar goods prepared for smoking, chewing, dipping, or any other such personal use.]~~

(4) An intern is an individual who performs work for the TDCJ on a temporary basis with or without pay, and whose work:

(A) provides training or supplements training given in an educational environment;

(B) provides experience for the benefit of the individual performing the work; and

(C) is performed under the close supervision of TDCJ staff.

~~[(4) TDCJ Property--Land, building, private offices, and vehicles owned, leased, or under contract by the TDCJ, excluding state-owned individual dwellings.]~~

(5) A person conducting official state business is any individual on TDCJ property for the purpose of conducting any form of official state business.

~~[(5) TDCJ Employee--All employees of the TDCJ, including temporary, part-time, contract employees, and volunteers.]~~

(6) TDCJ property includes land, buildings, private offices, and vehicles owned, leased, or under contract by the TDCJ, excluding state-owned individual dwellings.

~~[(6) Visitor--Any non-TDCJ employee on TDCJ property for any purpose other than conducting official state business.]~~

(7) Tobacco products are cigars, cigarettes, snuff, or any other similar goods prepared for smoking, chewing, dipping, or any other such personal use.

~~[(7) Persons Conducting Official State Business--Any individual on TDCJ property for the purpose of conducting any form of official state business.]~~

(8) Vapor products are electronic cigarettes (e-cigarettes) or any other device that uses a mechanical heating element, battery, or electronic circuit to deliver vapor that may include nicotine to the individual inhaling from the device, or any substance used to fill or refill the device.

~~[(8) Designated Outdoor Use Area--A location where the use of tobacco and vapor products are authorized.]~~

(9) A visitor is any non-TDCJ employee on TDCJ property for any purpose other than conducting official state business.

~~[(9) Correctional Facilities--Any secure facility operated by or under contract with the TDCJ.]~~

(10) A volunteer is an individual who has been approved to perform volunteer services for the TDCJ.

~~[(10) Vapor Products--Electronic e-cigarettes (e-cigarettes) or any other device that uses a mechanical heating element, battery, or electronic circuit to deliver vapor that may include nicotine to the individual inhaling from the device, or any substance used to fill or refill the device.]~~

(b) ~~[Applicability.]~~ This rule [policy] is applicable to all employees, interns, volunteers, persons conducting official state business, and visitors to [a] TDCJ property.

(c) ~~[Policy.]~~ The TDCJ is committed to providing a safe and healthy environment and working conditions for employees, interns, volunteers, visitors, and offenders. TDCJ employees, interns, volunteers, visitors, and persons on TDCJ property conducting official state business are authorized to possess and use tobacco or vapor products in accordance with this section.

(d) ~~[Procedures.]~~ The use of tobacco or vapor products inside [a] TDCJ property is strictly prohibited. Designated outdoor use areas shall be at a sufficient distance from any place at which employees regularly perform duties to ensure that no employee who abstains from the use of tobacco or vapor products is physically affected by the use of the products at the designated outdoor use areas. Tobacco or vapor product use in the designated outdoor use areas shall not [negatively] affect the [comfort or] safety of any employee, intern, volunteer, visitor, or offender. Employees are [shall be] permitted to use tobacco or vapor products in designated outdoor use areas [during their work hours] while on break and during their lunch period.

(1) Administrative Offices.

(A) Employees, interns, volunteers, visitors, and persons conducting official state business are permitted to carry and store tobacco and vapor products while in administrative offices that are not located within a correctional facility. The use of tobacco or vapor products is only allowed at designated outdoor use areas or in personal vehicles and any used tobacco or vapor products shall be disposed of in the receptacles provided or in personal vehicles. For administrative offices located in [on] a correctional facility, procedures are set forth in subsection (d)(2) of this section.

(B) The senior administrator of an administrative office building shall designate outdoor use areas and ensure the areas are at least 15 feet from any entryway to the building, preferably removed from the view of passing traffic. If the building owner or ordinance requires a greater distance, the senior administrator shall comply.

(2) Secure Correctional Facilities within the Correctional Institutions and Parole Divisions.

(A) Employees, interns, volunteers, visitors, and persons conducting official state business are prohibited from carrying and storing tobacco and vapor products while in secure correctional facilities. The use of tobacco or vapor products is only allowed in designated outdoor use areas or in personal vehicles and any used tobacco or vapor products shall be disposed of in the receptacles provided or in personal vehicles.

(B) The unit warden shall designate outdoor use areas and ensure the areas are at least 15 feet from the facility's main entrance.

(e) Violation of this rule [policy] may result in disciplinary action in accordance with [pursuant to] PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees." Interns, vol-

unteers, visitors, [Visitors] and persons conducting official state business who violate [in violation of] this rule [policy] may be asked to leave the property at the discretion of the senior supervisor onsite.

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 June 21, 2019.

TRD-201901927

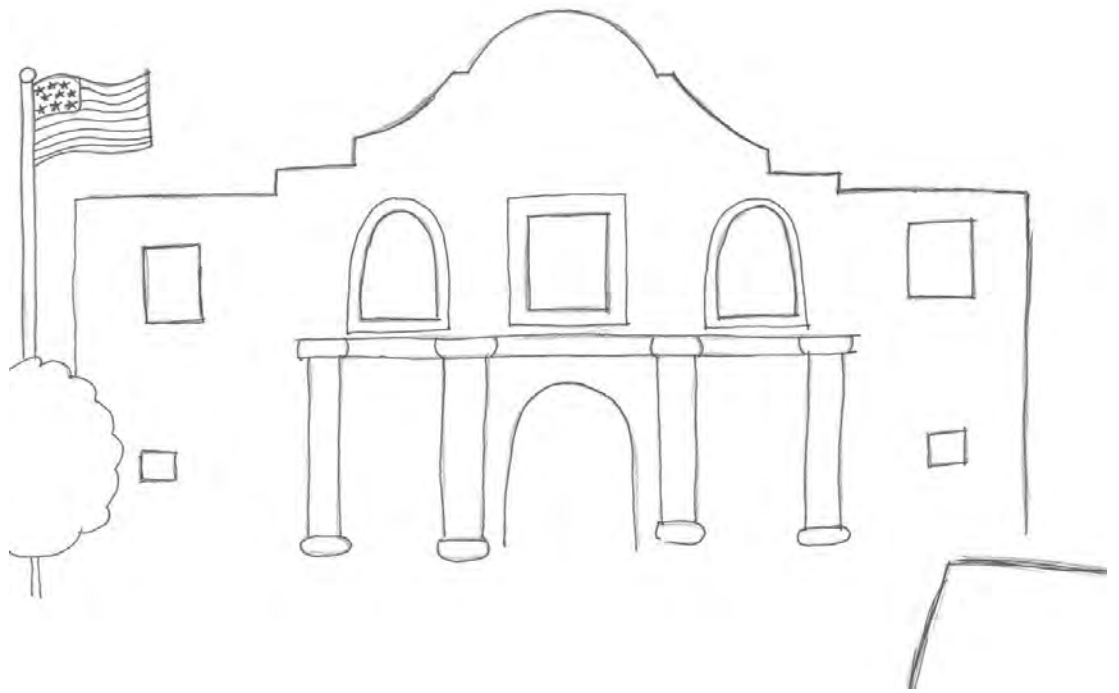
Sharon Howell
General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: August 4, 2019

For further information, please call: (936) 437-6700





WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER DD. OIL FIELD CLEANUP REGULATORY FEE

34 TAC §3.732

The Comptroller of Public Accounts withdraws the proposed amendments to §3.732 which appeared in the May 24, 2019, issue of the *Texas Register* (44 TexReg 2586).

Filed with the Office of the Secretary of State on June 24, 2019.

TRD-201901976

William Hamner

Special Counsel for Tax Administration

Comptroller of Accounts

Effective date: June 24, 2019

For further information, please call: (512) 475-2220





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 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 183. ACUPUNCTURE

22 TAC §183.20

The Texas Medical Board (Board) adopts amendments to §183.20, concerning Continuing Acupuncture Education (CAE). The amendments to §183.20 are being adopted without changes to the proposed text as published in the February 15, 2019, issue of the *Texas Register* (44 TexReg 661). The adopted amendments will not be republished.

The amendments to §183.20 change the CAE requirements so that hours from courses that relate to business practices and office administration will be optional rather than required. Further amendments are proposed so that the number of required core hours in the topics of ethics and safety will be reduced from four to two.

No comments were received on the proposed amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend rules to establish licensing and other fees and recommend rules necessary to administer and enforce Chapter 205.

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 June 21, 2019.

TRD-201901930

Scott Freshour

General Counsel

Texas Medical Board

Effective date: July 11, 2019

Proposal publication date: February 15, 2019

For further information, please call: (512) 305-7016



PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 204. FEES

22 TAC §§204.2, 204.4, 204.7

The Texas Funeral Service Commission (Commission) adopts amendments to Title 22 Texas Administrative Code, Part 10,

§204.2 - Individual Application Fees (Not Refundable); §204.4 - Individual Renewal Fees (Not Refundable); and §204.7 - Establishment Fees for Funeral Homes, Commercial Embalming Facilities, and Crematories (Not refundable).

