
TEXAS REGISTER

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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.

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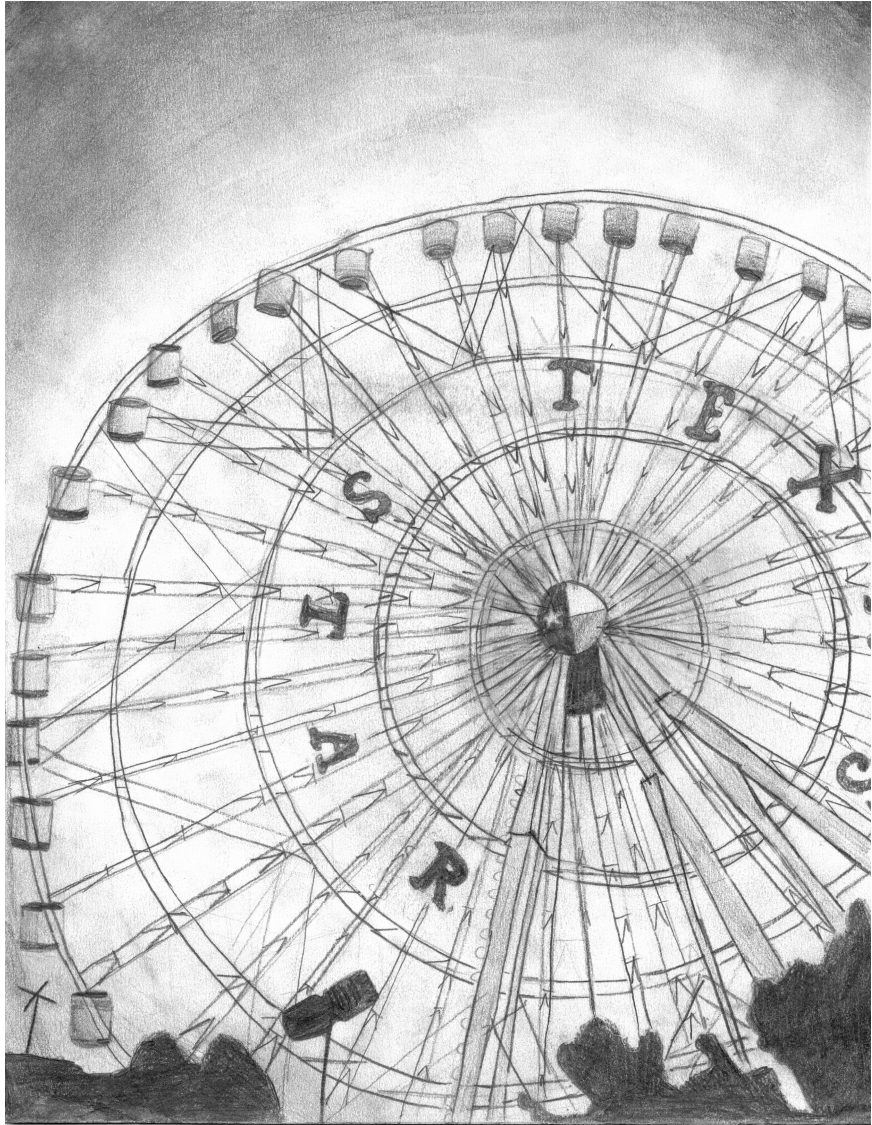
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THE GOVERNOR

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.

Appointments

Appointments for October 10, 2019

Appointed to the Texas Optometry Board, for a term to expire January 31, 2025, Judith Ann "Judy" Chambers of Austin, Texas (Ms. Chambers is being reappointed).

Appointed to the Texas Optometry Board, for a term to expire January 31, 2025, John Todd Cornett, O.D. of Amarillo, Texas (replacing Melvin G. "Mel" Cleveland, Jr., O.D. of Arlington, whose term expired).

Appointed to the Texas Optometry Board, for a term to expire January 31, 2025, Meghan A. Schutte, O.D., of Austin, Texas (replacing Virginia "Ginger" Sosa, O.D. of Uvalde, whose term expired).

Appointments for October 14, 2019

Appointed to the Sabine River Authority of Texas Board of Directors, for a term to expire July 6, 2025, Jeffrey D. "Jeff" Jacobs of Kaufman, Texas (Mr. Jacobs is being reappointed).

Appointed to the Sabine River Authority of Texas Board of Directors, for a term to expire July 6, 2025, Joshua A. "Josh" McAdams of Center, Texas (replacing David W. Koonce of Center whose term expired).

Appointed to the Sabine River Authority of Texas Board of Directors, for a term to expire July 6, 2025, Kevin M. Williams of Orange, Texas (replacing Clarence "Earl" Williams, Jr. of Orange whose term expired).

Appointments for October 15, 2019

Appointed to the Motor Vehicle Crime Prevention Authority for a term to expire February 1, 2025, Ashley M. Hunter of Austin, Texas (Ms. Hunter is being reappointed).

Appointed to the Motor Vehicle Crime Prevention Authority for a term to expire February 1, 2025, Katherine B. "Kit" Whitehill of Coppell, Texas (replacing Linda W. Kinney of Comfort, whose term expired).

Appointments for October 22, 2019

Appointed to the Teacher Retirement System of Texas Board of Trustees, for a term to expire August 31, 2025, Harry "Michael" Ball of Argyle, Texas (replacing Dolores Emilia Longoria Ramirez of San Benito, whose term expired).

Appointed to the Teacher Retirement System of Texas Board of Trustees, for a term to expire August 31, 2025, David Corpus of Humble, Texas (Mr. Corpus is being reappointed).

Appointed to the Teacher Retirement System of Texas Board of Trustees, for a term to expire August 31, 2025, Robert H. "Rob" Walls,

Jr. of San Antonio, Texas (replacing Joe Colonna, Jr., of Dallas, whose term expired).

Greg Abbott, Governor

TRD-201903886



Proclamation 41-3695

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that the severe weather event that began on October 20, 2019, has caused widespread and severe property damage, and threatens loss of life in Cass, Cameron, Collin, Dallas, Ellis, Erath, Hunt, Kaufman, Lamar, Panola, Rains, Rockwall, Rusk, Tarrant, Van Zandt and Wood counties.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties.

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

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

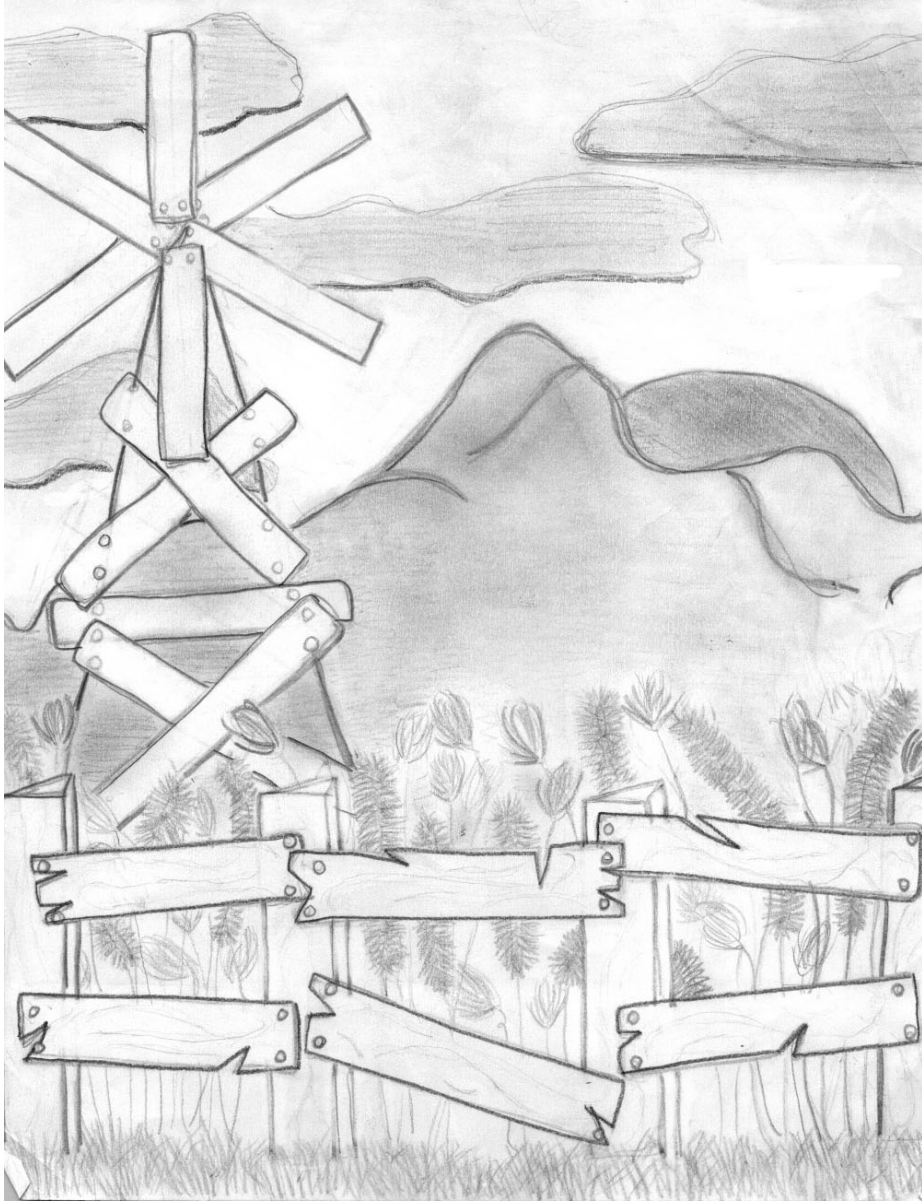
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 21st day of October, 2019.

Greg Abbott, Governor

TRD-201903885





THE ATTORNEY GENERAL

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

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

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

Opinions

Opinion No. KP-0274

The Honorable Morgan Meyer

Chair, General Investigating Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether provisions of the Dallas City Code regarding dangerous dogs conflict with chapter 822 of the Health and Safety Code (RQ-0287-KP)

S U M M A R Y

Subchapter D, chapter 822 of the Health and Safety Code governs dangerous dogs and incorporates local regulation. Under the home-rule amendment of the Texas Constitution, however, a municipality cannot adopt an ordinance that conflicts with or is inconsistent with state law.

Section 822.042 allows thirty days for an owner to comply with the applicable requirements for owning a dangerous dog. A municipal ordinance imposing a shorter compliance deadline cannot be harmonized with the statute and therefore the municipal ordinance provision would fall.

Subsection 822.0423(c-1) provides for an appeal bond in an amount established by the court. A municipal ordinance seeking to change the amount of an appeal bond is unenforceable. The section does not, however, purport to limit other fees or costs that a municipality may impose on an owner.

Though a municipal ordinance providing for the destruction of a dog running at large could be a valid exercise of a municipality's police power, the government's impoundment or destruction of personal property invokes the constitutional protection of due process of law. A municipal ordinance affording an owner no process to redeem the dog or to appeal certain determinations whatsoever would likely fail a procedural due process challenge. Moreover, section 822.0424 provides a right to appeal certain determinations made with respect to a dangerous dog and its owner. And subsection 822.042(e) expressly protects a dangerous dog from destruction during the pendency of such an appeal. A municipal ordinance providing for the destruction of a dangerous dog during the appeal is contrary to the statute and is unenforceable.

A municipality may exercise its powers only within its corporate limits unless its power is extended by law to apply to areas outside those lim-

its. Nothing in subchapter D authorizes a city to extend its dangerous dog ordinance outside of its city limits.

Opinion No. KP-0275

The Honorable William James Dixon

Navarro County Criminal District Attorney

Navarro County Courthouse

300 West 3rd, Suite 301

Corsicana, Texas 75110

Re: Whether probable cause affidavits that may identify child victims may be released to the public upon a request made to a justice of the peace (RQ-0288-KP)

S U M M A R Y

Article 15.26 of the Code of Criminal Procedure makes probable cause affidavits public information, but a court could conclude that subarticle 57.02(h) prohibits the disclosure of identifying information regarding a child sex offense victim from the affidavits in this case by a justice of the peace without a court order. Whether a justice of the peace could issue such an order depends on the nature of the underlying offense. A court could conclude that the two statutes may be reconciled through redaction of the identifying information.

Opinion No. KP-0276

The Honorable Bill Moore

Johnson County Attorney

Guinn Justice Center

204 South Buffalo Avenue, Suite 410

Cleburne, Texas 76033-5404

Re: Whether section 43.106 of the Local Government Code, requiring municipal annexation of county roads adjacent to annexed property, applies to voluntary annexations initiated pursuant to former section 43.028 of the Local Government Code (RQ-0289-KP)

S U M M A R Y

Section 43.106 of the Local Government Code requires a municipality that annexed any portion of a county road or an area abutting a county road by granting a petition under former section 43.028 to also annex the full width of the road and adjacent right-of-way.

Depending on the relief sought, a county could challenge a municipality's annexation under section 43.106 of the Local Government Code in an action in quo warranto, declaratory judgment, or both.

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

TRD-201903847

Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: October 22, 2019



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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 56. SKIMMERS

1 TAC §§56.1 - 56.6

The Office of the Attorney General ("OAG") proposes new rules, §§56.1 - 56.6, relating to best practices for motor fuel merchants to prevent, detect, and report the installation of payment card skimmers on their motor fuel dispensers.

BACKGROUND

The OAG proposes these rules in order to implement §1 of H.B. 2945 enacted in 2019 by the 86th Regular Session of the Texas Legislature. Specifically, §1 of H.B. 2945, created a new Chapter 607 of the Texas Bus. & Com. Code related to payment card skimmers on motor fuel dispensers. Chapter 607, which took effect September 1, 2019, requires motor fuel merchants to implement procedures to prevent, detect, and report the installation of skimmers on their unattended motor fuel dispensers. The statute further directs the OAG to adopt rules to establish practices for merchants to use to comply with those provisions. In accordance with §607.052 of the Texas Bus. & Com. Code, in drafting the proposed rule, the OAG considered emerging technology, compliance costs to merchants, and any impact the policies and procedures may have on consumers.