BACKGROUND AND JUSTIFICATION. The Commission's fee structure needs to be amended as a result of action by the Department of Information Resources (DIR) as it relates to the surcharge collected in accordance with Tex. Gov. Code Sec. 2054.252. DIR has instructed agencies to comply with the new surcharge amounts by the end of fiscal year 2019. The agency notes the fees paid by licensees either decrease or stay the same under this rule proposal.

The amendments (Title 22, Part 10, Texas Administrative Code Chapter 204 - Fees) are adopted with changes to the proposed text as published in the April 12, 2019, issue of the *Texas Register* (44 TexReg 1810). Section 204.7 will be republished.

No comments were received regarding the proposed amendments.

STATUTORY AUTHORITY. This adoption is made pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and Texas Occupations Code §651.154, which authorizes the agency to adopt fees to administer the chapter. These amendments are also adopted under the authority of Texas Government Code §2054.252(g) which sets out fee amounts the agency must follow for surcharges collected pursuant to this section.

No other statutes, articles, or codes are affected by these sections.

§204.7. *Establishment Fees for Funeral Homes, Commercial Embalming Facilities, and Crematories (Not Refundable).*

(a) New Establishment License Fee--\$462 (Includes a \$5 surcharge in accordance with Tex. Occ. Code Sec. 101.307).

(b) Establishment Renewal Fee--\$537 (includes a \$1 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and a \$16 - surcharge in accordance with Tex. Gov. Code Sec. 2054.252).

(c) Establishment Late Penalty (added to renewal fee if more than one day late)--\$520.

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 June 21, 2019.

TRD-201901921

Janice McCoy
Executive Director
Texas Funeral Service Commission
Effective date: July 11, 2019
Proposal publication date: April 12, 2019
For further information, please call: (512) 936-2469



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.33

The Texas Board of Criminal Justice adopts amendments to §163.33, concerning Community Supervision Staff, without changes to the proposed text as published in the April 19, 2019, issue of the *Texas Register* (44 TexReg 1971).

The adopted amendments are an extensive reorganization of the rule for clarity.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.013, 509.003.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on June 21, 2019.

TRD-201901928
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Effective date: July 11, 2019
Proposal publication date: April 19, 2019
For further information, please call: (936) 437-6700



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 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 308, Criteria and Standards for the National Pollutant Discharge Elimination System.

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 308 continue to exist.

Comments regarding suggested changes to the rules in Chapter 308 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 308. 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 2019-034-308-OW. Comments must be received by August 5, 2019. For further information, please contact Laurie Fleet, Water Quality Division, at (512) 239-5445.

TRD-201901982

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 25, 2019



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 312, Sludge Use, Disposal, and Transportation.

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 com-

mission will assess whether the reasons for initially adopting the rules in Chapter 312 continue to exist.

Comments regarding suggested changes to the rules in Chapter 312 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 312. 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 2019-035-312-OW. Comments must be received by August 5, 2019. For further information, please contact Laurie Fleet, Water Quality Division at (512) 239-5445.

TRD-201902001

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 25, 2019



Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §151.25, concerning Texas Department of Criminal Justice Tobacco Policy. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously proposes amendments to §151.25.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register*.

TRD-201901926

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Filed: June 21, 2019

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Adopted Rule Reviews

Finance Commission of Texas

Title 7, Part 1

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking (department) has completed the review of Texas Administrative Code, Title 7, Chapter 9 (Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), comprised of Subchapter A (§§9.1 - 9.3); Subchapter B (§§9.11 - 9.23 and 9.25 - 9.39); Subchapter C (§§9.51, 9.52 and 9.54 - 9.57); Subchapter D (§9.71 and §9.72); and Subchapter E (§§9.81 - 9.84).

Notice of the review of Chapter 9 was published in the April 19, 2019, issue of the *Texas Register* (44 TexReg 2063). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 9 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 9 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

TRD-201901953
Catherine Reyer
General Counsel
Finance Commission of Texas
Filed: June 24, 2019

◆ ◆ ◆

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking (department) has completed the review of Texas Administrative Code, Title 7, Chapter 10 (Contract Procedures), comprised of Subchapter A (§§10.1 - 10.21); Subchapter B (§10.30); and Subchapter C (§10.40).

Notice of the review of Chapter 10 was published in the April 19, 2019, issue of the *Texas Register* (44 TexReg 2063). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 10 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 10 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

TRD-201901969
Catherine Reyer
General Counsel
Finance Commission of Texas
Filed: June 24, 2019

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Texas Department of Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking (department) has completed the review of Texas Administrative Code, Title 7, Chapter 12 (Loans and Investments), comprised of Subchapter A (§§12.1 - 12.12); Subchapter B (§§12.31 - 12.33); Subchapter C (§12.61 and §12.62); and Subchapter D (§12.91).

Notice of the review of Chapter 12 was published in the April 19, 2019, issue of the *Texas Register* (44 TexReg 2063). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 12 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 12 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

TRD-201901956
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: June 24, 2019

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On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking (department) has completed the review of Texas Administrative Code, Title 7, Part 2, Chapter 25 (Prepaid Funeral Contracts), §§25.1 - 25.41, in its entirety.

Notice of the review of Chapter 25 was published in the April 19, 2019, issue of the *Texas Register* (44 TexReg 2064). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 25 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 25 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 25 in accordance with the requirements of the Government Code, §2001.039.

TRD-201901957
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: June 24, 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.

Figure: 7 TAC Chapter 25--Preamble

Fiscal Year	Additional Revenue
2019	\$17,255
2020	\$17,528
2021	\$17,805
2022	\$18,086
2023	\$18,372

Figure: 7 TAC §25.24(b)(1)

Annual Assessment Schedule		
If your number of outstanding contracts is:		Then your annual assessment is:
Over	But not over	
-----	99	\$260 plus the number of outstanding contracts over 0 multiplied by a factor of \$4.00
100	499	\$700 plus the number of outstanding contracts over 100 multiplied by a factor of \$3.95
500	999	\$2,325 plus the number of outstanding contracts over 500 multiplied by a factor of \$3.80
1,000	1,999	\$4,275 plus the number of outstanding contracts over 1,000 multiplied by a factor of \$3.55
2,000	2,999	\$7,825 plus the number of outstanding contracts over 2,000 multiplied by a factor of \$1.90
3,000	4,999	\$9,825 plus the number of outstanding contracts over 3,000 multiplied by a factor of \$0.77
5,000	9,999	\$11,365 plus the number of outstanding contracts over 5,000 multiplied by a factor of \$0.26
10,000	-----	\$12,675 plus the number of outstanding contracts over 10,000 multiplied by a factor of \$0.20

If calculation of the annual assessment produces an amount greater than \$18,450, then your annual assessment is \$18,450.

Figure: 7 TAC Chapter 26--Preamble

Fiscal Year	Additional Revenue
2019	\$14,457
2020	\$14,685
2021	\$14,917
2022	\$15,153
2023	\$15,393

Figure: 7 TAC §26.1(b)(3)

Annual Assessment Schedule		
If your fund balance is:		Then your annual assessment is:
Over	But not over	
-----	\$12,999.99	\$250
\$13,000.00	\$24,999.99	\$700 plus the amount of your fund balance over \$13,000 multiplied by a factor of .0080
\$25,000.00	\$49,999.99	\$800 plus the amount of your fund balance over \$25,000 multiplied by a factor of .0053
\$50,000.00	\$99,999.99	\$950 plus the amount of your fund balance over \$50,000 multiplied by a factor of .0045
\$100,000.00	\$249,999.99	\$1,180 plus the amount of your fund over \$100,000 multiplied by a factor of .0033
\$250,000.00	\$499,999.99	\$1,900 plus the amount of your fund over \$250,000 multiplied by a factor of .0032
\$500,000.00	\$999,999.99	\$2,750 plus the amount of your fund over \$500,000 multiplied by a factor of .00315
\$1,000,000.00	-----	\$4,500 plus the amount of your fund over \$1 million multiplied by a factor of .00307

If calculation of the annual assessment produces an amount greater than \$8,815, then your annual assessment is \$8,815.

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ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

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 07/01/19 - 07/07/19 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 07/01/19 - 07/07/19 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.

TRD-201901990

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: June 25, 2019



Court of Criminal Appeals

In the Court of Criminal Appeals of Texas

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 19-006

ORDER PROPOSING THE ADOPTION OF TEXAS RULE OF APPELLATE PROCEDURE 80.1, DELETION OF RULE OF APPELLATE PROCEDURE 68.11, AND AMENDMENTS TO RULES OF APPELLATE PROCEDURE 70.3 AND 79.7

ORDERED that:

1. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals proposes the adoption of Texas Rule of Appellate Procedure 80.1, the deletion of Texas Rule of Appellate Procedure 68.11, and amendments to Texas Rules of Appellate Procedure 70.3 and 79.7.
2. These amendments may be changed in response to public comments received before October 1, 2019. Any person may submit written comments to the Court of Criminal Appeals at txccarulescomments@txcourts.gov or by mail to the Clerk of the Court of Criminal Appeals at P.O. Box 12308, Austin, Texas 78711.
3. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

Dated: June 10, 2019.