SECTION-BY-SECTION SUMMARY

Section 56.1 incorporates definitions from Chapter 607 of Texas Bus. & Com. Code and adds definitions for other terms used in the rules. The proposed definitions are intended to add clarity and specificity to the requirements of the rules.

Section 56.2 requires motor fuel merchants to implement and maintain written policies and procedures for complying with the proposed rules and to properly train employees to ensure they understand and will comply with those policies and procedures. Subsection (a) requires any merchant that has a fuel dispenser with an unattended payment terminal to implement and maintain written policies and procedures, consistent with the mandates of Chapter 607 of the Texas Bus. & Com. Code. Consistent with best practices in the area of data security and the recommendation of experts, the proposed rule requires the policies and procedures to include a plan of action that the merchant will follow upon the discovery of a skimmer. Subsection (b) requires merchants to conduct training for its employees to ensure that they understand the policies and procedures as well as how to comply with them. The proposed rule also requires merchants to include in the training background information regarding skimmers, and the harm that such skimmers can cause to both cus-

tomers and to the merchant. Understanding the harms posed by skimmers will help employees to understand the importance of complying with the merchant's policies and procedures. The proposed rule also requires training on recognizing suspicious activity and warning signs so employees can effectively prevent and detect skimmers. To ensure that employees comply with merchants' policies and procedures, the proposed rule also requires the training to cover disciplinary consequences that employees may face if they do not comply.

Section 56.3 sets out required practices for all merchants that have a fuel dispenser with an unattended payment terminal. Paragraph (1) requires merchants to implement and maintain the policies, procedures, and training detailed in proposed §56.2. Paragraph (2) requires merchants to affix to or install on each door or panel that provides access to an interior portion of the dispenser from which the payment terminal or any electronic component of the payment terminal may be accessed, a lock requiring a key unique to the merchant's place of business. One characteristic that makes fuel dispensers attractive to criminals is that they have historically been manufactured and installed to be accessible with a universal key. Criminals can therefore open many motor fuel dispensers using just a few keys. The proposed rule would require merchants to utilize locks with unique keys, while providing merchants the flexibility to use the same key on all dispensers at the same business location. A merchant that has multiple business locations, however, would need to use a different key for each location, in part to ensure that if a key is compromised at one location, it would not affect the security of dispensers at other locations.

Paragraph (3) of proposed §56.3 requires merchants to maintain a log of all persons who do work on the forecourt. In order to avoid detection, criminals sometimes impersonate technicians working on the fuel dispenser. Requiring all persons who are working on the forecourt to check in with the merchant and sign a maintenance log will allow employees to quickly recognize when unauthorized persons are accessing the fuel dispensers.

Paragraph (4) of proposed §56.3 requires merchants to use tamper-evident security labels to secure every opening that provides access to an interior portion of a dispenser from which a payment terminal or any electronic component of a payment terminal may be accessed. Using tamper-evident security labels will allow merchants, as well as consumers, to see when the pump has been opened without authorization. Unfortunately, not long after merchants started using security labels, criminals started buying and carrying their own labels so that they could remove the merchant's label, open the dispenser, and then replace the label with a similar looking label. The proposed rule, therefore, requires merchants to use numbered security labels, so that the merchant can confirm that the number on the security label on

the dispenser matches the number on the label that the merchant put on the dispenser.

Paragraph (5) of proposed §56.3 requires merchants to conduct a thorough inspection of the exterior of each fuel dispenser at least once per day. During this inspection, merchants are required to conduct a visual inspection of the dispenser, looking for signs that a skimmer has been installed. Today, most skimmers are installed inside the pump and are not visible from the outside. Merchants are therefore required to look for signs that the dispenser has been opened, including scratches, pry marks, drilled holes, and other signs that the dispenser has been tampered with. In addition, as it becomes harder to get into the dispenser, and as the technology inside the dispenser gets harder to compromise, it is likely that criminals will revert to placing skimmers on the outside of the dispenser. Therefore, regardless of how diligent a merchant is and how well they protect the inside of the dispenser, it remains vital that the merchant continue to inspect the exterior of the dispenser for skimmers, shimmers, deep-insert skimmers, overlays, and other items that may have been installed on the exterior of the dispenser. It is also critical that every time the merchant does an inspection, the merchant inspects the tamper-evident security labels to confirm that the number on the label matches the merchant's log and that the label has not been cut or tampered with.

Criminals sometimes resort to extreme measures to access fuel dispensers. For example, there have been reports that criminals have drilled a hole in a dispenser door to install a skimmer and then covered the hole with a sticker or a leaflet holder. The rule therefore requires merchants to maintain a photo of its dispensers that employees can review and compare to the dispenser the employee is inspecting. The proposed rule provides merchants discretion regarding how and where to maintain the photo. Some may choose to print out the photo and post it on a bulletin board behind the counter, while others may keep a copy in their written policies and procedures, and others may maintain the photo electronically. The proposed rule gives merchants the flexibility to determine the best way to maintain the photo, so long as the photo is easily accessible to employees conducting the dispenser inspections. Moreover, to the extent that all dispensers are uniform in appearance (e.g., have the same stickers, leaflets, etc. in essentially the same position on each dispenser), the merchant only needs to maintain a photo of a single dispenser.

Many experts recommend inspections even more frequently than daily, such as three times a day or every shift change. More frequent inspections allow for faster detection of skimmers. In addition, some criminals install skimmers for less than 24 hours, in order to avoid detection. Nevertheless, in order to limit the burden on small businesses and to give merchants sufficient flexibility, the proposed rule only requires that merchants conduct such inspections at least once per day. The OAG encourages merchants to conduct inspections more frequently than once per day. The OAG cautions, however, that the quality of the inspections is more important than the quantity. The OAG believes that less frequent, but more thorough inspections are more likely to detect skimmers than inspections that are performed frequently, but less thoroughly.

Paragraph (5) of proposed §56.3 further requires merchants to maintain a log of all inspections, documenting the date and time of the inspection as well as the name of the person who conducted the inspection. Although not required by the proposed rule, the OAG recommends that inspections be conducted by

different employees at least periodically. For example, if a merchant conducts more than one inspection per day, it is recommended that the inspections be conducted by at least two different employees. If a merchant only conducts inspections once a day, it is recommended that no single employee conduct inspections on consecutive days. This will help limit the likelihood that an employee will become careless in the inspection process and will help limit the risk that the person conducting the inspections is complicit with persons installing skimmers. However, because some small businesses may have a limited number of employees, the proposed rule does not require that the inspections be conducted by multiple employees.

If an inspection reveals anything suspicious, signs that a dispenser has been opened or tampered with, or evidence that a skimmer has been installed in or on a dispenser, subparagraph (5)(F) of proposed §56.3 requires the merchant to disable the dispenser and to take appropriate steps to ensure that customers do not try to use the payment terminal that may include a skimmer. The merchant must keep the dispenser disabled until it has been manually inspected by a person trained in the identification and detection of skimmers. As with the dispenser's exterior, the proposed rule requires the merchant to maintain a photo of the interior of the dispenser that the person conducting an inspection may use to help determine whether any foreign object has been installed. And as with the photo of the exterior, the proposed rule provides merchants with discretion regarding how the merchant will maintain the photo of the interior.

In order to minimize the impact of the proposed rule on small businesses in remote areas of the state, where it may be difficult or expensive to have a service technician travel to the merchant's place of business, the proposed rule gives merchants discretion regarding how to comply with the rule. The manual inspection may be conducted by a service technician or an employee, so long as the person has been trained in the detection of skimmers. Moreover, the proposed rule does not specify how, where, or by whom such training must occur. The training does not have to be a formal class. It could be sufficient to have a service technician or experienced law enforcement officer come to the merchant's place of business and train employees on how to identify and detect skimmers on the merchant's own dispensers. It may be sufficient thereafter for experienced employees to train new employees.

In addition, paragraph (7) provides that if shutting down a dispenser would cause a merchant hardship or substantially disrupt the merchant's business, the merchant need not completely shut down the dispenser, but can instead disable the payment terminal and take steps to prevent consumers from trying to use the payment terminal. The OAG has provided this flexibility to accommodate small businesses that may have only a couple of dispensers. Instead of completely disabling the dispenser, resulting in lost business and potentially negatively impacting consumers, the merchant may cover the payment card slot and direct customers to pay inside the merchant's place of business.

Paragraph (6) of proposed §56.3 requires merchants to monitor its dispensers and payment terminals for high levels of invalid payment card read errors, dispenser offline messages, or other indications of problems accepting payment cards at the pump. These could be signs that a skimmer has been installed on the dispenser. If the merchant detects suspicious activity, the proposed rule requires the merchant to disable the affected dispenser until a person trained in the detection of skimmers has conducted a manual inspection of the dispenser. Similarly, the

merchant may be contacted by a card brand, a payment processor, a financial institution, a law enforcement officer, or a representative of the Center, informing the merchant that the merchant's place of business appears to be a common point of purchase for fraudulent activity. The proposed rule requires that if the merchant is notified by someone else that it may be a common point of purchase for fraudulent activity, the merchant must disable the affected dispenser until a person trained in the detection of skimmers has conducted a manual inspection of the dispenser. Just as under subparagraph (5)(F), paragraph (6) gives the merchant discretion regarding whether to have the dispenser inspected by a service technician or an employee who has been trained in the identification and detection of skimmers. Paragraph (7) also gives the merchant the ability to just disable the payment terminal and have customers pay inside if shutting down the dispenser would cause a hardship or substantially disrupt the merchant's business. Paragraph (8) requires the merchant to maintain a log of all inspections conducted pursuant to subparagraph (5)(F) or paragraph (6).

Section 56.4 sets out practices a merchant must follow if a skimmer is discovered on the merchant's motor fuel dispensers, referred to as a skimmer breach, on more than two occasions in a 24-month period. If a merchant diligently follows the practices required by proposed §56.3, it is unlikely that the merchant will experience a skimmer breach on three different occasions within a 24-month period. If a skimmer is discovered on three different occasions, it is an indication either that the merchant is not carefully following the requirements of proposed §56.3 or that the merchant's location is at an increased risk for having skimmers installed on its dispensers. In either event, it is reasonable to require the merchant to implement additional practices to prevent further skimmers from being installed on its dispensers.

Paragraph (1) of proposed §56.4 requires merchants, within 30 days of a third skimmer breach, to implement a program to electronically monitor their dispensers. In particular, the merchant must install on each dispenser an electronic monitoring device that will detect when the dispenser is opened without authorization, immediately disabling the dispenser and either sounding an audible alarm or sending a notification to the merchant. If the device sounds an audible alarm, the alarm must continue to emit an audible alert at least every 30 seconds until the merchant deactivates the alarm. If the device sends a notification, the notification must be sent to the merchant's owner, an executive of the merchant, or to a supervisor that the owner or executive has designated. This requirement ensures that notification goes to someone with sufficient authority to implement an appropriate response. However, this requirement does not exclude the possibility that notification could also be sent to a cashier or other employee. The proposed rule also requires that the electronic monitoring device create a log of every event that occurs on the dispenser. For example, the device must log every time that it is armed or disarmed and every time that it is triggered. The merchant must monitor the log for suspicious behavior, like the alarm being disarmed at inappropriate times. After the device has been triggered and the dispenser disabled, the dispenser must remain inoperable until it has been inspected by a person properly trained in the identification and detection of skimmers. The rule gives the merchant discretion to have the inspection conducted by a service technician or an employee, so long as the inspector is trained in the identification and detection of skimmers.

Pursuant to proposed §56.4, merchants who have experienced three skimmer breaches in a 24-month period are required to

install electronic monitoring devices only on dispensers that are not EMV compliant. Instead of installing electronic monitoring devices on its dispensers, a merchant may decide to upgrade the payment terminals on its dispensers to be EMV compliant. Independent of this rule, most U.S. payment networks (e.g., Visa, Mastercard, American Express, Discover Card) have set a deadline of October 1, 2020, for all motor fuel dispensers to be EMV compliant. Merchants who do not have EMV compliant dispensers by October 1, 2020, will likely be liable for card fraud that is committed at the dispensers. Although the cost to upgrade may be significant, the cost of card fraud for which the merchant will become responsible if they fail to upgrade is probably more significant. Merchants, therefore, have a strong incentive to upgrade their dispensers to be EMV compliant independent of this rule.

A merchant who installs an electronic monitoring device or upgrades to EMV compliant dispensers is not required to use tamper-evident security labels pursuant to paragraph (4) of proposed §56.3.

For merchants to whom the rule applies, paragraph (2) of proposed §56.4 requires the merchant to have the interior of each dispenser inspected by a person trained in the identification and detection of skimmers at least once a month. Paragraph (3) requires the merchant to maintain a log of all inspections required by proposed §56.4 and to retain such logs for a minimum of 12 months.

The OAG considered imposing the obligations in §56.4 on all merchants with an unattended payment terminal on a motor fuel dispenser. Such practices are strongly encouraged by many experts and law enforcement personnel. Because of the costs such practices might impose on small businesses and micro-businesses, however, the OAG has decided to impose these obligations only on merchants who have been subject to more than two skimmer breaches.

Section 56.5 sets out measures merchants must follow if they experience a skimmer breach on more than four occasions in a 24-month period. If a skimmer is discovered on the merchant's dispensers on five different occasions in a 24-month period, it is likely an indication that the merchant is not following one or more of the requirements of proposed §§56.3 and 56.4 or that the merchant's location is at a very high risk for having skimmers installed on its dispensers. Whatever the reason, it is reasonable to require such merchants to implement additional practices to prevent further skimmers from being installed on its dispensers.

Paragraph (1) of proposed §56.5 requires merchants, within 30 days of a fifth skimmer breach, to install and maintain high resolution video cameras. The cameras must be positioned in such a way that they will capture both images of license plates of vehicles entering and exiting the dispenser area, and images of persons pumping gas at the dispenser. The proposed rule requires all such images to be captured at a minimum resolution of 60 pixels per foot. Requiring a minimum resolution of 60 pixels per foot is likely to ensure that the images are of sufficient clarity to provide beneficial evidence in related law enforcement investigations. In order to ensure that this video footage is available for any relevant law enforcement matter, the rule requires merchants to retain the video footage for 31 days. In addition to providing valuable evidence, the mere presence of the video cameras will provide a strong deterrence against the installation of skimmers.

Paragraph (2) of proposed §56.5 requires merchants, within 30 days of discovering a skimmer on the fifth different occasion, to install and maintain proper lighting on the forecourt. In particular, the rule requires merchants to install lighting around the dispensers and under any canopy such that the minimum horizontal illuminance at grade level is 10 footcandles. Although this is a very modest level of required lighting, it should serve the purposes of the rule, which include providing enough light for video surveillance cameras and to provide enough light so that persons accessing fuel dispensers can be clearly seen by others, including other vehicles passing by. For marketing and promotional reasons, many, if not most, merchants already maintain lighting that meets the minimum required by the proposed rule.

Section 56.6 sets out practices that a merchant who discovers a skimmer on one of its dispensers must take. The proposed rule prohibits the merchant from touching the skimmer in order to avoid compromising or contaminating any physical evidence that a criminal may have left. The merchant is required to immediately disable both sides of the fuel dispenser, notify law enforcement, and take steps to protect the dispenser from tampering until law enforcement arrives. The merchant is also required to notify the Department within 24 hours. The proposed rule also requires the merchant to run a receipt for the last dispenser transaction on the compromised dispenser, and to preserve all video surveillance and logs related to the compromised dispenser. The proposed rule also requires the merchant to cooperate with law enforcement, the Department, and the Center in the investigation of the skimmer, including allowing access to the dispenser so that the skimmer may be removed. Recognizing that disabling the dispenser for an extended period could adversely affect the merchant, especially merchants that qualify as small businesses and micro-businesses, the proposed rule provides the merchant discretion to remove the skimmer itself if neither law enforcement nor the Department has contacted the merchant within 24 hours of the merchant's notification to the Department. If the merchant removes the skimmer, the rule requires that the merchant take certain steps to maintain the integrity of the evidence. This includes wearing gloves to remove the skimmer, bagging the skimmer, and securing the skimmer for later pick-up by law enforcement.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Jennifer Jackson, Chief of the Consumer Protection Division of the OAG, has determined that for the first five-year period the proposed rules are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments, under Texas Gov't Code §2001.024(a)(4), as a result of enforcing or administering these new rules, as proposed.

PUBLIC BENEFIT/COST NOTE

Ms. Jackson has determined, under Texas Gov't Code §2001.024(a)(5), that for the first five-year period the new rules are in effect, the public benefit of the rule will be a significant reduction in the number of skimmers installed on fuel dispensers in the State of Texas. Skimmers on motor fuel dispensers have become a massive problem in Texas over the last few years. Skimmers are commonly discovered by many different entities, including state regulators, local law enforcement agencies across the state, service technicians, and merchants themselves. Unfortunately, before H.B. 2945, there was no clear duty for merchants or service technicians to report skimmers they found. There was also no centralized location where skimmers were reported. As a result, there is no good data on the entire scope of the problem. What data there is, however, suggests

that Texas is a hotbed for criminal enterprises committing card fraud by installing skimmers on motor fuel dispensers.

For example, a representative of Wex, Inc., a provider of payment processing and information management services based in the State of Maine, traveled to Texas to testify in support of H.B. 2945. In his testimony, the witness from Wex, Inc., testified that of the company's total nationwide fraud losses attributable to skimmers, 35 to 42 percent occurred in Texas. Testimony from detectives with the Houston Police Department and the Tyler Police Department was also presented at the hearing. Both detectives testified that Houston is a major hub for organized crime gangs involved in installing skimmers on fuel dispensers, and that those crime gangs have spread to other parts of Texas. The head of the Financial Crimes Unit of the Tyler Police Department testified that in the last two and one-half years, the Tyler Police Department has made over 45 felony arrests related to credit card skimming at gas stations. Similarly, the detective from the Houston Police Department testified that the motor fuel skimming problem involves hundreds of millions of dollars and that the Houston Police Department has thousands of suspects.

The scope of Texas' skimming problem is also evidenced by the number of skimmers found by the Texas Department of Agriculture ("TDA") on an annual basis. From 2017 through August 2019, TDA generally only inspected fuel dispensers for skimmers after it received a complaint alleging that there may be a skimmer in a fuel dispenser, and even then, TDA could only inspect the interior of a dispenser with the consent of the merchant. Nevertheless, in 2017 TDA found more than 40 skimmers in fuel dispensers in Texas, on 31 different occasions. On five other occasions, TDA did not find a skimmer at the time it inspected the dispenser but was informed that a skimmer had been removed before they arrived. In 2018, TDA found more than 60 skimmers on 39 different occasions. On another 16 occasions, TDA was informed that at least one skimmer was removed before TDA's inspection. From January 1, 2019, through August 20, 2019, TDA found more than 110 skimmers on 64 different occasions. Fourteen additional times TDA was told that a skimmer was removed before the inspection.

Another good indication of the scope of the problem comes from a nationwide initiative the U.S. Secret Service carried out in November 2018. Over the Thanksgiving holiday, the Secret Service and its partners conducted inspections of over 400 gas stations in 16 states. During those searches, nearly 200 skimmers were recovered from inside fuel dispensers. With more than 14,000 gas stations in the State of Texas, the ratio of one skimmer for every two gas stations suggests there could be nearly 7,000 skimmers in fuel dispensers in Texas at any one time.

Although the number of skimmers found or reported to law enforcement officials is significant, most skimmers are likely discovered directly by merchants or by the service technicians the merchants retain to maintain their dispensers. For example, one large petroleum service company estimates that its technicians on average find at least one skimmer per day. Some merchants and service technicians notify local law enforcement when a skimmer is located. Others, however, do not notify any law enforcement agency, but simply remove and discard the skimmer. Therefore, there is no way to know the full scope of the problem.

Depending on how long a skimmer is installed on a fuel dispenser, each skimmer can result in the victimization of hundreds or thousands of consumers. Each victim will have to spend time

and effort to reverse fraudulent charges they incur and clear the negative impact that such charges can have on their credit report. Such efforts can sometimes take months. And the fraudulent charges themselves can cause severe harm, especially for consumers paying by debit card. Criminals often withdraw thousands of dollars from the victim's bank account before being detected. Even though the consumer's financial institution typically restores the consumer's money, this process can take weeks and the financial impact on consumers living paycheck to paycheck can be catastrophic.

Although skimmers cause significant harm to individual consumers, the entities that take the biggest financial loss from skimmers are generally the affected financial institutions. The Texas Bankers Association ("TBA") and the Independent Bankers Association of Texas ("IBAT") estimate that banks in Texas could be losing in excess of \$100 million per year in card fraud. This does not include losses to credit unions who are also being hit hard by motor fuel skimmers. While not all card fraud is attributable to skimmers, and most financial institutions do not have a way to specifically allocate losses attributable to skimming, banks responding to a survey conducted by TBA and IBAT estimated anywhere from less than 10% of their card fraud losses to well over 50% of such losses were attributable to skimming on fuel dispensers.

Although the OAG recognizes that the proposed rules will not eliminate skimmers on fuel dispensers, the OAG does expect that compliance with the rules will significantly decrease both the number of skimmers installed on fuel dispensers and the amount of time a skimmer may remain installed on a fuel dispenser, thereby minimizing the number of victims who experience financial harm as a result of such skimmers.

Although the proposed rules strive to minimize the impact they will have on the motor fuel merchant community, Ms. Jackson has determined that for each year of the first five-year period the new rules are in effect, there will be a probable economic cost to merchants who are required to comply with the rule.

The most significant economic impact the rule will have on merchants will come from the requirement in paragraph (2) of proposed §56.3 that all merchants install locks on their dispensers with a key unique to that location. Because the rule requires that locks be changed immediately, all expenses related to this requirement should come in the first year the rule is in effect.

Experts have recommended unique locks on fuel dispensers for several years. As a result, it is likely that approximately 35% of merchants have already installed locks with a unique key. Therefore, approximately 65% of merchants will be required to change their locks or to add new locks that meet the specification. Merchants have wide discretion regarding how to comply with this proposed rule. For example, almost any locksmith can change or add a lock on a fuel dispenser. Similarly, merchants can call their service technician to install compliant locks. Finally, merchants can purchase locks online and either install the locks themselves or have a service technician install the locks. Locks purchased online are typically designed so that the merchant can install the locks without any assistance.

Fuel dispenser locks can be found online for as little as \$7.25 per lock. Most fuel dispenser locks, however, appear to be priced between \$25 - \$35 per lock. Many models of fuel dispensers contain four doors (two on each side of the dispenser) providing access to an interior portion of the dispenser from which the payment terminal or its electronic components may be accessed.

Therefore, if a merchant buys the locks online and installs the locks itself, the merchant can comply with this proposed rule for as little as \$33 per fuel dispenser. Using the more common average price per lock of \$30, the cost for a merchant to comply with the rule could be \$130 per fuel dispenser. These costs include the cost of shipping the lock to the merchant's place of business and the cost of unique keys. This cost would be the same for any merchant in the state, whether the merchant is a small business, a micro-business, or a merchant in a rural community.

If a merchant is unable to change the locks itself, the merchant can have the locks changed by a locksmith or service technician. Depending on the type of lock chosen and the number of dispensers the merchant has, the OAG estimates that a merchant can have a locksmith or service technician change a merchant's dispenser locks for somewhere between \$90 to \$200 per fuel dispenser. For merchants in some remote rural communities, the cost to have a locksmith or service technician travel to the merchant's place of business could significantly increase these costs. However, as noted above, most of the fuel dispenser locks are designed to be installed easily, so merchants in remote rural communities should be able to install the locks themselves or should be able to find someone in the local community that could install the locks for a reasonable price.

Paragraph (4) of proposed §56.3 will also likely impose tangible costs on all merchants. This provision requires merchants to use tamper-evident security labels on its dispensers. Tamper-evident security labels can be purchased online, including from the merchant's own trade association, the Association for Convenience and Fuel Retailing (NACS), formerly known as the National Association of Convenience Stores. Labels purchased from NACS cost fourteen cents per label. Many fuel brands also offer compliant tamper-evident security labels at a similar price point. Generic, unbranded labels can also be purchased online for as little as 1 cent per label. The proposed rule requires the same doors that require unique locks to also be secured with a tamper-evident security label. For most dispensers, this means that four labels are required for each dispenser. In most cases, the doors on the dispenser only need to be opened to service the dispenser, to inspect the dispenser for skimmers, and to change the receipt paper on the dispenser. Most merchants probably only open some doors on each dispenser once every two weeks, at most. If a merchant opened every door on its dispensers once every two weeks, the merchant would incur costs of approximately \$15 per year, per dispenser. Even if merchants were diligent and conducted inspections of the interior of its pumps at least once per week, the merchant would incur costs of less than \$30 per year, per dispenser. Even if a merchant conducted daily inspections or changed its security labels every day, the merchant would incur costs of approximately \$200 per year, per dispenser. These costs would be the same for any merchant, whether or not the merchant is a small business.

The obligation to protect dispensers using tamper-evident security labels only applies to dispensers that are not EMV compliant. Therefore, the cost that such requirement will impose on merchants in years two through five of the proposed rule depends on how many merchants meet the October 1, 2020, deadline set by the card brands to be EMV compliant. If 100% of merchants meet the deadline, the proposed rule would not have any economic impact after the first year. The OAG hopes that all merchants meet the EMV compliance deadline and strongly encourages all merchants to meet the deadline. It is likely, however, that not all merchants will meet the deadline. Therefore, the obligation to protect dispensers using tamper-evident security labels

will likely continue to have an economic impact on some merchants for at least the first couple of years after the rule takes effect.

Paragraph (1) of proposed §56.4, which requires electronic monitoring devices in some circumstances, could also impose a cost on some merchants. As noted above, the OAG considered requiring all merchants to install electronic monitoring devices on their dispensers. However, in order to minimize the costs imposed on small businesses, the application of proposed §56.4 is limited to only those merchants who have experienced more than two skimmer breaches in a 24-month period. The expectation is that most merchants, if they comply with the requirements of proposed §56.3, will not experience multiple skimmer breaches in a 24-month period. The costs imposed by the requirements of proposed §56.4, therefore, will only be borne by those merchants that are known to pose a high risk of having skimmers installed on the merchants' dispensers. That elevated risk justifies the costs of the electronic monitoring device.

In order to avoid creating a preference for any one company and in order to provide merchants multiple options and discretion, the OAG has drafted the proposed rule in a manner that ensures that merchants are able to select from any of several companies that sell electronic monitoring devices that meet the criteria set out in proposed §56.4. Based on its review of the products currently available on the market, most merchants should be able to install compliant electronic monitoring devices on their dispensers for approximately \$800 to \$1100 per dispenser. Depending on several factors, it is possible that merchants could comply with the rule for as little as \$500 per dispenser. But it is also possible that some merchants, especially if they have less than four dispensers, could pay more per dispenser.

Paragraph (1) of proposed §56.4 only requires merchants to install an electronic monitoring device on a dispenser that is not EMV compliant. Therefore, rather than spending money to install an electronic monitoring device, merchants could instead decide to invest in upgrading their dispensers to be EMV compliant. While in most cases it will cost merchants more to upgrade their dispensers to be EMV compliant, merchants are already under a separate obligation - or at least severe pressure - independent from this rule to be EMV compliant by October 1, 2020.