Sharon Keller, Presiding Judge

Michael Keasler, Judge

Barbara P. Hervey, Judge

Bert Richardson, Judge

Kevin P. Yeary, Judge

David Newell, Judge

Mary Lou Keel, Judge

Scott Walker, Judge

Michelle M. Slaughter, Judge

~~Rule 68.11. Service on State Prosecuting Attorney~~

~~In addition to the service required by Rule 9.5, service of the petition, the reply, and any amendment or supplementation of a petition or reply must be made on the State Prosecuting Attorney.~~

* * *

Rule 70.3. Brief Contents and Form

Briefs must comply with the requirements of Rules 9 and 38, except that they need not contain the appendix (Rule 38.1(k)). ~~Copies must be served as required by Rule 68.11.~~

* * *

Rule 79.7. Service

The requirements of Rule ~~68.11~~80.1 apply.

* * *

Rule 80.1. Service on State Prosecuting Attorney

The State Prosecuting Attorney must be served on every petition for discretionary review or brief filed by any party or amicus curiae in the Court of Criminal Appeals, including replies, responses, amendments, and supplements.

Comment to 2019 change: This rule incorporates and expands former Rule 68.11 to require service on the State Prosecuting Attorney of all petitions for discretionary review and all substantive briefing in the Court of Criminal Appeals. In using the phrase “brief filed by any party or amicus curiae in the Court of Criminal Appeals,” the rule does not intend to require service on the State Prosecuting Attorney of petitions for a writ of mandamus (or responses) or applications for a writ of habeas corpus (or answers) and their accompanying memoranda. However, if the Court of Criminal Appeals has filed and set a mandamus petition or habeas corpus application, the rule does require service on the State Prosecuting Attorney of the briefs filed in the case.

TRD-201901950
Deana Williamson
Clerk of the Court
Court of Criminal Appeals
Filed: June 21, 2019

◆ ◆ ◆
Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, 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 5, 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 5, 2019**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: David McNeese dba McNeese Pumping; DOCKET NUMBER: 2019-0467-SLG-E; IDENTIFIER: RN107013443; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: registered sludge transporter business; RULES VIOLATED: 30 TAC §312.143 and TWC, §26.121(a)(1), by failing to deposit wastes at a facility designated by or acceptable to the generator where the owner or operator of the facility agrees to receive the wastes and the Texas facility has written authorization by permit or registration issued by the executive director to receive wastes; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: GH Case Company, Incorporated; DOCKET NUMBER: 2019-0593-AIR-E; IDENTIFIER: RN110046760; LOCATION: Austin, Travis County; TYPE OF FACILITY: guitar case manufacturing plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.085(b) and §382.0518(a), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,250; ENFORCEMENT COORDINA-

TOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: GIRL SCOUTS OF TEXAS OKLAHOMA PLAINS, INCORPORATED; DOCKET NUMBER: 2019-0412-PWS-E; IDENTIFIER: RN101197663; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director (ED) regarding the failure to report the results of nitrate sampling to the ED for the January 1, 2016 - December 31, 2016, monitoring period and regarding the failure to report the results of secondary constituent sampling to the ED for the January 1, 2014 - December 31, 2016, monitoring period; PENALTY: \$129; ENFORCEMENT COORDINATOR: Julianne Dewar, (512) 239-1001; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2017-1540-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review (NSR) Permit Numbers 95 and PSDTX854M2, Special Conditions (SC) Number 2, Federal Operating Permit (FOP) Number O2327, Special Terms and Conditions (STC) Number 20, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate (MAER); 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 95 and PSDTX854M2, SC Number 43.H, FOP Number O2327, STC Number 20, and THSC, §382.085(b), by failing to provide valid emissions predictions at least 95% of the time; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 95 and PSD-TX-854, SC Number 1, FOP Number O2327, STC Number 19, and THSC, §382.085(b), by failing to comply with the MAER; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 95 and PSD-TX-854, SC Number 37.A, FOP Number O2327, STC Number 18, and THSC, §382.085(b), by failing to conduct fugitive monitoring of components in volatile organic compound service on a quarterly basis; and 30 TAC §117.340(a) and §122.143(4), FOP Number O2327, STC Number 1.A, and THSC, §382.085(b), by failing to install totalizing fuel flow meters with an accuracy of ± 5% on all applicable combustion engines to individually and continuously measure the gas and liquid fuel usage in order to demonstrate continuous compliance with control requirements for nitrogen oxides in the Houston-Galveston-Brazoria nonattainment area; PENALTY: \$206,083; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$82,433; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: KD GILL LLC dba Four Corner; DOCKET NUMBER: 2019-0554-PST-E; IDENTIFIER: RN102891819; LOCATION: Paint Rock, Concho County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with an underground storage tanks (UST) system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A) and (2) and (d)(1)(B)(ii) and TWC, §26.3475 (a) and (c)(1), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days, failing to conduct reconciliation

of detailed inventory control records at least once every 30 days, in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, Class B, and Class C for the facility; PENALTY: \$8,154; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(6) COMPANY: L. H. CHANEY MATERIALS, INCORPORATED dba Chaney Trucking; DOCKET NUMBER: 2019-0568-PST-E; IDENTIFIER: RN101563344; LOCATION: Haslet, Wise County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Amanda Scott, (512) 239-2558; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: MUNNA RUBEL ENTERPRISES INCORPORATED dba Stop by Mart; DOCKET NUMBER: 2019-0468-PST-E; IDENTIFIER: RN102236080; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: \$1,626; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: MURPHY OIL USA, INCORPORATED dba Murphy USA 5665; DOCKET NUMBER: 2019-0392-PST-E; IDENTIFIER: RN102258761; LOCATION: Mount Pleasant, Titus County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the agency within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate suspected releases of regulated substances within 30 days of discovery; PENALTY: \$18,777; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$7,511; ENFORCEMENT COORDINATOR: Amanda Scott, (512) 239-2558; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: NEIGHBORLY, LLC; DOCKET NUMBER: 2019-0395-PST-E; IDENTIFIER: RN101891638; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; and 30 TAC §334.605(a), by failing to ensure that the certified Class A and Class B operator is re-trained within three years of the last training date; PENALTY: \$5,434; ENFORCEMENT COORDINATOR: Amanda Scott, (512) 239-2558; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Phuong Kim Huynh dba Bayou City Cleaners; DOCKET NUMBER: 2019-0363-DCL-E; IDENTIFIER: RN100638618; LOCATION: Houston, Harris County; TYPE OF

FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.4(h), by failing to obtain a valid, current TCEQ registration certificate prior to purchasing or otherwise obtaining dry cleaning solvent; 30 TAC §337.10(b)(3), by failing to provide written notice of changes made at the facility within 30 days from the date of the occurrence of the changes; 30 TAC §337.11(e)(3) and Texas Health and Safety Code, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and 30 TAC §337.20(e)(6), by failing to visually inspect each installed secondary containment structure weekly to ensure that the structure is not damaged; PENALTY: \$2,228; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Port O'Connor Improvement District; DOCKET NUMBER: 2019-0210-MWD-E; IDENTIFIER: RN106064280; LOCATION: Port O'Connor, Calhoun County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013693001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2., by failing to comply with permitted effluent limitations; 30 TAC §305.125(1), and TPDES Permit Number WQ0013693001, Monitoring and Reporting Requirements Number 3.b, by failing to maintain monitoring and reporting records at the facility and make them readily available for review by a TCEQ representative for a period of three years; 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and TPDES Permit Number WQ0013693001, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; 30 TAC §305.125(1) and (9), and TPDES Permit Number WQ0013693001, Monitoring and Reporting Requirements Numbers 7.a and 7.b.i, by failing to notify the TCEQ Regional Office, orally or by facsimile transmission, of any noncompliance which may endanger human health or safety, or the environment, within 24 hours of becoming aware of the noncompliance, and in writing to the TCEQ Regional Office and the TCEQ Enforcement Division within five working days of becoming aware of the noncompliance; 30 TAC §305.125(1) and §319.7(d), and TPDES Permit Number WQ0013693001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports at the intervals specified in the permit; and 30 TAC §305.125(5), and TPDES Permit Number WQ0013693001, Operational Requirements Number 1, by failing to ensure at all times that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: \$35,962; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$28,778; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(12) COMPANY: R&J Gas & Grocery Incorporated; DOCKET NUMBER: 2019-0810-PST-E; IDENTIFIER: RN102280609; LOCATION: Plano, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c), by failing to submit an initial/renewal Underground Storage Tank Registration and Self-certification form; and 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ Delivery Certificate prior to receiving fuel; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: RPM Oilfield Services Incorporated; DOCKET NUMBER: 2019-0148-SLG-E; IDENTIFIER: RN106054471; LOCATION: Gary, Panola County; TYPE OF FACILITY: sludge transporter business; RULES VIOLATED: 30 TAC §312.142(d),

by failing to renew the sludge transporter registration biennially; 30 TAC §312.143, by failing to deposit wastes at a facility designated by or acceptable to the generator where the owner or operator of the facility agrees to receive the wastes and the Texas facility has written authorization by permit or registration issued by the executive director (ED) to receive wastes; 30 TAC §312.145(b)(4), by failing to submit to the ED an annual summary of sludge transport activities by July 1st of each year; and TWC, §26.121(a)(1), by failing to prevent the discharge of sewage into or adjacent to any water in the state; PENALTY: \$15,325; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: Sunoco, LLC dba Sunoco Energy Services Nacogdoches; DOCKET NUMBER: 2019-0472-PST-E; IDENTIFIER: RN104267083; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain underground storage tank (UST) records and make them immediately available for inspection upon request by agency personnel; 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; 30 TAC §334.72, by failing to report a suspected release to the agency within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate suspected releases of regulated substances within 30 days of discovery; PENALTY: \$30,811; ENFORCEMENT COORDINATOR: Amanda Scott, (512) 239-2558; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: Tidehaven Independent School District; DOCKET NUMBER: 2019-0483-PWS-E; IDENTIFIER: RN109227942; LOCATION: El Maton, Matagorda County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on the running annual average; PENALTY: \$157; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Town of Ponder; DOCKET NUMBER: 2018-0369-MWD-E; IDENTIFIER: RN102739349; LOCATION: Ponder, Denton County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011287003, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17), and §319.5(b) and TPDES Permit Number WQ0011287003, Monitoring and Reporting Requirements Number 1, by failing to collect and analyze effluent samples at the required frequency; PENALTY: \$29,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$29,250; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: UNITED PETROLEUM TRANSPORTS, INCORPORATED; DOCKET NUMBER: 2019-0435-PST-E; IDENTIFIER: RN103894564; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was covered by a valid, current TCEQ delivery certificate; PENALTY: \$1,255; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(18) COMPANY: WEST MAIN PLAZA LLC dba On Point; DOCKET NUMBER: 2019-0523-PST-E; IDENTIFIER: RN101907012; LOCATION: Gun Barrel City, Henderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure the underground storage tank (UST) corrosion protection system is operated and maintained in a manner that will provide continuous corrosion protection; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (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 and failing to provide release detection for the pressurized piping associated with the UST system at the facility; PENALTY: \$5,954; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(19) COMPANY: Westwood Independent School District; DOCKET NUMBER: 2018-0756-PST-E; IDENTIFIER: RN102867918; LOCATION: Palestine, Anderson County; TYPE OF FACILITY: fleet refueling facility; 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 month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,000; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: Woodridge 1 LP; DOCKET NUMBER: 2018-1408-WQ-E; IDENTIFIER: RN109958876; LOCATION: Boerne, Kendall County; TYPE OF FACILITY: commercial construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with construction activities; and TWC, §26.121(a)(2), by failing to prevent the discharge of other waste into or adjacent to waters of the state; PENALTY: \$3,125; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201901980

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 25, 2019



Enforcement Orders

An agreed order was adopted regarding Pearland Malibu Enterprises, LLC, Docket No. 2017-1057-PWS-E on June 25, 2019 assessing \$250 in administrative penalties with \$50 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, 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 Norma Jean Bruton, Docket No. 2017-1222-MSW-E on June 25, 2019 assessing \$1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ben Warms, 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 Cabot Corporation, Docket No. 2018-0357-AIR-E on June 25, 2019 assessing \$4,000 in administrative penalties with \$800 deferred. Information concerning any aspect of

this order may be obtained by contacting Johnnie Wu, 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 EAST TEXAS BAPTIST ENCAMPMENT, Docket No. 2018-0537-PWS-E on June 25, 2019 assessing \$1,700 in administrative penalties with \$340 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 Burlington Resources Oil & Gas Company LP, Docket No. 2018-0676-AIR-E on June 25, 2019 assessing \$2,438 in administrative penalties with \$487 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 City of Sinton, Docket No. 2018-0767-MWD-E on June 25, 2019 assessing \$7,250 in administrative penalties with \$1,450 deferred. Information concerning any aspect of this order 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.

An agreed order was adopted regarding Alan Matysiak dba Long Point Corner Store, Docket No. 2018-0802-PST-E on June 25, 2019 assessing \$4,125 in administrative penalties with \$825 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 Weatherford U.S., L.P., Docket No. 2018-0841-IWD-E on June 25, 2019 assessing \$6,187 in administrative penalties with \$1,237 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 Kathryn Zwick, Docket No. 2018-0874-WR-E on June 25, 2019 assessing \$1,000 in administrative penalties with \$200 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 CENTERLINE WATER SUPPLY CORPORATION, Docket No. 2018-0966-PWS-E on June 25, 2019 assessing \$399 in administrative penalties with \$79 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 SOUTHEAST KAUFMAN WATER SUPPLY CORPORATION, Docket No. 2018-1038-PWS-E on June 25, 2019 assessing \$50 in administrative penalties with \$10 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 CHCA WEST HOUSTON, L.P. dba West Houston Medical Center, Docket No. 2018-1053-PST-E on June 25, 2019 assessing \$5,569 in administrative penalties with \$1,113 deferred. Information concerning any aspect of this order may

be obtained by contacting Berenice Munoz, 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 R7R Event Center, LLC, Docket No. 2018-1070-PWS-E on June 25, 2019 assessing \$449 in administrative penalties with \$89 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 Los Botines Water Supply Corporation, Docket No. 2018-1113-PWS-E on June 25, 2019 assessing \$1,750 in administrative penalties with \$350 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, 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 Luling, Docket No. 2018-1122-PWS-E on June 25, 2019 assessing \$640 in administrative penalties with \$128 deferred. 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 NAZS ENTERPRISES, INC. dba Honey Stop 2, Docket No. 2018-1129-PST-E on June 25, 2019 assessing \$3,000 in administrative penalties with \$600 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, 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 LLCM, LLC, Docket No. 2018-1171-PWS-E on June 25, 2019 assessing \$465 in administrative penalties with \$93 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, 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 Power, Pipe, and Tank, LLC, Docket No. 2018-1202-AIR-E on June 25, 2019 assessing \$4,876 in administrative penalties with \$975 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 Bois D' Arc Municipal Utility District, Docket No. 2018-1221-PWS-E on June 25, 2019 assessing \$142 in administrative penalties with \$28 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 RBTQ, INC., Docket No. 2018-1273-PWS-E on June 25, 2019 assessing \$623 in administrative penalties with \$124 deferred. 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 DIAMOND SHAMROCK REFINING COMPANY, L.P., Docket No. 2018-1288-AIR-E on June 25, 2019 assessing \$2,813 in administrative penalties with \$562 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, 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 Toyah, Docket No. 2018-1332-PWS-E on June 25, 2019 assessing \$2,092 in administrative penalties with \$418 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 WestRock Texas, L.P., Docket No. 2018-1346-AIR-E on June 25, 2019 assessing \$4,463 in administrative penalties with \$892 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, 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 HydroChem LLC, Docket No. 2018-1420-SLG-E on June 25, 2019 assessing \$1,238 in administrative penalties with \$247 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 Jim Wells County, Docket No. 2018-1426-AIR-E on June 25, 2019 assessing \$2,250 in administrative penalties with \$450 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, 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 GOLDEN GROUP, INC. dba Snappy Mart, Docket No. 2018-1469-PST-E on June 25, 2019 assessing \$1,625 in administrative penalties with \$325 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 DEAD RIVER RANCH MATERIALS, LLC, Docket No. 2018-1484-PST-E on June 25, 2019 assessing \$813 in administrative penalties with \$162 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 Perryton Independent School District, Docket No. 2018-1609-PST-E on June 25, 2019 assessing \$2,438 in administrative penalties with \$487 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.

A field citation was adopted regarding Nathan A. Miller, Docket No. 2019-0101-WOC-E on June 25, 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 Joseph D. Buerkle, Docket No. 2019-0233-WOC-E on June 25, 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 John H. McDonald, Docket No. 2019-0234-WOC-E on June 25, 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.

TRD-201902004

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 26, 2019



Enforcement Orders

An agreed order was adopted regarding City of Dilley, Docket No. 2017-0051-MWD-E on June 26, 2019, assessing \$24,112 in administrative penalties with \$4,822 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.

A default order was adopted regarding Water Association of North Lake, Inc., Docket No. 2017-0471-MLM-E on June 26, 2019, assessing \$10,600 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, 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 INEOS USA LLC, Docket No. 2017-0576-AIR-E on June 26, 2019, assessing \$30,563 in administrative penalties with \$6,112 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 KMCO, LLC, Docket No. 2017-0837-AIR-E on June 26, 2019, assessing \$95,437 in administrative penalties with \$19,087 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.