Proposed §56.5 may also impose costs on a small group of merchants. Proposed §56.5 only applies to merchants who have experienced a skimmer breach on five different occasions during a 24-month period. This will likely apply to very few merchants because it is unlikely that a merchant complying with §§56.3 and 56.4 would suffer five skimmer breaches in a 24-month period. For a merchant who must comply with the rule, the merchant is likely to incur costs to install or upgrade its security surveillance. The merchant may also have to install or upgrade its forecourt lighting. The cost to upgrade a merchant's video surveillance and lighting is very difficult to estimate because there are many different factors that may affect the price, including the number of dispensers, the layout of the forecourt, and the availability and/or location of electrical connections. Nevertheless, the OAG believes that most merchants could install a new video surveillance system that meets the requirements of paragraph (1) of proposed §56.5 for approximately \$3,500 to \$4,500 per dispenser. The OAG calculated this estimate based on a proposed security camera configuration that includes two cameras per dispenser (one on each side of the dispenser) specially designed to capture the license plate, and one to two overhead dome cameras per dispenser to capture video of persons dispensing gas. Most

merchants likely already have forecourt lighting that meets the minimum requirements of paragraph (2) of proposed §56.5. But even for merchants that have no lighting at all, the OAG estimates that merchants could install compliant lighting for \$600 to \$1000 per dispenser as long as electricity is readily accessible. The OAG calculated this estimate based on a proposed lighting configuration that included two to three light fixtures per dispenser, which should be sufficient to achieve a minimum horizontal illuminance of 10 footcandles.

The rules will also impose additional indirect costs on merchants who must comply with the rules. For example, the proposed rules require all merchants to implement written policies and procedures and to conduct training on those policies. Such requirements are not anticipated to impose significant costs on merchants. Most, if not all, merchants already have written policies and procedures covering various aspects of their businesses. The proposed rules do not prescribe specific content or length of the policies and procedures a merchant must adopt, making it relatively easy and inexpensive for merchants to adopt policies and procedures related to complying with the proposed rules. Similarly, virtually all merchants regularly train new employees on the operations of the business, so adding material specific to skimmers and compliance with the proposed rules should not significantly add to the cost of training new employees. It is also likely that merchants already have a method for communicating updated policies and procedures to employees and training them on such policies and procedures. The rules do not prescribe specific practices for notifying employees of updated policies related to skimmers and providing updated training. Merchants can use their current practices for informing employees of new policies or procedures to provide employees new information about skimmers and the merchants' policies to prevent, detect, and report the installation of skimmers on their fuel dispensers.

The proposed rules also require merchants to conduct daily inspections of the exterior of all fuel dispensers. The OAG estimates that someone who is familiar with a dispenser can conduct a thorough inspection of the exterior of the fuel dispenser in one to two minutes. Even when adding the few minutes needed for preparation, recordkeeping, and going to and from the dispensers, the OAG thinks that for most merchants such costs can likely be absorbed by current personnel.

The proposed rules also require merchants to conduct inspections of the interior of dispensers in several circumstances. For example, when daily inspections reveal signs of unauthorized access or tampering, when merchants detect suspicious payment card reader errors or are notified that they may be a common point of purchase for fraud, or when an electronic monitoring device is triggered, merchants must conduct an inspection that includes inspecting the interior of the dispenser. Merchants who are subject to proposed §56.4 must also conduct monthly inspections of the interior of the dispenser. All of these inspections must be conducted by a person who has been specifically trained in the identification and detection of skimmers. The OAG anticipates that most merchants will rely on employees to conduct these inspections. Persons trained to inspect the interior of fuel dispensers can generally conduct such an inspection in five to ten minutes, although some types of pumps may take longer. And the type of training required to conduct such inspections can likely be accomplished in one to two hours. Therefore, it is unlikely that the required inspections will impose a significant cost on merchants.

It should also be noted that H.B. 2945 and the proposed rules only apply to merchants with unattended payment terminals on fuel dispensers. Merchants, including those that qualify as small businesses and micro-businesses, could avoid the rules and any associated costs imposed by the rules by disabling all payment terminals located on their fuel dispensers and by requiring consumers to pay inside. Similarly, merchants could limit costs by reducing the number of dispensers with a payment terminal.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

There is no reasonably forecasted effect on local economies for the first five years that the proposed rules are in effect. Therefore, no local employment impact statement is required under Texas Gov't Code §2001.022.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Ms. Jackson has also determined that for each year of the first five years the proposed rules are in effect, there will be no reasonably forecasted adverse economic effect on rural communities as a result of implementing these rules.

Ms. Jackson has determined, however, that for each year of the first five years the proposed rules are in effect, there will be a forecasted adverse economic effect on small and micro-businesses. Based on the Texas Comptroller's calculation of the number of small businesses in each North American Industry Classification System, there are 4,715 small businesses in the categories of gasoline stations to whom the proposed rules likely apply. Accordingly, approximately 95% of the merchants to whom the proposed rules apply are small businesses, and many are likely micro-businesses. The economic impact on small businesses and micro-businesses will be the same as the impact on all merchants as outlined above. In particular, in the first year, merchants who qualify as small businesses may incur the cost of changing the locks or adding locks on their fuel dispensers. In the first year, such merchants will also incur the costs necessary to apply tamper-evident security labels on their fuel dispensers. Those merchants who do not upgrade their dispensers to be EMV compliant will continue to incur the costs related to tamper-evident security labels in subsequent years. Some merchants who qualify as small businesses may also suffer three skimmer breaches within a 24-month period. Those merchants may also incur the cost to install electronic monitoring devices on their dispensers, unless they choose to upgrade their dispensers to be EMV compliant. Some merchants who qualify as small businesses may suffer five skimmer breaches within a 24-month period, in which case they would likely incur the costs of installing appropriate video surveillance equipment and proper lighting. Merchants who qualify as small businesses would also incur the indirect costs described above, such as costs to revise the merchant's policies and procedures, costs to train employees, and costs to conduct the required dispenser inspections.

In drafting the rules, the OAG has sought to minimize the impact on small businesses. To accomplish that, the OAG conducted a regulatory flexibility analysis, which is presented throughout the rule proposal notice and which has resulted in proposed rules that employ a three-tiered approach to compliance. Each tier represents an alternative method to achieve the purpose of the rules. The three tiers of compliance are based on risk factors, and lower-tier compliance is less expensive than higher-tier compliance. As a result, a small business with lower risk would be required to implement only the low-cost first-tier measures, and

most small businesses would avoid the more costly measures of the second and third tiers by implementing the first-tier measures. An example of the flexibility analysis the OAG applied appears in the following discussion concerning the proposed requirements that a merchant install certain devices and conduct frequent inspections: Many experts recommend electronic monitoring devices and video surveillance as the two most effective measures that can be taken to prevent and detect skimmers on fuel dispensers. The OAG considered making one or the other of such measures mandatory for all merchants. In order to reduce the impact on small businesses, however, the OAG decided not to make them mandatory for all merchants, but rather only require them if less costly alternatives prove ineffective. Similarly, many experts argue that adoption of EMV will dramatically lower the incidences of skimmer breaches. The OAG, therefore, considered mandating adoption of EMV on fuel dispensers no later than October 1, 2020. This would have coincided with the deadline set by the card brands but would have made upgrading mandatory, rather than a merchant's business decision regarding liability shift. Because upgrading to EMV may be cost prohibitive for some small businesses, the OAG decided not to mandate compliance with EMV. Moreover, because upgrading to EMV can be costly for small businesses and because EMV provides similar protection from skimmers, the OAG has drafted the rule such that if a merchant upgrades to EMV, the merchant is not required to install an electronic monitoring device, one of the more costly measures required by the proposed rule. Nor would the merchant be required to use tamper-evident security tape, further limiting the burden on the merchant. The OAG also considered requiring that all inspections of the interior of the dispenser be conducted by licensed service technicians. However, the OAG decided that such a requirement may unduly burden small businesses and provided discretion for merchants to use employees that have been specifically trained in the identification and detection of skimmers. The OAG also considered requiring inspections of the exterior of all fuel dispensers three times per day as recommended by many experts. However, because of the burden such a requirement could pose to small businesses, the proposed rule only requires inspections once a day. The OAG also considered whether there were suitable alternatives to the requirements imposed by the proposed rule, especially alternatives for locks with unique keys. After considering alternatives, however, the proposed rules reflect the minimum practices necessary to accomplish the mandates of the statute while also protecting the economic welfare of the state.

The proposed rules present alternative ways for small businesses to comply with the rules by allowing for a range of actions and materials at different price points that the merchant may take or use to comply with the requirements for procuring and installing unique locks, for maintaining logs, for training employees, and for securing fuel dispensers that have been breached. Also, if a small business ends up in a higher risk category and is then required to implement more expensive, second-tier measures, including the installation of certain equipment, the rules allow for use of different types of equipment that vary in price.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with Texas Gov't Code §2001.0221, the OAG has prepared a government growth impact statement. For the first five years that the rules will be in effect:

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

- (2) The proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) The proposed rules will not require an increase or decrease in future legislative appropriations to the OAG;
- (4) The proposed rules will not lead to an increase or decrease in the fees paid to the OAG, but could lead to an increase in penalties paid to the OAG if merchants do not comply;
- (5) The proposed rules will create new regulations;
- (6) The proposed rules will not expand, limit, or repeal an existing regulation;
- (7) The proposed rules will increase the number of individuals subject to the proposed rules' applicability; and
- (8) The proposed rules will likely positively affect this state's economy by reducing crime and fraudulent charges.

TAKINGS IMPACT ASSESSMENT

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

NO MAJOR ENVIRONMENTAL RULE

The proposed new rules do not constitute major environmental rules because the proposal does not have the specific intent to protect the environment or reduce risks to human health from environmental exposure and does not have the potential to adversely affect the economy, productivity, competition, jobs, the environment, or the public health and safety of the state. A draft impact analysis, therefore, is not required under Texas Gov't Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Written comments on the proposed rules may be submitted in writing to Brad Schuelke, Sr. Assistant Attorney General, Office of the Attorney General, Consumer Protection Division, P.O. Box 12548, Austin, Texas 78711-2548, or via email at SkimmerRuleComments@oag.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register*.

STATUTORY AUTHORITY

The rules are proposed pursuant to Texas Bus. & Com. Code §607.052, which requires the OAG to adopt rules that establish reasonable policies and procedures that identify best practices for merchants to use to comply with Texas Bus. & Com. Code §607.051.

STATUTORY SECTIONS AFFECTED

The statutory provisions affected by the proposed rules are found at Texas Bus. & Com. Code Chapter 607.

§56.1. Definitions.

In addition to the definitions set out in Texas Business and Commerce Code, Chapter 607, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Electronic Monitoring Device" means an alarm system that is installed on a motor fuel dispenser to monitor panels and doors to prevent unauthorized entry.

(2) "EMV compliant" means that each payment terminal on the motor fuel dispenser utilizes secure EMV technology that meets the security, interoperability, and functionality specifications issued by EMVCo, LLC, and processes EMV transactions end-to-end in compliance with EMVCo, LLC and payment brand standards.

(3) "Forecourt" means the outside area of a merchant's place of business where the merchant's motor fuel dispensers are present.

(4) "Insert skimmer" means a type of skimmer that is hidden in the card acceptance slot of a payment terminal.

(5) "Overlay" means a type of skimmer designed to be placed over the top of the card acceptance slot and/or the PIN pad of a payment terminal.

(6) "Place of business" means the location at which a merchant sells motor fuel to retail customers. For purposes of this rule, each separate physical address at which a merchant sells motor fuel to retail customers is a separate place of business.

(7) "Shimmer" means a type of skimmer that targets chip-based payment cards.

(8) "Skimmer breach" means the installation of a skimmer on the interior or exterior of a motor fuel dispenser with an unattended payment terminal. An incident is not considered a skimmer breach if, at the time the skimmer was installed, the dispenser and payment terminal were disabled and neither the dispenser nor the payment terminal were operational at any point in time while the skimmer was installed on the dispenser.

(9) "Tamper-evident security label" means a label or tape that, once applied to a surface, cannot be removed without self-destructing or otherwise leaving a clear indication (e.g., VOID marking) that the label or tape has been removed.

§56.2. Policies, Procedures, and Training.

(a) A merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business shall implement and maintain written policies and procedures for complying with these rules. The written policies and procedures shall include documented and detailed procedures that the merchant will follow to prevent the installation of skimmers on the merchant's payment terminals and steps that the merchant will take if the merchant is notified or otherwise becomes aware that a skimmer is installed or is likely to have been installed on one of the merchant's payment terminals.

(b) A merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business shall conduct training for its employees to ensure that all employees understand the merchant's procedures for complying with these rules, their responsibilities in executing those procedures, and how to meet those responsibilities. The training shall:

(1) Include background information on skimmers, including information about the harm skimmers can cause to customers and to the business, information about the different types of skimmers and how to identify them, and information about the types of suspicious activity or warning signs that may suggest someone is attempting to install or has installed a skimmer, including:

(A) Vehicles parked at a motor fuel dispenser for a long time or returning to the same dispenser frequently;

(B) Large vehicles blocking the view of dispensers;

(C) Attempts by one customer to distract store personnel while a partner remains at the dispenser;

(D) Technicians purporting to perform unscheduled work on dispensers; and

(E) High levels of invalid card read errors or other problems with dispensers accepting cards;

(2) Include details on the merchant's procedures to prevent the installation of skimmers;

(3) Include details on the merchant's procedures for when a skimmer is detected, whether such skimmer is detected by the merchant or reported to the merchant by a third party;

(4) Include details on the disciplinary consequences employees may face for failing to comply with the merchant's policies and procedures related to these rules; and

(5) Be provided to new employees as part of the merchant's regular training program for new employees. If the merchant does not have a regular training program for new employees, the training shall be provided no later than seven days after the employee's first day of employment. Merchants shall thereafter provide employees ongoing training sufficient to ensure that employees are aware of any new procedures adopted by the merchant and aware of any new types of skimmers or warning signs for which employees must watch.