A default order was adopted regarding Lucky's Redi-Mix Co. LLC, Docket No. 2017-0985-MLM-E on June 26, 2019, assessing \$10,178 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, 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 FOREST WATER SUPPLY CORPORATION, Docket No. 2018-0033-PWS-E on June 26, 2019, assessing \$2,212 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, 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 Blanchard Refining Company LLC, Docket No. 2018-0307-AIR-E on June 26, 2019, assessing \$68,125 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, 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 SAM RAYBURN WATER, INC., Docket No. 2018-0309-PWS-E on June 26, 2019, assessing \$1,326 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, 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 KUNWAR VENTURES LLC dba US Mart and Handi Stop, Docket No. 2018-0417-PST-E on June 26, 2019, assessing \$3,750 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 Roscoe, Docket No. 2018-0434-PWS-E on June 26, 2019, assessing \$796 in administrative penalties with \$531 deferred. 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 Strip Property Land and Water, LLC, Docket No. 2018-0649-PWS-E on June 26, 2019, assessing \$774 in administrative penalties with \$258 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 Shintech Incorporated, Docket No. 2018-0665-AIR-E on June 26, 2019, assessing \$52,263 in administrative penalties with \$10,452 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, 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 Mart, Docket No. 2018-0681-PWS-E on June 26, 2019, assessing \$2,011 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 Gerdau Ameristeel US Inc., Docket No. 2018-0738-AIR-E on June 26, 2019, assessing \$10,688 in administrative penalties with \$2,137 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, 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 R.N.A. Corporation dba RNA Chevron, Docket No. 2018-0748-PST-E on June 26, 2019, assessing \$9,000 in administrative penalties with \$1,800 deferred. Information concerning any aspect of this order 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.

An agreed order was adopted regarding Clarke Products, Inc., Docket No. 2018-0750-AIR-E on June 26, 2019, assessing \$73,125 in administrative penalties with \$14,625 deferred. Information concerning any aspect of this order may be obtained by contacting Robyn Babyak, 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 Motiva Enterprises LLC, Docket No. 2018-0781-AIR-E on June 26, 2019, assessing \$32,813 in administrative penalties. 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 Oldcastle Materials Texas, Inc., Docket No. 2018-0870-AIR-E on June 26, 2019, assessing \$3,750 in administrative penalties. 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 North East Independent School District, Docket No. 2018-0924-EAQ-E on June 26, 2019, assessing \$8,438 in administrative penalties with \$1,687 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 FOOTHILLS MOBILE HOME RANCH, INC., Docket No. 2018-0936-PWS-E on June 26, 2019, assessing \$175 in administrative penalties with \$175 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 WTG South Permian Midstream LLC, Docket No. 2018-0953-AIR-E on June 26, 2019, assessing \$13,500 in administrative penalties with \$2,700 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.

TRD-201902008
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 26, 2019



Notice of Correction to Agreed Order Number 9

In the April 20, 2018, issue of the *Texas Register* (43 TexReg 2473), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 9, for Grand Harbor Water Supply Corporation. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "\$3,077."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-201901981
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 25, 2019



Notice of District Petition

Notice issued June 25, 2019

TCEQ Internal Control No. D-04302019-052; Texas General Land Office, on behalf of the State of Texas ("Petitioner") filed a petition for creation of Butterfield Trail Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of all of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed

District; (3) the proposed District will contain approximately 668 acres, more or less, located within El Paso County, Texas; (4) the proposed District may be within the extraterritorial jurisdiction of the City of El Paso, Texas; and (5) the City of El Paso has consented to creation of the District by resolution adopted on May 29, 2018. The petition further states that the proposed District will construct, purchase, acquire, maintain, own and operate water, wastewater, drainage, road and park and recreational facilities within the proposed District. It further states that the planned residential and commercial development of the area and the present and future inhabitants of the area will be benefited by the above-referenced work, which will promote the purity and sanitary condition of the State's waters and the public health and welfare of the community. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$64,710,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-201901998

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 25, 2019



Notice of District Petition

Notice issued June 25, 2019

TCEQ Internal Control No. D-04302019-053; The State of Texas, through the General Land Office, for the use and benefit of the Permanent School Fund (Petitioner) filed a petition for creation of Butterfield Trail Municipal Utility District No. 2 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to all of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 591 acres located within EL Paso County, Texas; and (4) all of the land within the proposed District may or may not be within the extraterritorial jurisdiction of the City of EL Paso, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city; and (5) by Resolution passed and approved on May 29, 2018, the City of El Paso has consented to creation of the District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will construct, purchase, acquire, maintain, own and operate water, wastewater, drainage, road and park and recreational facilities within the proposed District.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$64,830,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-201901999

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 25, 2019



Notice of District Petition: TCEQ Docket No. 2018-1565-DIS and TCEQ Internal Control No. D-08232018-052

PETITION. CTM Holdings, LLC, a Texas Limited Liability Company (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the creation of Conroe Municipal Management District No. 2 of Montgomery County (District). The TCEQ will conduct this hearing under the authority of Chapter 375, Texas Local Government Code; Chapter 49 of the Texas Water Code; Title 30, Chapter 293 of the Texas Administrative Code and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at:

9:30 a.m., Wednesday, August 14, 2019

Building E, Room 201S

12100 Park 35 Circle

Austin, Texas

The proposed District will contain approximately 174.213 acres of land within the corporate limits of the City of Conroe, Montgomery County, Texas. The territory to be included in the proposed District is set forth in a metes and bounds description and is depicted in the vicinity map designated as Exhibit "B" which is attached to this document. The Petition states that the creation of the proposed District would be a benefit to the land within its boundary.

HEARING. As required by the Texas Local Government Code §375.023 and §375.024 and Title 30 of the Texas Administrative Code §293.12(g)(2)(A), the above hearing regarding this application will be held no earlier than 31 days after notice of this hearing is published in a newspaper with general circulation in the county or counties in which the District is located. The purpose of this hearing is to provide all interested persons the opportunity to appear and offer testimony for or against the proposal contained in the petition.

At the hearing, pursuant to Chapter 375, Texas Local Government Code; Chapter 49 of the Texas Water Code; and Chapter 293 of Title 30 of the Texas Administrative Code, the TCEQ will determine if creating Conroe Municipal Management District No. 2 of Montgomery County would be a benefit to the land and property included in the District, or, if there is any opposition to the proposed creation, the Commission may refer the application to the State Office of Administrative Hearings for a contested case hearing on the application.

INFORMATION. For information regarding the date and time this application will be heard before the Commission, please submit written inquiries to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087, or by phone at (512) 239-3300. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact Andrew Paynter of the Districts Creation Review Team at (512) 239-4691. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

Si desea información en español, puede llamar al (512) 239-0200.

Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the TCEQ External Relations Division at (800) 687-4040 or (800) RELAY-TX (TDD), at least one week prior to the hearing.

TRD-201901994
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 25, 2019



Notice of Intent to Perform Removal Action at the Moss Lake Road Groundwater Plume Proposed State Superfund Site, Big Spring, Howard County, Texas

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) hereby issues public notice of intent to perform a removal action, as provided by Texas Health and Safety Code, §361.133, for the Moss Lake Road Groundwater Plume proposed state Superfund site (the site). The site, including all land, structures, appurtenances, and other improvements, is located approximately 1/4 mile north of the intersection of North Moss Lake Road and Interstate 20, approximately four miles east of Big Spring, Howard County, Texas. The contamination in the groundwater plume consists of tetrachloroethylene, also called perchloroethylene (PCE), which can have adverse effects on humans and the environment. The site also includes any areas where hazardous substances have come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site. The site was proposed for listing on the Texas Superfund Registry in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6389).

The removal action will consist of the excavation and proper disposal of the PCE-contaminated soil that exceeds Protective Concentration Levels. Immediate action is appropriate to remove contaminated soil that is an ongoing source of contamination to groundwater, and is appropriate to protect human health and the environment. The proposed removal can be completed without extensive investigation and planning and will achieve a significant cost reduction for the site. Additionally, the TCEQ plans to connect residential homes within the site vicinity to the City of Coahoma's public water system water line, eliminating the costs of maintaining and monitoring the existing filtration systems, and reducing the overall cost of the potential remedial alternatives for the site.

A portion of the records for the site is available for review during regular business hours at the Howard County Library, 500 South Main Street, Big Spring, Texas 79720, (432) 264-2260. The complete public file may be reviewed during business hours at the commission's Central File Room, Building E, Room 103, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-2900, or cfrreg@tceq.texas.gov. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E. Information is also available regarding the state Superfund program at: <https://www.tceq.texas.gov/remediation/superfund/sites/index.html>.

For further information, please contact Sherell Heidt, TCEQ Project Manager, Remediation Division, at (713) 767-3708, or John Flores, TCEQ Community Relations Coordinator, at (800) 633-9363 or (512) 239-5674.