§56.3. Minimum Practices for Prevention of Skimmers.

A merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business shall implement the following practices to prevent the installation of a skimmer on the dispenser:

(1) The merchant shall implement and maintain written policies and procedures and shall conduct training as detailed in §56.2 of this chapter.

(2) For each motor fuel dispenser with an unattended payment terminal, the merchant shall affix to or install onto the exterior of each door that provides access to an interior portion of the motor fuel dispenser from which the payment terminal or any electronic component connected to the payment terminal may be accessed, a locking device that requires an access key unique to that place of business.

(3) The merchant shall maintain a forecourt maintenance log that documents all work performed on the forecourt within the calendar year. The merchant shall require every person working on or accessing a dispenser to perform maintenance to sign in and present appropriate identification before any work is done on a dispenser or a payment terminal on a dispenser. The merchant shall retain the forecourt maintenance log for a minimum of 12 months after the end of the calendar year for which the log was maintained. The maintenance log shall include at a minimum:

(A) the name of the person working on or accessing the dispenser;

(B) the name of the company with which the person is employed;

(C) the person's service technician's license number, if applicable;

(D) the time at which the person began maintenance on the dispenser;

(E) the time at which the person finished maintenance on the dispenser; and

(F) an identification of the dispenser or other equipment where work was performed.

(4) The merchant shall use tamper-evident security labels to restrict unauthorized access to any unattended payment terminal on a motor fuel dispenser that is not EMV compliant and that is not protected by an electronic monitoring device. The merchant's use of tamper-evident security labels shall meet the following requirements:

(A) A tamper-evident security label must be placed over each panel opening that provides access to an interior portion of the dispenser from which the payment terminal or any electronic component connected to the payment terminal may be accessed;

(B) Each tamper-evident security label shall contain a serial number. Each tamper-evident security label used within a 12-month period must have a different serial number; and

(C) The merchant shall keep an annual log documenting the serial number of each currently installed label. Each time a label is changed, the merchant shall document the new serial number and reason for the change. The serial label log may be maintained electronically (e.g., through the use of a mobile application or software program). The merchant shall retain such logs for a minimum of 12 months after the end of the calendar year for which the log was maintained and shall regularly review the logs to ensure that they do not reveal a pattern of suspicious conduct.

(5) The merchant shall, at least daily, conduct a thorough inspection of the exterior of each motor fuel dispenser with an unattended payment terminal. In conducting such inspections, the merchant shall:

(A) Inspect the exterior of each motor fuel dispenser for signs that the dispenser has been opened or tampered with, including, for example, by confirming all locks are secured, and that there are no signs of scratches, pry marks, drilled holes, or other indications that a door has been compromised;

(B) Inspect the exterior of each motor fuel dispenser for signs of skimmers, shimmers, insert skimmers, overlays, hidden cameras, wireless antennas, new stickers or decals that might be hiding a hole, or other foreign objects;

(C) Inspect each serialized, tamper-evident label to ensure that the serial number matches the serial number log and that the label has not been cut or tampered with;

(D) Maintain current photos of the motor fuel dispensers, and make the dispenser photos easily accessible to employees inspecting dispensers so that they can use the photos to identify unauthorized stickers, decals, leaflet holders, and other materials that may have been added to hide holes or other alterations made to a dispenser;

(E) Maintain an annual log of each inspection conducted and retain such log for a minimum of 12 months after the end of the calendar year for which the log was maintained. Such logs shall include:

(i) the date and time of the inspection;

(ii) the name of person who did the inspection; and

(iii) an identification of the dispensers inspected;

and

(F) If an inspection reveals any sign that a motor fuel dispenser has been opened or tampered with or that a skimmer has been installed, disable the dispenser and take appropriate steps to prevent customers from inserting a payment card into the payment terminal until someone who has been properly trained in the identification and detection of skimmers in motor fuel dispensers has inspected the dispenser. The merchant shall maintain a current photo of the interior of the dispenser that was taken at a time when the merchant is confident

that there was no skimmer installed that can be used by the inspector to compare for unauthorized items installed inside the dispenser.

(6) The merchant shall monitor its dispensers and payment terminals for high levels of invalid payment card read errors or other indications of problems accepting payment cards which may indicate the presence of a skimmer. If the merchant detects such suspicious behavior, or if the merchant is notified by a card brand, a payment processor, a financial institution, law enforcement, or the Center that the merchant's place of business or a dispenser at the merchant's place of business is a common point of purchase for fraudulent activity, the merchant shall immediately disable each suspected dispenser until someone who has been properly trained in the identification and detection of skimmers in motor fuel dispensers has inspected the dispenser.

(7) If disabling a motor fuel dispenser as required by subparagraph (5)(F) or paragraph (6) of this section would cause a hardship on the merchant or substantially disrupt the merchant's business, the merchant may continue to allow the dispenser to operate but shall disable the payment terminal or take other steps to prevent customers from using the payment terminal or inserting a payment card into the payment terminal.

(8) The merchant shall maintain an annual log of all inspections conducted pursuant to subparagraph (5)(F) or paragraph (6) of this section and shall retain such logs for a minimum of 12 months after the end of the calendar year for which the log was maintained. The log shall include:

(A) the date and time of the inspection;

(B) the name of person doing the inspection;

(C) the name of the company with which the person doing the inspection is employed, if different from the merchant;

(D) the person's service technician's license number, if applicable; and

(E) an identification of the dispenser inspected.

§56.4. Additional Practices for the Prevention of Skimmers at Previously Compromised Places of Business.

A merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business, and that has suffered a skimmer breach on more than two occasions in the previous 24 months at that place of business, shall implement the following additional practices to prevent the installation of a skimmer on dispensers at the merchant's place of business:

(1) No later than 30 days after the date on which the third discovery or notification of a skimmer was made or received, respectively, the merchant shall implement a program to electronically monitor motor fuel dispensers by installing an electronic monitoring device on each dispenser with an unattended payment terminal that is not EMV compliant. The merchant's electronic monitoring program must meet the following criteria:

(A) Whenever any door on the motor fuel dispenser is opened without authorization, the electronic monitoring device must:

(i) Immediately shut down power to the dispenser or otherwise prevent the dispenser from dispensing fuel; and

(ii) Sound an alarm that emits an audible alert continuously or at least every 30 seconds until deactivated by the merchant or send a notification to the merchant, including notification to the owner, an executive of the merchant, or someone with supervisory responsibility who has been designated by the owner or an executive of the merchant to receive such notifications;

(B) The electronic monitoring device must create a log of every event (e.g., each time the device is armed, disarmed, triggered, etc.). Such log shall be retained for a minimum of 12 months after the end of the period for which the log was maintained and the merchant shall monitor the logs for suspicious activity, including, for example, that the device was disarmed at unexpected times, that certain employees disarmed the device on a recurring basis, or that the device lost power at unexpected times; and

(C) After the electronic monitoring device has been triggered, the motor fuel dispenser shall remain inoperable until someone that has been properly trained in the identification and detection of skimmers in motor fuel dispensers has inspected the dispenser.

(2) The merchant shall conduct, at least once a month, a thorough inspection of the interior of each motor fuel dispenser with an unattended payment terminal for evidence of tampering or that a skimmer has been installed. Such inspections shall be conducted by a qualified person who has been specifically trained in the identification and detection of skimmers in motor fuel dispensers.

(3) The merchant shall maintain an annual log of all inspections conducted pursuant to subparagraph (1)(C) or paragraph (2) of this section and shall retain such logs for a minimum of 12 months after the end of the calendar year for which the log was maintained. The log shall include:

(A) the date and time of the inspection;

(B) the name of person doing the inspection;

(C) the name of the company with which the person doing the inspection is employed, if different from the merchant;

(D) the person's service technician's license number, if applicable; and

(E) an identification of the dispenser inspected.

§56.5. Additional Practices for the Prevention of Skimmers at Highly Compromised Places of Business.

A merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business, and that has suffered a skimmer breach on more than four occasions in the previous 24 months at that place of business, shall implement the following additional practices to prevent the installation of a skimmer on dispensers at the merchant's place of business:

(1) No later than 30 days after the date on which the fifth discovery or notification of a skimmer was made or received, respectively, the merchant shall install and thereafter maintain high resolution video cameras, positioned to record the license plate of each vehicle that approaches or leaves the merchant's motor fuel dispensers, and to record persons dispensing gas at the dispensers. Video cameras shall be placed so that images of vehicle license plates and of persons dispensing gas at the dispenser are captured at a minimum resolution of 60 pixels per foot. All video footage shall be retained for at least 31 days after the date on which the footage was recorded; and

(2) No later than 30 days after the date on which the fifth discovery or notification of a skimmer was made or received, respectively, the merchant shall install and thereafter maintain proper lighting on the station forecourt. Areas around each dispenser island and under all canopies shall be illuminated so that the minimum horizontal illuminance at grade level is 10 footcandles.

§56.6. Detection, Reporting, and Removal of Skimmers.

A merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business shall do the following

when the merchant detects a skimmer on one of the merchant's motor fuel dispensers or receives a report of a skimmer on one of the merchant's motor fuel dispensers:

- (1) The merchant shall not touch the skimmer;
- (2) The merchant shall immediately disable both sides of the motor fuel dispenser on which the skimmer was discovered;
- (3) The merchant shall immediately notify an appropriate law enforcement agency;
- (4) The merchant shall protect the motor fuel dispenser from tampering until law enforcement arrives by taking appropriate steps, including:
 - (A) Covering the nozzle;
 - (B) Covering the payment terminal on the dispenser;
 - (C) Blocking access to dispenser (e.g., by using cones, tape, etc.);
- (5) The merchant shall report the skimmer to the Department within 24 hours;
- (6) The merchant shall run a receipt for the last transaction on the fuel dispenser to timestamp the event;
- (7) The merchant shall cooperate with law enforcement, the Department, and the Center in the investigation of the skimmer, including by providing access to the motor fuel dispenser for removal of the skimmer;
- (8) The merchant shall preserve all video surveillance and access logs related to the compromised motor fuel dispenser and provide a copy to law enforcement, the Department, or the Center upon request. Notwithstanding any other retention period mandated by this chapter, the merchant shall retain all video surveillance and access logs related to the compromised dispenser until a copy has been provided to law enforcement, the Department, or the Center, or until the merchant has been advised by law enforcement, the Department, or the Center that the material may be destroyed; and
- (9) If neither law enforcement nor the Department has arrived or contacted the merchant within 24 hours after the merchant reports the skimmer to the Department, the merchant may:
 - (A) While wearing sterile gloves, carefully remove the skimmer;
 - (B) Place the skimmer in a clear plastic bag, seal the bag, and label the sealed bag with the date and time the skimmer was removed and bagged, along with the initials of the person removing and bagging the skimmer;
 - (C) Take a picture of the skimmer in the bag; and
 - (D) Place the bag in a secured area (e.g., locked file cabinet) for pick-up by law enforcement.

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 October 21, 2019.

TRD-201903828

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Earliest possible date of adoption: December 1, 2019

For further information, please call: (512) 475-3210



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 32. CLINICAL LABORATORY SERVICES

1 TAC §355.8610

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8610, concerning Reimbursement for Clinical Laboratory Services.

BACKGROUND AND PURPOSE

HHSC proposes to amend the rule governing Clinical Laboratory Services reimbursement. This amendment updates the rule to allow HHSC to establish fees based on a percentage of the Medicare fee schedule and removes the limitation that would not allow payments to exceed the Medicare fee schedule. Currently, HHSC Medicaid fees for clinical laboratory services provided by the Department of State Health Services (DSHS) Laboratory are set at 100 percent of the Medicare fee. The Medicare fee schedule may adjust fees more frequently or in a manner that could negatively impact the DSHS Laboratory. Of particular concern is the series of tests that comprise the newborn screening, which are provided solely by the DSHS laboratory for all Texas newborns.

This amendment allows HHSC to reimburse for clinical laboratory services at a percentage of the Medicare fee schedule, which still permits flexibility for HHSC to maintain existing funding for the DSHS Laboratory and their ability to continue to provide newborn screenings for Medicaid newborns.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8610 updates language to specify that fees will be established at a percentage of the Medicare fee schedule and removes the reference for payments to be limited to the Medicare fee schedule.

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, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as there is no requirement to alter business practices.

LOCAL EMPLOYMENT IMPACT

There will be no impact on local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Rate Analysis, has determined that for each year of the first five years the rule is in effect, the public will be ensuring the Department of State Health Services Laboratory receives a reimbursement rate adequate to be able to continue performing public health activities.

Victoria Grady has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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 HHSC, c/o Kevin Niemeyer, Mail Code H400, 4900 North Lamar Blvd, Austin, Texas 78751-2316 by fax to (512) 730-7475; or by email to RateAnalysisDept@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 e-mailed 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 e-mailing comments, please indicate "Comments on Proposed Rule 19R042" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the Health and Human Services agencies; 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 medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Texas Government Code Chapter 531, and Texas Human Resources Code Chapter 32.

§355.8610. Reimbursement for Clinical Laboratory Services.

Clinical diagnostic laboratory tests performed in a practitioner's office, by an independent laboratory, or by a hospital laboratory for its outpatients shall be reimbursed the lower of the provider's usual customary charge for that service or a maximum fee determined by the Texas Health and Human Services Commission (HHSC) or its designee. HHSC or its designee will review maximum fees at least every two years, with any adjustments made within available funding. Fees [Payments] for services provided will be established at a percentage of [must not exceed] the Medicare fee schedule.

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 October 17, 2019.