TRD-201902000
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 25, 2019



Notice of Public Hearing on Assessment of Administrative Penalties and Certain Actions of Chahal R&R, Inc dba Alvin Express: SOAH Docket No. 582-19-5399; TCEQ Docket No. 2018-0970-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - July 18, 2019

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed January 4, 2019, concerning assessing administrative penalties against and requiring certain actions of CHAHAL R&R, INC dba Alvin Express, for violations in Brazoria County, Texas, of: Tex. Water Code §26.3475(c)(1) and 30 Texas Administrative Code §334.50(b)(1)(A).

The hearing will allow CHAHAL R&R, INC dba Alvin Express, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford CHAHAL R&R, INC dba Alvin Express, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of CHAHAL R&R, INC dba Alvin Express to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** CHAHAL R&R, INC dba Alvin Express, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Kevin R. Bartz, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address:

SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 19, 2019

TRD-201901996

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 25, 2019



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of TA & JP Company dba Discount Mart 4: SOAH Docket No. 582-19-5607; TCEQ Docket No. 2019-0280-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - July 18, 2019

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed April 16, 2019, concerning assessing administrative penalties against and requiring certain actions of TA & JP Company dba Discount Mart 4, for violations in Titus County, Texas, of: Tex. Water Code §26.3475(c)(1), 30 TAC §334.50(b)(1)(A), and TCEQ Agreed Order in Docket No. 2017-1395-PST-E, Ordering Provision No. 2.a.

The hearing will allow TA & JP Company dba Discount Mart 4, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford TA & JP Company dba Discount Mart 4, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of TA & JP Company dba Discount Mart 4 to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** TA & JP Company dba Discount Mart 4, the Executive Director of the

Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26 and 30 TAC chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 TAC §70.108 and §70.109 and ch. 80, and 1 TAC ch. 155.

Further information regarding this hearing may be obtained by contacting Benjamin Warms, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 TAC §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 19, 2019

TRD-201901997

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 25, 2019



Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment: Proposed Permit No. 2298A

Application. Downstream Environmental, LLC., 3737 Walnut Bend Lane, Houston, Texas 77042, a liquid waste processing facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize an increase to the processing capacity for the maximum permitted. The facility is at 3737 Walnut Bend Lane, Houston, Texas 77042 in Harris County, Texas. The TCEQ received this application on May 7, 2019. The permit application is available for viewing and copying at the Robinson-Westchase Neighborhood Library, 3223 Wilcrest, Houston, Texas 77042 and may be viewed online at www.team-psc.com/engineering-sector/solid-waste/tceq-permits/. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.7202&lng=-95.56&zoom=13&type=r>. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition,

you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at <www.tceq.texas.gov/goto/cid>. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and request must be submitted either electronically at <www14.tceq.texas.gov/epic/eComment/> or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at <www.tceq.texas.gov/goto/pep>. Si desea información en español, puede llamar al (800) 687- 4040.

Further information may also be obtained from Downstream Environmental, LLC at the address stated above or by calling Mr. Todd E. Stiggins, Associate at (806) 473-2200.

TRD-201901995

Bridget Bohac
Chief Clerk

Texas Commission on Environmental Quality
Filed: June 25, 2019



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the TCEQ on March 7, 2019, in the matter of the Executive Director of the Texas Commission on Environmental Quality v. Skypak Corp dba Country Food Store; SOAH Docket No. 582-18-3786; TCEQ Docket No. 2017-0550-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Skypak Corp dba Country Food Store on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Mehgan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-201901993

Bridget C. Bohac
Chief Clerk

Texas Commission on Environmental Quality
Filed: June 25, 2019



Texas Facilities Commission

Request for Proposals #303-1-20659

The Texas Facilities Commission (TFC), on behalf of the Texas Parks and Wildlife Department (TPWD), announces the issuance of Request for Proposals (RFP) #303-1-20659. TFC seeks a five (5) or ten (10) year lease of approximately 10,084 square feet of usable space that consists of 5,084 square feet of office space and 5,000 square feet of boat storage space in City/County, Texas.

The deadline for questions is July 16, 2019, and the deadline for proposals is July 25, 2019, at 3:00 p.m. The award date is October 17, 2019. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at <http://www.txsmartbuy.com/sp/303-1-20659>.

TRD-201901935

Naomi Gonzalez

Acting General Counsel

Texas Facilities Commission

Filed: June 21, 2019



Office of the Governor

Notice of Application and Priorities for the Justice Assistance Grant Program Federal Application

The Governor's Criminal Justice Division (CJD) is planning to apply for federal fiscal year (FFY) 2019 formula funds under the Edward Byrne Justice Assistance Grant (JAG) program administered by the U.S. Department of Justice, Bureau of Justice Assistance. The FFY 2019 allocation to Texas is estimated to be \$13.4 million.

CJD proposes to use the FFY 2019 award to fund initiatives that target border security, violent crimes, organized criminal activity, improved technology, substance abuse diversion programs and offender reentry into the community.

Comments regarding the proposed use of JAG funds should be submitted in writing within 30 days from the date of this announcement in the *Texas Register*. Comments may be submitted to the attention of Mr. Andrew Friedrichs, Criminal Justice Division (CJD), Texas Office of the Governor, by email at Andrew.Friedrichs@gov.texas.gov or by mail to the Office of the Governor, Criminal Justice Division, Post Office Box 12428, Austin, Texas 78711. You may also request a copy of the application upon its completion from Mr. Friedrichs.

TRD-201901971

Aimee Snoddy

PSO Executive Director

Office of the Governor

Filed: June 24, 2019



Texas Health and Human Services Commission

Notice of Public Hearing on Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 9, 2019, at 9:30 a.m., to receive comment on proposed rate increases for: the Residential Care (RC), Primary Home Care (PHC), Community Attendant Services (CAS), Family Care (FC), and Day Activity and Health Services (DAHS) pro-

grams; Community Living Assistance and Support Services (CLASS) Respite; STAR+PLUS Home and Community-Based Services (HCBS) Waiver Personal Assistance Services (PAS), Respite Care, and Habilitation (HAB) Proxy Rates; and STAR Kids Waiver Attendant, Attendant with Registered Nurse (RN) Delegation, and Community First Choice Habilitation (CFC HAB) Proxy Rates.

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 it 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 attendant base wage to \$8.11 for the attendant cost component for: RC, PHC, CAS, FC, DAHS, and CLASS Respite; STAR+PLUS HCBS Waiver PAS, Respite Care, and HAB Proxy Rates; STAR Kids Waiver Attendant; Attendant with RN Delegation, and CFC HAB Proxy Rates, in accordance with the 2020-21 General Appropriations Act (Article II, 86th Legislature, Regular Session, 2019, Rider 45). These payment rates are proposed to be effective September 1, 2019.

Methodology and Justification. The proposed rates were calculated in accordance with Title 1 of the Texas Administrative Code:

- §355.112, concerning Attendant Compensation Rate Enhancement;
- §355.509, concerning the Reimbursement Methodology for Residential Care;
- §355.5902, concerning the Reimbursement Methodology for Primary Home Care;
- §355.6907, concerning the Reimbursement Methodology for Day Activity and Health;
- §355.505, concerning the Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program;
- §355.502, concerning the Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers; and
- §355.507, concerning the Reimbursement Methodology for the Medically Dependent Children Program.

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://rad.hhs.texas.gov/rate-packets> on June 28, 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 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-201902010
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 26, 2019



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Deaf-Blind with Multiple Disabilities Waiver Program

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 9, 2019, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Deaf-Blind with Multiple Disabilities Waiver Program (DBMD).

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 it 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 all DBMD services in accordance with the 2020-21 General Appropriations Act (Article II, 86th Legislature, Regular Session, 2019, Rider 44). These payment rates are proposed to be effective September 1, 2019.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code §355.513, which addresses the reimbursement methodology for the DBMD program.

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://rad.hhs.texas.gov/rate-packets> on June 28, 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 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-201902009

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 26, 2019



Notice of Public Hearing on Reimbursement Rates for the Home Delivered Meals

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 9, 2019, at 10:30 a.m., to receive comment on the Reimbursement Rates for the Home Delivered Meals (HDM). These payment rates are proposed to 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 it 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 ceilings for the HDM Program in accordance with the 2020-21 General Appropriations Act (Article II, 86th Legislature, Regular Session, 2019, Rider 99), which appropriated \$3 million general revenue in each State Fiscal Year of the 2020-2021 biennium to increase the maximum rate for HDM to \$5.31 per meal effective September 1, 2019.

Methodology and Justification. The methodology for the proposed HDM reimbursement rates is at Title 1 of the Texas Administrative Code (TAC) §355.511.