TRD-201903781
 Karen Ray
 Chief Counsel
 Texas Health and Human Services Commission
 Earliest possible date of adoption: December 1, 2019
 For further information, please call: (512) 730-7445



TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 5. ADMINISTRATION OF FINANCE AGENCIES

7 TAC §§5.100, 5.101, 5.103, 5.105

The Finance Commission of Texas (commission) proposes amendments to §5.101 (relating to Employee Training and Education Assistance Programs) and proposes new §5.100 (relating to Definitions), §5.103 (relating to Alternative Dispute Resolution Policy), and §5.105 (relating to Negotiated Rulemaking) in 7 TAC, Chapter 5, concerning Administration of Finance Agencies.

In general, the purpose of the proposed amendments and new rules in 7 TAC, Chapter 5 is to implement provisions related to alternative dispute resolution and negotiated rulemaking required by HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC), and required by SB 614, the Sunset legislation for the Texas Department of Banking (DOB) and the Department of Savings and Mortgage Lending (SML). The Texas Legislature passed HB 1442 and SB 614 in the 2019 legislative session.

Effective September 1, 2019, Texas Finance Code, §§12.113, 13.017, and 14.110 require the commission to develop a policy by rule to encourage the use of negotiated rulemaking procedures under Texas Government Code, Chapter 2008, and alternative dispute resolution procedures under Texas Government Code, Chapter 2009.

The OCCC, SML, and DOB 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, SML, and DOB did not receive any informal written precomments on the rule text draft.

Proposed new §5.100 adds a definition of "finance agency" in Chapter 5, in order to allow the term "finance agency" to be used throughout Chapter 5. The proposed amendment to §5.101 repeals the definition of "finance agencies" in Chapter 5, because this definition is being moved to proposed new §5.100.

Proposed new §5.103 implements HB 1442 and SB 614 by encouraging the use of alternative dispute resolution. Subsection (a) explains that it is the policy of the commission to use alternative dispute resolution procedures when reasonable and appropriate. Subsection (b) explains that the procedures for alternative dispute resolution must conform to model guidelines of the State Office of Administrative Hearings. Subsection (c) explains that the finance agencies will coordinate to implement alternative dispute resolution procedures and training. Subsection (d) explains that the finance agencies will collect data concerning the effectiveness of alternative dispute resolution procedures and report to the commission.

Proposed new §5.105 implements HB 1442 and SB 614 by encouraging the use of negotiated rulemaking. Subsection (a) explains that it is the policy of the commission to use negotiated rulemaking. Subsection (b) explains that the finance agencies will coordinate to implement negotiated rulemaking and training. Subsection (c) explains that the finance agencies will collect data concerning the effectiveness of negotiated rulemaking and report to the commission.

Christina Cuellar Hoke of the OCCC, Ernest Garcia of the SML, and Catherine Reyer of the DOB, have determined that for the first five-year period the proposed rule changes in Chapter 5 are in effect, there will be no fiscal implications for state or local government as a result of administering the rule amendments.

Huffman Lewis of the OCCC, Ernest Garcia of the SML, and Catherine Reyer of the DOB, have determined that for each year of the first five years the rule changes in Chapter 5 are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be consistent with legislation recently passed by the legislature.

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 rural communities or small or micro-businesses.

During the first five years the rule changes will be in effect, the rule 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, SML, or DOB because they are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes will not require an increase or decrease in fees paid to the agencies. The proposed rule changes create new regulations to move the definition of "finance agency" to new §5.100, to encourage the use of alternative dispute resolution in new §5.103, and to encourage the use of negotiated rulemaking in new §5.105. The proposed rule changes do not expand or repeal an existing regulation. The proposed rule changes limit current §5.101 by moving the definition of "finance agencies" out of this section. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agencies do 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 Michael Rigby, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 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 rule changes are proposed under Texas Finance Code, §§12.113, 13.017, and 14.110 (as added by HB 1442 and SB 614), which authorize the commission to adopt rules to encourage the use of negotiated rulemaking procedures under Texas Government Code, Chapter 2008, and alternative dispute resolution procedures under Texas Government Code, Chapter 2009. In addition, Texas Finance Code, §§11.301, 11.302, 11.304, and 11.306 generally authorize the commission to adopt banking rules, rules applicable to state savings associations and savings banks, rules necessary to supervise the consumer credit commissioner, and rules applicable to residential mortgage loan origination.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 12, 13, and 14.

§5.100. Definitions.

In this chapter, a "finance agency" means the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.

§5.101. Employee Training and Education Assistance Programs.

(a) [For purposes of this rule, "finance agencies" means the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.] Pursuant to the State Employees Training Act, Chapter 656, Subchapter C of the Texas Government Code, it is the policy and practice of the finance agencies to encourage employees' professional development through training and education programs sponsored or supported by the finance agencies.

(b) The finance agencies may provide assistance for education and training that will enhance an employee's ability to perform current or prospective job duties and will benefit both the respective finance agency and the employee.

(c) Approval to participate in a training or education program is not automatic and is subject to eligibility of individual employees as established in the respective finance agency's policy, and the availability of funds within the respective finance agency's budget.

(d) The employee training and education program for the finance agencies may include one or more of the following:

- (1) agency-sponsored training provided in-house or by contract;
- (2) seminars and conferences;
- (3) technical or professional certifications and licenses; or
- (4) reimbursement for tuition, fees and required course materials.

(e) The finance agencies maintain policies for administering the employee training and education program of each respective finance agency. These policies include:

- (1) eligibility requirements for participation;
- (2) designation of appropriate level of approval for participation; and
- (3) obligations of program participants.

(f) Approval to participate in any portion of a finance agency's training and education program will not in any way affect an employee's at-will status.

(g) In order to receive tuition reimbursement for a course offered by an institution of higher education, the employee must successfully complete the course, and the executive head of the finance agency must personally authorize the tuition reimbursement payment.

§5.103. Alternative Dispute Resolution Policy.

(a) Policy. It is the policy of the finance commission to use alternative dispute resolution procedures where reasonable and appropriate under Texas Government Code, Chapter 2009 to assist in the resolution of internal and external disputes under the jurisdiction of a finance agency.

(b) Model guidelines. The procedures for alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Coordination and training. The finance agencies will coordinate with each other as reasonable to implement the use of appropriate alternative dispute resolution procedures and provide training as needed to implement the use of alternative dispute resolution procedures.

(d) Data collection and reporting. Each finance agency will collect data concerning the effectiveness of alternative dispute resolution procedures, and report to the finance commission its use of alternative dispute resolution procedures.

§5.105. Negotiated Rulemaking.

(a) Policy. It is the policy of the finance commission to use negotiated rulemaking procedures under Texas Government Code, Chapter 2008 and §9.85 of this title (relating to Negotiated Rulemaking).

(b) Coordination and training. The finance agencies will coordinate with each other as reasonable to implement the use of negotiated

rulemaking procedures and provide training as needed to implement the use of negotiated rulemaking procedures.

(c) Data collection and reporting. Each finance agency will collect data concerning the effectiveness of negotiated rulemaking procedures, and report to the finance commission its use of negotiated rulemaking procedures.

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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Michael Rigby
General Counsel
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7623



CHAPTER 6. BANKING DEVELOPMENT DISTRICTS

7 TAC §6.1

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend 7 TAC, §6.1 concerning the purpose and scope of the rules for administering the banking development district program established by Texas Finance Code, Chapter 279. The amendment is proposed to correct a citation.

Kurt Purdom, Deputy Commissioner, 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.

Mr. Purdom has also 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 improved accuracy for persons required to comply with the rule.

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.

For each year of the first five years that the rule will be in effect, the rule will not:

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

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 amendment must be submitted no later than 5:00 p.m. on December 2, 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 amendment is proposed under Texas Finance Code, §279.052, which provides that the commission shall adopt rules regarding the criteria for the designation of banking development districts.

Texas Finance Code, Chapter 279 is affected by the proposed amendment.

§6.1. Purpose; Scope.

(a) (No change.)

(b) This chapter does not affect or circumvent:

(1) requirements under the Tax Increment Financing Act or the Property Redevelopment and Tax Abatement Act (~~Government Code,~~ Tax Code, Chapters 311 and 312, respectively), including requirements for designation of an area as a municipal or county reinvestment zone or for authorization to enter into a tax abatement agreement; or

(2) (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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Catherine Reyer

General Counsel

Finance Commission of Texas

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CHAPTER 9. RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS, APPEALS, AND RULEMAKINGS

The Finance Commission of Texas (commission) proposes amendments to §9.82 (relating to Petitions To Initiate Rulemaking Proceedings); proposes new §9.85 (relating to Negotiated Rulemaking); proposes the repeal of §9.51 (relating to Time Deadlines for Appeal to the Finance Commission Mandatory), §9.52 (relating to Motion for Rehearing), §9.54 relating to Application for Review), §9.55 (relating to Scope of Review) §9.56 (relating to Oral Argument before the Finance Commission), and §9.57 (relating to Interim Appeals); and proposes relettering the titles of Subchapters D and E in 7 TAC, Chapter 9, concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings.

In general, the purpose of the proposed amendments, repeals, and new rule in 7 TAC, Chapter 9 is to implement provisions re-

lated to negotiated rulemaking and finance commission appeals in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC), and SB 614, the Sunset legislation for the Texas Department of Banking (DOB) and the Department of Savings and Mortgage Lending (SML). The Texas Legislature passed HB 1442 and SB 614 in the 2019 legislative session.

Effective September 1, 2019, Texas Finance Code, §§12.113, 13.017, and 14.110 require the commission to develop a policy by rule to encourage the use of negotiated rulemaking procedures under Texas Government Code, Chapter 2008.

Effective September 1, 2019, all references to appeals to the commission have been removed from Texas Finance Code, §§14.208, 31.202, 31.204, 35.110, 181.202, 181.204, and 354.005. The proposed repeal of Subchapter C of 7 TAC, Chapter 9 would remove all provisions pertaining to appeals to the commission in conformity with the amendments to the Texas Finance Code found in SB 614 and HB 1442.

The OCCC, SML, and DOB 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, SML, and DOB did not receive any informal written precomments on the rule text draft.

The proposed repeal of Subchapter C of Chapter 9 implements HB 1442 and SB 614 by eliminating provisions relating to appeals to the commission. The proposed amendments would also reletter Subchapters D and E as a result of the repeal of Subchapter C.

The proposed amendments to §9.82 relate to petitions to initiate rulemaking proceedings. In subsection (a), a proposed amendment would add any request to engage in negotiated rulemaking to the list of items that a petition to initiate rulemaking must include. Proposed new subsection (b) explains that an agency receiving a petition will present the petition and a recommendation to the commission. Proposed new subsection (c) explains that the commission will vote to initiate a rulemaking proceeding, or to deny the petition and state the reasons for denial.

Proposed new §9.85 describes to the procedures for negotiated rulemaking. Subsection (a) explains that an agency may propose to engage in negotiated rulemaking if the commission votes to initiate a rulemaking proceeding, or if the agency determines that a proposed rule might benefit from the process. Subsection (b) explains that an agency may appoint a convener to assist in determining whether negotiated rulemaking should proceed, as described by Texas Government Code, §2008.052. Subsection (c) explains that the agency will publish notice of intent to engage in negotiated rulemaking, as described by Texas Government Code, §2008.053. Subsection (d) explains that the agency will appoint a facilitator and committee, as described by Texas Government Code, §2008.056. Subsection (e) explains that the commission may adopt, amend, or refuse to adopt a rule created through negotiated rulemaking.

Christina Cuellar Hoke of the OCCC, Ernest Garcia of the SML, and Catherine Reyer of the DOB, have determined that for the first five-year period the rule changes to Chapter 9 are in effect, there will be no fiscal implications for state or local government as a result of administering the rule amendments.

Huffman Lewis of the OCCC, Ernest Garcia of the SML, and Catherine Reyer of the DOB, have determined that for each year of the first five years the rule changes to Chapter 9 are in effect,

the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be consistent with legislation recently passed by the legislature.

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 rural communities or small or micro-businesses.

During the first five years the proposed rule changes will be in effect, the rule 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, SML, or DOB because they are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes will not require an increase or decrease in fees paid to the agencies. The proposed rule creates a new regulation to encourage the use of negotiated rulemaking under §9.85. The proposed rule expands the current rule at §9.82, relating to a petition to initiate rulemaking, in order to address negotiated rulemaking. The proposed rule changes repeal Subchapter C of Chapter 9 to eliminate provisions relating to appeals to the commission, in accordance with HB 1442 and SB 614. The proposed rule changes do not limit an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agencies do 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 Michael Rigby, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 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. APPEALS TO FINANCE COMMISSION

7 TAC §§9.51, 9.52, 9.54 - 9.57

The rule changes are proposed under Texas Finance Code, §§12.113, 13.017, and 14.110 (as added by HB 1442 and SB 614), which authorize the commission to adopt rules to encourage the use of negotiated rulemaking procedures under Texas Government Code, Chapter 2008. In addition, Texas Finance Code, §§11.301, 11.302, 11.304, and 11.306 generally authorize the commission to adopt banking rules, rules applicable to state savings associations and savings banks, rules necessary to supervise the consumer credit commissioner, and rules applicable to residential mortgage loan origination.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 12, 13, 14, 31, 35, 181, and 354.

§9.51. *Time Deadlines for Appeal to the Finance Commission Mandatory.*

§9.52. *Motion for Rehearing.*

§9.54. *Application for Review.*

§9.55. *Scope of Review.*

§9.56. *Oral Argument before the Finance Commission.*

§9.57. *Interim Appeals.*

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

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Michael Rigby

General Counsel, Office of Consumer Credit Commissioner
Finance Commission of Texas

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For further information, please call: (512) 936-7623



SUBCHAPTER E. RULEMAKING

7 TAC §§9.82, §9.85

The rule changes are proposed under Texas Finance Code, §§12.113, 13.017, and 14.110 (as added by HB 1442 and SB 614), which authorize the commission to adopt rules to encourage the use of negotiated rulemaking procedures under Texas Government Code, Chapter 2008. In addition, Texas Finance Code, §§11.301, 11.302, 11.304, and 11.306 generally authorize the commission to adopt banking rules, rules applicable to state savings associations and savings banks, rules necessary to supervise the consumer credit commissioner, and rules applicable to residential mortgage loan origination.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 12, 13, 14, 31, 35, 181, and 354.

§9.82. *Petitions To Initiate Rulemaking Proceedings.*

(a) Petitions to initiate rulemaking proceedings pursuant to Texas Government Code, §2001.021, must be submitted to the agency in writing. A petition must include:

- (1) a brief explanation of the proposed rule;
- (2) the full text of the proposed rule, and, if the petition is to modify an existing rule, the text of the proposed rule prepared in the same manner as an amendment to legislation that clearly identifies any words to be added or deleted from the existing text by underlining new language and striking through language to be deleted;
- (3) a concise explanation of the legal authority to adopt the proposed rule, including a specific reference to the particular statute or other authority that authorizes it;
- (4) an explanation of how the public would be benefitted by the adoption of the proposed rule;
- (5) all available data or information showing a need for the proposed rule; [and]
- (6) any request to engage in negotiated rulemaking under §9.85 of this title (relating to Negotiated Rulemaking); and
- (7) [~~(6)~~] such other or additional information as the agency may request.

(b) An agency receiving a petition under subsection (a) of this section will present to the finance commission the petition and the agency's recommendation.

(c) The finance commission will vote to initiate a rulemaking proceeding, or to deny the petition and state the reasons for the denial.

§9.85. Negotiated Rulemaking.

(a) Initiation of process. An agency may propose to engage in negotiated rulemaking process pursuant to Texas Government Code, Chapter 2008 if:

(1) the finance commission votes to initiate a rulemaking proceeding under §9.82 of this title (relating to Petitions To Initiate Rulemaking) that includes negotiated rulemaking; or

(2) the agency determines that drafting the proposed rule might benefit from the negotiated rulemaking process.

(b) Appointment of a convener. Upon proposing a negotiated rulemaking process under subsection (a) of this section, the agency will appoint a convener to assist in determining whether it is advisable to proceed with negotiated rulemaking. The convener will be appointed pursuant to, and perform the duties described by, Texas Government Code, §2008.052.

(c) Notice of negotiated rulemaking. If the agency decides to engage in negotiated rulemaking after considering the convener's recommendation and report, then the agency will publish timely notice of its intent on its website and with the secretary of state for publication in the Texas Register in compliance with Texas Government Code, §2008.053.

(d) Appointment of facilitator and committee. The agency will appoint a facilitator and members of the negotiated rulemaking committee to carry out the duties described in Texas Government Code, §2008.056.

(e) Adoption of rule. The finance commission may adopt, amend, or refuse to adopt a rule created through the negotiated rulemaking process in its sole discretion.

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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Michael Rigby

General Counsel, Office of Consumer Credit Commissioner

Finance Commission of Texas

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 15. CORPORATE ACTIVITIES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §15.42(j) concerning branch relocation, §15.115 concerning notification, and §§15.1, 15.2, 15.7, 15.23, 15.41, 15.81, 15.103 - 15.106, 15.108, 15.111, and 15.122 to update citations, correct typographical errors, simplify technical language, and ensure the consistency of the language within the chapter.

Section 15.42(j) currently states that a bank may relocate a branch immediately after the Banking Commissioner (the com-

missioner) notifies the bank in writing that the required fee has been paid and the notice is complete and accepted for filing. The proposed amendment relaxes this requirement by adding the current practice of allowing a bank to relocate a branch beginning on the 31st day after the date the commissioner receives the bank's notice of branch relocation. This method of approving branch relocations has worked well in practice and alleviated the need for the commissioner to issue written notifications for every branch relocation. In addition, stating that a bank's notice of relocation is complete means that the required fee has been paid and the notice has been accepted for filing. Therefore, in practice, the commissioner's written notification to the bank simply states that the bank's "required notice is complete." The proposed amendment simplifies the language in the rule to match what is currently included in the commissioner's notification.

Section 15.115 allows notification by the commissioner to be made by mail, in person, or by fax. The proposed amendment will allow notification by the commissioner to be made by email as well.

Mark Largent, Director of Corporate Activities, 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.

Mr. Largent has also 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 improved accuracy and clarity for persons required to comply with the rules.

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 rules 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.

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;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on December 2, 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.

SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

7 TAC §§15.1, 15.2, 15.7

Amendments to Chapter 15, Subchapter A, §§15.1, 15.2, and 15.7 are proposed under Texas Finance Code, §31.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Banking Act.

Texas Finance Code, §§202.001 and 202.004, and Texas Finance Code, Title 3, Subtitles A and G are affected by the proposed amendments to Chapter 15, Subchapter A.

§15.1. Definitions.

Words and terms used in this chapter that are defined in the Finance Code, Title 3, Subtitle A or Subtitle G, have the same meanings as defined in the Finance Code. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accepted filing--An application, request, notice, or protest filed with the banking commissioner pursuant to the Finance Code, Title 3, Subtitle A or G, this chapter, or another rule adopted pursuant to the Finance Code if:

(A) the appropriate fee has been paid pursuant to §15.2 of this title (relating to Filing and Investigation Fees); and [~~(relating to Filing Fees and Cost Deposits); and]~~

(B) (No change.)

(2) - (5) (No change.)

(6) Low or moderate income area--A designated geography for CRA purposes, as defined in 12 CFR, §228.12(m)(1) and (m)(2), [~~§228.12(4), (n)(1), and (n)(2),~~] for state member banks, or 12 CFR, §345.12(m)(1) and (m)(2), [~~§345.12(4), (n)(1), and (n)(2),~~] for state nonmember banks.

(7) - (9) (No change.)

§15.2. Filing and Investigation Fees.

(a) (No change.)

(b) Filing fees. Simultaneously with a submitted application or notice, an applicant shall pay to the department:

(1) - (6) (No change.)

(7) \$2,000 for an application to establish a branch office (including an interstate transaction) pursuant to Finance Code, §32.203, and §15.42 of this title (relating to Establishment and Closing of a Branch Office), or \$1,000 if the application is eligible for expedited treatment pursuant to §15.3 of this title (relating [related] to Expedited Filings), provided that the department will not require a filing fee for an application for a new branch office to be located in a low or moderate income area and where no other depository institution operates a branch or home office;

(8) - (23) (No change.)

(c) - (f) (No change.)

§15.7. Submission of Reproductions.

(a) (No change.)

(b) Reproduction. For purposes of this section, the term reproduction means:

(1) (No change.)

(2) a facsimile copy of an original document submitted by telephonic document transmission to the fax [~~telecopier telephone~~] number specified by the department; or

(3) (No change.)

(c) (No change.)

(d) Page limitations. A reproduction submitted by telephonic document transmission to the department's fax [~~telecopier~~] machine may not exceed 25 pages in total length, including the transmittal document required by subsection (e) of this section, or it will be rejected for filing. The transmission of portions of any particular filing at different times is treated as one reproduction for purposes of this subsection.

(e) (No change.)

(f) Time of receipt. To be considered received by the department, a reproduction must be in clearly legible form. The date the submission is actually received by the department or the date and time imprinted by the department's fax machine [~~telecopier~~] on the last page of a reproduction submitted by telephonic document transfer will determine the time of receipt, provided that a reproduction received after 4:30 p.m. is considered received at 8:00 a.m. on the next business day. A reproduction will not be considered received until the department receives the entire document and the required filing fee, if any.

(g) (No change.)

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

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Catherine Reyer

General Counsel

Texas Department of Banking

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SUBCHAPTER B. BANK CHARTERS

7 TAC §15.23

Amendment to Chapter 15, Subchapter B, §15.23 is proposed under Texas Finance Code, §31.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Banking Act.

Texas Finance Code, Chapters 32 and 203 are affected by the proposed amendment to Chapter 15, Subchapter B.

§15.23. Application for Interim Bank Charters.

(a) General. The banking commissioner may issue an interim state bank charter solely for the purpose of facilitating the acquisition, reorganization, or merger of a pre-existing bank, if the resulting bank will engage in the business of banking in substantially the same markets. The applicant must submit the application for an interim bank charter on a form prepared and prescribed by the banking commissioner and tender the required filing fee pursuant to §15.2 of this title (relating to Filing and Investigation Fees). [~~(relating to Filing Fees and Cost Deposits)-]~~ The applicant must describe in detail the entire transaction in which the interim bank charter is proposed to be used and identify the resulting bank after completion of the transaction.

(b) - (d) (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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SUBCHAPTER C. BANK OFFICES

7 TAC §15.41, §15.42

Amendments to Chapter 15, Subchapter C, §15.41 and §15.42 are proposed under Texas Finance Code, §31.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Banking Act.

Texas Finance Code, §32.202, §32.203, and §203.001 are affected by the proposed amendments to Chapter 15, Subchapter C.

§15.41. Written Notice or Application for Change of Home Office.

(a) Relocation by notice. Unless an application under subsection (b) of this section is required, a state bank may change its home office to one of its previously established branches pursuant to the Finance Code, §32.202(b), by filing a written notice containing the information required by subsection (c) of this section, accompanied by the filing fee required by §15.2 of this title (relating to Filing and Investigation Fees). [~~relating to Filing Fees and Cost Deposits.~~] A bank may relocate its home office immediately after the required notice and fee has been acknowledged in writing as complete and accepted for filing by the banking commissioner. An application under subsection (b) of this section is required if the proposed home office relocation:

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

(b) - (f) (No change.)

§15.42. Establishment and Closing of a Branch Office.

(a) - (i) (No change.)

(j) Branch relocation. A bank may relocate a branch within a one-mile radius by submitting a completed written notice on a form prescribed by the banking commissioner and tendering the required filing fee pursuant to §15.2 of this title. A bank may relocate the branch beginning on the 31st day after the date the banking commissioner receives the bank's notice or immediately after the banking commissioner notifies the bank in writing that the required notice is complete. [~~fee has been paid and the notice is complete and accepted for filing.~~]

(k) (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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SUBCHAPTER E. CHANGE OF CONTROL APPLICATIONS

7 TAC §15.81

Amendment to Chapter 15, Subchapter E, §15.81 is proposed under Texas Finance Code, §31.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Banking Act.

Texas Finance Code, §§33.001 - 33.005 are affected by the proposed amendment to Chapter 15, Subchapter E.

§15.81. Application for Acquisition or Change of Control of State Bank.

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

(c) Form of application. The applicant must submit a fully completed, verified application in a form prescribed by the banking commissioner and simultaneously tender the required filing fee pursuant to §15.2 of this title (relating to Filing and Investigation Fees). [~~relating to Filing Fees and Cost Deposits.~~] The Interagency Notice of Change of Control and the Interagency Biographical and Financial Report may be submitted in lieu of the commissioner prescribed forms if they are accompanied by the executed and notarized signature pages of the commissioner prescribed forms. The application must, except to the extent expressly waived in writing by the banking commissioner, disclose:

(1) - (14) (No change.)

(d) - (m) (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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General Counsel
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SUBCHAPTER F. APPLICATIONS FOR MERGER, CONVERSION, AND PURCHASE OR SALE OF ASSETS

7 TAC §§15.103 - 15.106, 15.108, 15.111, 15.115

Amendments to Chapter 15, Subchapter F, §§15.103 - 15.106, 15.108, 15.111 and 15.115 are proposed under Texas Finance Code, §31.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Banking Act.

Texas Finance Code, §§32.001, 32.008, 32.301 - 32.304, 32.401 - 32.405, 32.501, 32.502, 203.001, and 203.003 are affected by the proposed amendments to Chapter 15, Subchapter F.

§15.103. Expedited Filings.

(a) A financial institution that would be an eligible bank as defined in §15.1 of this title (relating to Definitions) if it was a state bank may file an expedited filing in lieu of an application required under §15.104 of this title (relating to Application for Merger or Share Exchange), §15.105 of this title (relating to Application for Authority to Purchase Assets of Another Financial Institution), or §15.108 of this title (relating to Conversion of a Financial Institution into a State Bank), and simultaneously tender the required filing fee pursuant to §15.2 of this title (relating to Filing and Investigation Fees). [~~(relating to Filing Fees and Cost Deposits).~~]

(b) - (f) (No change.)

§15.104. *Application for Merger or Share Exchange.*

(a) (No change.)

(b) Form of application. The applicant must submit a fully completed, verified application on a form prescribed by the banking commissioner and simultaneously tender the required filing fee pursuant to §15.2 of this title (relating to Filing and Investigation Fees). [~~(relating to Filing Fees and Cost Deposits).~~] The Interagency Bank Merger Act application may be used in lieu of the commissioner prescribed form if it is accompanied by the signature page and supplemental page of the commissioner prescribed form. The application must, except to the extent waived by the banking commissioner, include:

(1) - (22) (No change.)

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

§15.105. *Application for Authority to Purchase Assets of Another Financial Institution.*

(a) (No change.)

(b) Form of application. The applicant must submit a fully completed, verified application on a form prescribed by the banking commissioner and simultaneously tender the required filing fee pursuant to §15.2 of this title (relating to Filing and Investigation Fees). [~~(relating to Filing Fees and Cost Deposits).~~] The application must, except to the extent waived by the banking commissioner, include:

(1) (No change.)

(c) - (d) (No change.)

§15.106. *Application for Authority to Sell Assets.*

(a) (No change.)

(b) Subsection (f) of this section specifically addresses a sale of assets without shareholder approval under the Finance Code, §32.405(c) [~~§32.405(a)(7)~~] or Finance Code, §203.003.