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://rad.hhs.texas.gov/rate-packets> on June 28, 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@hhsc.state.tx.us. The briefing package will also 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@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-201902003

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 25, 2019



Public Notice: Children's Health Insurance Program (CHIP) State Plan Amendments: 45, 46, and 47

The Texas Health and Human Services Commission announces its intent to submit State Plan Amendments (SPAs) transmittal numbers 45, 46, and 47 to the Texas State Plan for the Children's Health Insurance Program (CHIP), under Title XXI of the Social Security Act.

The purpose of CHIP SPA transmittal number 45 is to demonstrate compliance with the Medicaid managed care final rule (81 FR 27497, <http://www.federalregister.gov/d/2016-09581>). The requested effective date for the proposed amendment is August 31, 2019. The submission of a SPA to CMS is done through a template form provided by CMS. This amendment transitions HHSC to using a new CMS template which includes new language.

The purpose of CHIP SPA transmittal number 46 is to demonstrate compliance with the Affordable Care Act CHIP external review process. The requested effective date for the proposed amendment September 1, 2019. This amendment updates the state plan to be consistent with policy requiring CHIP managed care organizations to offer members the opportunity to access a third-party review of certain denials through an external review process after exhausting the MCO internal appeal process.

The purpose of CHIP SPA transmittal number 47 is to demonstrate compliance with the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patient and Communities Act. The requested effective date for the proposed amendment is October 24, 2019. This amendment will expand the CHIP Perinatal service array, including adding mental health and substance use services.

HHSC is not estimating a fiscal impact for CHIP SPAs 45 and 46 as they are not expected to have an effect on CHIP utilization or cost. CHIP SPA 47 is estimated to have a fiscal impact due to the utilization of the services added to CHIP Perinatal.

To obtain copies of the proposed amendments, interested parties may contact Courtney Pool, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 424-6889; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-201902002

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 25, 2019



Texas Department of Insurance

Company Licensing

Application for AXA Art Insurance Company, a foreign fire and/or casualty company, to change its name to Digital Affect Insurance Company. The home office is in New York, New York.

Application for Liberty Life Assurance Company of Boston, a foreign life, accident and/or health company, to change its name to Lincoln Life Assurance Company of Boston. The home office is in New Hampshire.

Application for incorporation in the state of Texas for Southlake Specialty Insurance Company, a domestic fire and/or casualty company. The home office is in Austin, 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 Christian Hertzberg, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201902007

James Person

Interim General Counsel

Texas Department of Insurance

Filed: June 26, 2019

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Texas Department of Insurance, Division of Workers' Compensation

Chapter 134 Stakeholder Meeting

The Texas Department of Insurance, Division of Workers' Compensation (DWC) is accepting comments on an informal working draft of rules for 28 Texas Administrative Code §134.150 and §134.155 to implement Senate Bill (SB) 935, 86th Legislature (2019). Section 134.150 describes the process for reimbursement of services provided by a federal military treatment facility (FMTF), and §134.155 describes procedures for resolving disputes over charges by an FMTF.

SB 935 requires DWC to adopt rules necessary to implement Labor Code §413.0112 no later than December 1, 2019. The rules will establish requirements for processing medical bills for services provided to an injured employee by an FMTF, as well as a separate medical dispute resolution process to resolve charges billed directly to an injured employee by an FMTF. The change in law made by SB 935 applies to health care services provided to an injured employee on or after January 1, 2020, regardless of the date of injury.

DWC will host a stakeholder workshop to discuss the rules on Monday, July 8, 2019, at 1:30 p.m. at the DWC Central Office located at 7551 Metro Center Drive, Suite 100, in Austin. DWC provides reasonable accommodations for persons attending meetings, hearings, or educational events as required by the Americans with Disability Act. If you need accommodations, please contact Cynthia Guillen at (512) 804-4275 or at RuleComments@tdi.texas.gov before the close of business on Tuesday, July 2.

TRD-201901918

Nicholas Canaday III

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: June 20, 2019

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Texas Lottery Commission

Correction of Error - Scratch Ticket Game Number 2168 "\$50,000 Bonus Cashword"

The Texas Lottery Commission published the game procedure for Scratch Ticket Game No. 2168 "\$50,000 BONUS CASHWORD" in the June 21, 2019, issue of the *Texas Register* (44 TexReg 3176). Due to an error by the Texas Lottery Commission, the name of the Scratch Ticket Game was incorrect in title section of this game procedure. The title section of this game procedure is corrected by adding a "\$" to the number "50,000" as follows:

Texas Lottery Commission

Scratch Ticket Game Number 2168 "\$50,000 Bonus Cashword"

TRD-201902006

Bob Biard

General Counsel

Texas Lottery Commission

Filed: June 26, 2019

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Scratch Ticket Game Number 2153 "Extreme Payout"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2153 is "EXTREME PAYOUT". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2153 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2153.

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, STAR SYMBOL, STACK OF CASH SYMBOL, \$10.00, \$20.00, \$40.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000 and \$250,000.

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. 2153 - 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
STAR SYMBOL	WIN
STACK OF CASH SYMBOL	WIN\$100
\$10.00	TEN\$
\$20.00	TWY\$
\$40.00	FRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$10,000	10 TH
\$250,000	250 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 (2153), 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: 2153-0000001-001.

H. Pack - A Pack of the "EXTREME PAYOUT" 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 "EXTREME PAYOUT" Scratch Ticket Game No. 2153.

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 "EXTREME PAYOUT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 66 (sixty-six) 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 "STAR" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "STACK OF CASH" Play Symbol, the player WINS \$100 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 66 (sixty-six) 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 66 (sixty-six) 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 66 (sixty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 66 (sixty-six) 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, except on Tickets winning thirty (30) times, with respect to other parameters, play action or prize structure.

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. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 10 and \$10, 20 and \$20, 40 and \$40, and 50 and \$50).

J. 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.

K. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

L. The "STAR" (WIN) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

M. The "STAR" (WIN) Play Symbol will never appear on a Non-Winning Ticket.

N. The "STAR" (WIN) Play Symbol will never appear more than once on a Ticket.

O. The "STAR" (WIN) Play Symbol will win the corresponding prize for that Play Symbol.

P. The "STAR" (WIN) and "STACK OF CASH" (WIN\$100) Play Symbols will never appear on the same Ticket.

Q. The "STACK OF CASH" (WIN\$100) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

R. The "STACK OF CASH" (WIN\$100) Play Symbol will win \$100 instantly.

S. Tickets that win with the "STACK OF CASH" (WIN\$100) Play Symbol will always have a \$100 prize.

T. The "STACK OF CASH" (WIN\$100) Play Symbol will never appear more than once on a Ticket.

U. The "STACK OF CASH" (WIN\$100) Play Symbol will never appear on a Non-Winning Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "EXTREME PAYOUT" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$150 or \$300, 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, \$150 or \$300 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 "EXTREME PAYOUT" 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 "EXTREME PAYOUT" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lot-

tery 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 "EXTREME PAYOUT" 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 "EXTREME PAYOUT" 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. 2153. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2153 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10	660,000	9.09
\$20	480,000	12.50
\$30	180,000	33.33
\$40	50,000	120.00
\$50	108,000	55.56
\$100	60,000	100.00
\$150	30,000	200.00
\$300	4,000	1,500.00
\$1,000	200	30,000.00
\$10,000	10	600,000.00
\$250,000	4	1,500,000.00

*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 3.82. 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. 2153 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. 2153, 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-201901984

Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 25, 2019



Scratch Ticket Game Number 2155 "Bonus Jackpot"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2155 is "BONUS JACKPOT". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2155 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2155.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 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, MONEYBAG SYMBOL, 2X SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$500, \$1,000 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. 2155 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
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	TRV
36	TRSX
37	TRSV
38	TRET

39	TRNI
40	FRTY
MONEYBAG SYMBOL	WIN
2X SYMBOL	DBL
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$40.00	FRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
\$1,000	ONTH
\$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 (2155), 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: 2155-0000001-001.

H. Pack - A Pack of "BONUS JACKPOT" 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 "BONUS JACKPOT" Scratch Ticket Game No. 2155.

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 "BONUS JACKPOT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 50 (fifty) Play Symbols. BONUS PLAY AREA: If a player reveals 2 matching prize amounts in the same BONUS PLAY AREA, the player wins that amount. BONUS JACKPOT PLAY AREA: 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 a player reveals a "MONEY-BAG" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "2X" Play Symbol, the player wins DOUBLE 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 50 (fifty) 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 50 (fifty) 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 50 (fifty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 50 (fifty) 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-three (23) 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 any 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 four (4) 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 three (3) times.

G. The "MONEYBAG" (WIN) and the "2X" (DBL) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "2X" (DBL) Play Symbol will 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., 20 and \$20).

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS JACKPOT" 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 "BONUS JACKPOT" Scratch Ticket Game prize of \$1,000 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 "BONUS JACKPOT" 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 "BONUS JACKPOT" 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 "BONUS JACKPOT" 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 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2155. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2155 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	768,000	9.38
\$10	1,008,000	7.14
\$20	192,000	37.50
\$50	48,000	150.00
\$100	30,900	233.01
\$500	1,500	4,800.00
\$1,000	80	90,000.00
\$100,000	4	1,800,000.00

*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 3.51. 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. 2155 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. 2155, 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.

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 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: June 25, 2019



Scratch Ticket Game Number 2179 "Veterans Cash"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2179 is "VETERANS CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2179 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2179.

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, \$\$ SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$30,000.

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. 2179 - 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
\$\$ SYMBOL	DBL
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$

\$100	ONHN
\$1,000	ONTH
\$30,000	30TH

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 (2179), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2179-0000001-001.

H. Pack - A Pack of the "VETERANS CASH" Scratch Ticket Game contains 125 Tickets. One Ticket will be folded over to expose a front and back of one ticket on each pack. Please note the packs will be in an A, B, C, and D configuration.

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 "VETERANS CASH" Scratch Ticket Game No. 2179.

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 "VETERANS CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-three (23) 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 "\$\$" Play Symbol, the player wins DOUBLE 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 twenty-three (23) 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 twenty-three (23) 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 twenty-three (23) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-three (23) 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 ten (10) 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 three (3) 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 two (2) times.

G. The "\$\$" (DBL) Play Symbol will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "\$" (DBL) Play Symbol will only appear as dictated by the prize structure.

I. Non-winning Prize Symbol(s) 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 "VETERANS CASH" Scratch Ticket Game prize of \$2.00, \$4.00, \$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 "VETERANS CASH" Scratch Ticket Game prize of \$1,000 or \$30,000, 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 "VETERANS CASH" 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 "VETERANS CASH" 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 "VETERANS CASH" 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 5,520,000 Scratch Tickets in Scratch Ticket Game No. 2179. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2179 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2	574,080	9.62
\$4	441,600	12.50
\$5	88,320	62.50
\$10	66,240	83.33
\$20	44,160	125.00
\$50	36,225	152.38
\$100	2,438	2,264.15
\$1,000	69	80,000.00
\$30,000	5	1,104,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.40. 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. 2179 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. 2179, 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-201902005

Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: June 26, 2019

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Public Utility Commission of Texas

Notice of Petition for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 17, 2019, for recovery of universal service funding pursuant to Public Utility Regulatory Act §56.025 and 16 Texas Administrative Code §26.406.

Docket Style and Number: Application of Border to Border Communications, Inc. to Recover Funds from the Texas Universal Service Fund, Docket Number 49637.

The Application: Border to Border Communications, Inc., seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to

Border to Border Communications, Inc. for calendar year 2019. Valley Telephone requests that the Commission allow recovery of funds from the TUSF in the amount of \$1,293,090 for calendar year 2019 to replace the projected reduction in FUSF revenue

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 49637.

TRD-201901919
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2019

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Teacher Retirement System of Texas

Award Notice - TRS contract No. 19-0000183

Per Texas Government Code §2254.030, the Teacher Retirement System of Texas (TRS) announces this notice of award of a consulting services contract for TRS Compensation Classification Review services, to Deloitte Consulting, LLP, 30 Rockefeller Plaza, New York, NY 10112. The consultant will analyze TRS' existing compensation structure, conduct a market study, and evaluate internal relationships and organizational structure to develop an agency-specific total compensation package. The term of the contract is June 11, 2019, through November 30, 2019. The contract total is \$497,000.00, with an option for an additional custom compensation survey not to exceed \$45,000. The consultant is required to present various documents and reports regarding the services to TRS between July 12, 2019, and November 22, 2019, including a final report.

TRD-201901979
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Filed: June 25, 2019

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Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html

Or visit www.txdot.gov, and under How Do I, choose Find Hearings and Meetings, then choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or (800) 68-PI-LOT.

TRD-201901989
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Filed: June 25, 2019

January - December 2020 Publication Schedule

Filing deadlines for publication in the *Texas Register* are 12 noon Monday for rules and 12 noon Wednesday for miscellaneous documents, rule review notices, and other documents. These deadlines are for publication. ***They are not related to posting requirements for open meeting notices.*** Because of printing and mailing schedules, documents received after the deadline for an issue cannot be published until the next issue. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

Issue Date	Deadline for rules by 12 noon	Deadline for other documents by 12 noon
January 3, 2020	<i>Wednesday, December 18, 2019*</i>	<i>Wednesday, December 18, 2019*</i>
January 10, 2020	Monday, December 30, 2019	<i>Monday, December 30, 2019*</i>
January 10, 2020	<i>2019 Annual Index</i>	
January 17, 2020	Monday, January 6, 2020	Wednesday, January 8, 2020
January 24, 2020	Monday, January 13, 2020	Wednesday, January 15, 2020
January 31, 2020	<i>Friday, January 17, 2020*</i>	Wednesday, January 22, 2020
February 7, 2020	Monday, January 27, 2020	Wednesday, January 29, 2020
February 14, 2020	Monday, February 3, 2020	Wednesday, February 5, 2020
February 21, 2020	Monday, February 10, 2020	Wednesday, February 12, 2020
February 28, 2020	<i>Friday, February 14, 2020*</i>	Wednesday, February 19, 2020
March 6, 2020	Monday, February 24, 2020	Wednesday, February 26, 2020
March 13, 2020	Monday, March 2, 2020	Wednesday, March 4, 2020
March 20, 2020	Monday, March 9, 2020	Wednesday, March 11, 2020
March 27, 2020	Monday, March 16, 2020	Wednesday, March 18, 2020
April 3, 2020	Monday, March 23, 2020	Wednesday, March 25, 2020
April 3, 2020	<i>2020 First Quarterly Index</i>	
April 10, 2020	Monday, March 30, 2020	Wednesday, April 1, 2020
April 17, 2020	Monday, April 6, 2020	Wednesday, April 8, 2020
April 24, 2020	Monday, April 13, 2020	Wednesday, April 15, 2020
May 1, 2020	Monday, April 20, 2020	Wednesday, April 22, 2020
May 8, 2020	Monday, April 27, 2020	Wednesday, April 29, 2020
May 15, 2020	Monday, May 4, 2020	Wednesday, May 6, 2020
May 22, 2020	Monday, May 11, 2020	Wednesday, May 13, 2020
May 29, 2020	Monday, May 18, 2020	Wednesday, May 20, 2020
June 5, 2020	<i>Friday, May 22, 2020*</i>	Wednesday, May 27, 2020
June 12, 2020	Monday, June 1, 2020	Wednesday, June 3, 2020
June 19, 2020	Monday, June 8, 2020	Wednesday, June 10, 2020
June 26, 2020	Monday, June 15, 2020	Wednesday, June 17, 2020
July 3, 2020	Monday, June 22, 2020	Wednesday, June 24, 2020

July 3, 2020	<i>2020 Second Quarterly Index</i>	
July 10, 2020	Monday, June 29, 2020	Wednesday, July 1, 2020
July 17, 2020	Monday, July 6, 2020	Wednesday, July 8, 2020
July 24, 2020	Monday, July 13, 2020	Wednesday, July 15, 2020
July 31, 2020	Monday, July 20, 2020	Wednesday, July 22, 2020
August 7, 2020	Monday, July 27, 2020	Wednesday, July 29, 2020
August 14, 2020	Monday, August 3, 2020	Wednesday, August 5, 2020
August 21, 2020	Monday, August 10, 2020	Wednesday, August 12, 2020
August 28, 2020	Monday, August 17, 2020	Wednesday, August 19, 2020
September 4, 2020	Monday, August 24, 2020	Wednesday, August 26, 2020
September 11, 2020	Monday, August 31, 2020	Wednesday, September 2, 2020
September 18, 2020	<i>Friday, September 4, 2020*</i>	Wednesday, September 9, 2020
September 25, 2020	Monday, September 14, 2020	Wednesday, September 16, 2020
October 2, 2020	Monday, September 21, 2020	Wednesday, September 23, 2020
October 2, 2020	<i>2020 Third Quarterly Index</i>	
October 9, 2020	Monday, September 28, 2020	Wednesday, September 30, 2020
October 16, 2020	Monday, October 5, 2020	Wednesday, October 7, 2020
October 23, 2020	Monday, October 12, 2020	Wednesday, October 14, 2020
October 30, 2020	Monday, October 19, 2020	Wednesday, October 21, 2020
November 6, 2020	Monday, October 26, 2020	Wednesday, October 28, 2020
November 13, 2020	Monday, November 2, 2020	Wednesday, November 4, 2020
November 20, 2020	Monday, November 9, 2020	<i>Monday, November 9, 2020*</i>
November 27, 2020	Monday, November 16, 2020	Wednesday, November 18, 2020
December 4, 2020	<i>Friday November 20, 2020*</i>	<i>Friday, November 20, 2020*</i>
December 11, 2020	Monday, November 30, 2020	Wednesday, December 2, 2020
December 18, 2020	Monday, December 7, 2020	Wednesday, December 9, 2020
December 25, 2020	Monday, December 14, 2020	Wednesday, December 16, 2020

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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