(c) Form of application. The applicant must submit a fully completed, verified application on a form prescribed by the banking commissioner and simultaneously tender the required filing fee pursuant to §15.2 of this title (relating to Filing and Investigation Fees). [~~(relating to Filing Fees and Cost Deposits).~~] The application must, except to the extent waived by the banking commissioner, include:

(1) - (18) (No change.)

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

(f) Sale of assets without shareholder approval under the Finance Code, §32.405(c). [~~§32.405(a).~~] The board of a state bank, with the prior written approval of the banking commissioner, may cause a bank to sell all or substantially all of its assets without shareholder or participant approval if the banking commissioner finds the interests of depositors and creditors are jeopardized because of insolvency or imminent insolvency and that the sale is in their best interest.

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

§15.108. *Conversion of a Financial Institution into a State Bank.*

(a) (No change.)

(b) Form of application. The applicant must submit a fully completed, verified application on a form prescribed by the banking commissioner and simultaneously tender a filing fee in the amount required for the filing of an application for a new bank charter pursuant to §15.2 of this title (relating to Filing and Investigation Fees). [~~(relating to Filing Fees and Cost Deposits).~~] The application must, except to the extent waived by the banking commissioner, include:

(1) - (20) (No change.)

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

§15.111. *Investigation of Application.*

(a) (No change.)

(b) Costs and fees. An applicant under this subchapter must pay reasonable costs incurred in the investigation including the cost of a required examination, as provided by §3.36(h) of this title (relating to Annual Assessments and Specialty [~~Speciality~~] Examination Fees) and §15.2(e) of this title (relating to Filing and Investigation Fees). [~~(relating to Filing Fees and Cost Deposits).~~]

(c) (No change.)

§15.115. *Notification.*

A notification by the banking commissioner under this subchapter may be by registered or certified mail, return receipt requested, and is complete when the notification is deposited in the United States mail postage prepaid, return receipt requested, mailed to the address furnished in the application. Notification may also be made in person to the applicant, or to another person, financial institution, foreign corporation or domestic corporation, or other entity subject to this subchapter, by agent-receipted delivery or by courier-receipted delivery to the address furnished in the application, by email to the email address furnished in the application, or by telephonic document transfer to the fax number [~~applicant's telecopier number as~~] furnished in the application. Notice by telephonic document transfer served after 6:00 p.m. local time of recipient is considered as notice served on the following day.

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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Catherine Reyer

General Counsel

Texas Department of Banking

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



SUBCHAPTER G. CHARTER AMENDMENTS
AND CERTAIN CHANGES IN OUTSTANDING
STOCK

7 TAC §15.122

Amendments to Chapter 15, Subchapter G, §15.122 are proposed under Texas Finance Code, §31.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Banking Act.

Texas Finance Code, §31.002 and §32.101 are affected by the proposed amendments to Chapter 15, Subchapter G.

§15.122. Amendment of Certificate to Effect a Reverse Stock Split.

(a) (No change.)

(b) Procedure. Pursuant to the Finance Code, §32.101, to effectuate a reverse stock split in compliance with this section, a state bank must:

(1) (No change.)

(2) obtain the approval of the banking commissioner pursuant to subsection (d) of this section, by filing an application setting forth the information and documents required by subsection (c) of this section and the filing fee required by §15.2 of this title (relating to Filing and Investigation Fees). [~~(relating to Filing Fees and Cost Deposits)~~]

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

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

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Catherine Reyer

General Counsel

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CHAPTER 21. TRUST COMPANY CORPORATE ACTIVITIES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §21.7 concerning the submission of reproductions, §21.74 concerning notification, and §§21.2, 21.6, 21.42, 21.43, and 21.61 to update citations, simplify technical language, and ensure the consistency of the language within the chapter.

Section 21.7 allows reproductions of application documents to be submitted to the Department by mail, hand delivery, or fax. The proposed amendment will allow reproductions of application documents to be submitted to the Department by email as well.

Section 21.74 allows notification by the commissioner to be made by mail, in person, or by fax. The proposed amendment will allow notification by the commissioner to be made by email as well.

Mark Largent, Director of Corporate Activities, 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.

Mr. Largent has also 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 improved accuracy and clarity for persons required to comply with the rules.

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.

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;

-- create a new regulation;

-- expand, limit or repeal an existing regulation;

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

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

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on December 2, 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.

SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

7 TAC §§21.2, 21.6, 21.7

Amendments to Chapter 21, Subchapter A, §§21.2, 21.6 and 21.7 are proposed under Texas Finance Code, §181.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Trust Company Act.

Texas Finance Code, §§182.003, 182.012, and 182.202 are affected by the proposed amendments to Subchapter A.

§21.2. Filing and Investigation Fees.

(a) (No change.)

(b) Filing fees. Simultaneously with a submitted application or notice, an applicant shall pay to the department:

(1) - (9) (No change.)

(10) \$2,000 for an application to relocate the home office with abandonment of existing office pursuant to Finance Code, §182.202(d), and §21.41(b) of this title, or \$1,000 for an application accepted for expedited treatment pursuant to §21.3 of this title (relating [~~related~~] to Expedited Filings);

(11) - (17) (No change.)

(18) \$2,500 for an application by an existing trust company for exemption pursuant to Finance Code, §182.012, and §21.24 of this title (relating to Exemptions for Family Trust Companies); [~~(relating to Exemptions for Trust Companies Administering Family Trusts)~~];

(19) - (22) (No change.)

(c) - (f) (No change.)

§21.6. *Applications for Trust Charter: Notices to Applicants; Application Processing Times; Appeals.*

(a) Form of application. An application to engage in a state trust company [business] under Finance Code, §182.003, must be filed on a form prescribed by the banking commissioner.

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

§21.7. *Submission of Reproductions.*

(a) (No change.)

(b) Reproduction. For purposes of this section, the term reproduction means:

(1) a photographic or photostatic copy or similar reproduction of an original document that is submitted to the department by mail or hand delivery;

(2) a facsimile copy of an original document submitted by telephonic document transmission to the fax number specified by the department; or

(3) if permitted by the department with respect to a specific filing, an electronic copy of an original document submitted to the email address specified by the department.

~~[(b) Reproduction. For purposes of this section, the term reproduction means a photographic or photostatic copy or similar reproduction of an original document that is submitted to the department by mail, hand delivery, or telephonic document transmission to the telecopier machine specified by the department.]~~

(c) (No change.)

(d) Page limitations. A reproduction submitted by telephonic document transmission to the department's fax [telecopier] machine may not exceed 25 pages in total length, including the transmittal document required by subsection (e) of this section, or it will be rejected for filing. The transmission of portions of any particular filing at different times is treated as one reproduction for purposes of this subsection.

(e) (No change.)

(f) Time of receipt. To be considered received by the department, a reproduction must be in clearly legible form. The date the submission is actually received by the department or the date and time imprinted by the department's fax machine [telecopier] on the last page of a reproduction submitted by telephonic document transfer will determine the time of receipt, provided that a reproduction received after 4:30 p.m. is considered received at 8:00 a.m. on the next business day. A reproduction will not be considered received until the department receives the entire document and the required filing fee, if any.

(g) (No change.)

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

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Catherine Reyer
General Counsel

Texas Department of Banking

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SUBCHAPTER D. TRUST COMPANY OFFICES

7 TAC §21.42, §21.43

Amendments to Chapter 21, Subchapter D, §21.42 and §21.43 are proposed under Texas Finance Code, §181.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Trust Company Act.

Texas Finance Code, §182.203 and §204.106 are affected by the proposed amendments to Subchapter D.

§21.42. *Establishment, Relocation and Closing of an Additional Office.*

(a) Establishment or relocation by notice. A trust company may establish or relocate an additional office pursuant to Finance Code, §182.203, by filing a written notice with the banking commissioner containing all information required by subsection (b) of this section, accompanied by the required filing fee pursuant to §21.2 of this title (relating to Filing and Investigation Fees), ~~[(relating to Filing Fees and Cost Deposits),]~~ and notice of the submission must be published as required by subsection (d) of this section. A trust company filing notice of an additional office under this subsection may establish the additional office on the 31st day after the date the required notice and fee are received by the banking commissioner unless the banking commissioner gives notice in writing, prior to the expiration of that time period, that an earlier or later date is authorized or that additional information is required pursuant to subsection (c) of this section.

(b) - (h) (No change.)

§21.43. *Representative Trust Offices of Federally Chartered or Federally Insured Out-of-State Banks.*

(a) (No change.)

(b) An out-of-state bank authorized by its charter to conduct a trust business that has not established or acquired a branch in this state may establish a representative trust office in this state:

(1) if not chartered by a federal banking regulatory agency and not insured by the Federal Deposit Insurance Corporation, only after complying with §21.44 of this title (relating to Representative Trust Offices of Out-of-State Trust Companies and Uninsured State Banks); or

(2) (No change.)

(c) (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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SUBCHAPTER F. APPLICATION FOR MERGER, CONVERSION, OR SALE OF ASSETS

7 TAC §21.61, §21.74

Amendments to Chapter 21, Subchapter F, §21.61 and §21.74 are proposed under Texas Finance Code, §181.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Trust Company Act.

Texas Finance Code, §182.003, §182.202, and §182.203 are affected by the proposed amendments to Subchapter F.

§21.61. Definitions.

(a) Words and terms used in this subchapter that are defined in the Trust Company Act or in §21.1 of this title (relating to Definitions), have the same meanings as defined therein.

(b) (No change.)

§21.74. Notification.

A notification by the banking commissioner under this subchapter may be by registered or certified mail, return receipt requested, and is complete when the notification is deposited in the United States mail postage prepaid, return receipt requested, mailed to the address furnished in the application. Notification may also be made in person to the applicant, or to the trust company or another person, fiduciary institution, foreign corporation or domestic corporation, or other entity subject to this subchapter, by agent-receipted delivery or by courier-receipted delivery to the address furnished in the application, by email to the email address furnished in the application, or by telephonic document transfer to the fax number [applicant's telecopier number as] furnished in the application. Notice by telephonic document transfer served after 6:00 p.m. local time of recipient is considered as notice served on the following day.

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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Catherine Reyer

General Counsel

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PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 52. DEPARTMENT ADMINISTRATION

SUBCHAPTER B. HEARINGS AND APPEALS

7 TAC §52.20

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes to add new Subchapter B, Hearings and Appeals, and new §52.20, concerning appeals, hearings, and informal settlement conferences, to 7 TAC Chapter 52, concerning Department Administration. The new rule is proposed to provide consistent procedures for resolving complaints concerning entities and individuals regulated by the department. The new rule

is proposed in response to recommendations of the Sunset Advisory Commission that the department update its complaint resolution 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 rule implements 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 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.

Commissioner Jones 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 that complainants and respondents will have a better understanding of the appeal and resolution process.

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

For each year of the first five years that the rule will be in effect, the rule 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; or
- 6) positively or adversely affect this state's economy.

The rule creates new regulations concerning complaint resolution to conform to recommendations from the Sunset Advisory Commission.

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 rule is 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 resolution procedures, Finance Code §96.002, which pro-

vides 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 rule are found in Finance Code Title 3, Subtitles B and C, and also Finance Code Chapters 13, 156, 157, 158, and 180.

§52.20. Appeals, Hearings, and Informal Settlement Conferences.

(a) Alternative resolution of appeal. If enforcement staff determines resolution to an appeal without a hearing is appropriate and possible, enforcement staff may pursue settlement through negotiation, agreed order, consent order, informal settlement conference, or other appropriate means.

(b) Informal settlement conference. Informal settlement conferences:

(1) are conducted at the discretion of enforcement staff;

(2) may not be used as a delay tactic;

(3) may be primarily conducted over the phone and by email; and

(4) a request for an informal settlement conference does not create any new or additional rights or obligations.

(c) Mediation. As applicable under 1 Texas Administrative Code §155.351, 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 complaints or other matters.

(d) Hearing. Hearings may be conducted in accordance with Chapter 9 of this title, with Texas Government Code, Chapter 2001, and may be conducted by the State Office of Administrative Hearings (SOAH).

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



SUBCHAPTER C. ADVISORY COMMITTEES

7 TAC §52.30

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes to add new Subchapter C, Advisory Committees, and new section 52.30, concerning advisory committees and informal conferences, to 7 TAC Chapter 52. The new rules are proposed to formalize in rule the use of advisory committees and informal conferences by the department, including creating an automatic abolition date for such committees.

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 and respondents will have a better understanding of the appeal and resolution process.

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.

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.

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 to formalize in rule the use of advisory committees and informal conferences by the department, including creating an automatic abolition date for such committees.

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 and Finance Code §13.018, which provides that the commissioner may appoint advisory committees to assist the department and commissioner in performing their duties.

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.

§52.30. Advisory Committees and Informal Conferences.

(a) Advisory committees. The mortgage industry advisory committee referenced in Texas Finance Code, §§157.0024 and 156.104, as well as any advisory committees which may be created under Texas Finance Code, §13.018 shall continue in existence and unless continued further shall be automatically abolished on September 1, 2031.

(b) Informal conferences. Without limiting any mortgage industry advisory committee's ability to advise and assist the commissioner, the commissioner may use committees, informal conferences, and consultations to obtain the opinions and advice of interested persons regarding contemplated rulemaking in accordance with Texas Government Code, §2001.031 or to otherwise advise the department. The power of any committee members appointed by the commissioner is advisory only. Any committees created, unless continued, shall be abolished.

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



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 16. HISTORIC SITES

13 TAC §16.3

The Texas Historical Commission (hereafter referred to as the "Commission") proposes amendments to 13 TAC §16.3, concerning historic sites. These amendments are needed as part of the Commission's overall effort to clarify language in order to implement necessary updates, additions and changes to more precisely reflect the procedures of the historic sites division.

The rule amends the current two-phase process and creates a three-phase process within the updated State Historic Sites Historic Properties Collection Plan for the evaluation of a historic property. The amendments provide the criteria to be used in preliminary staff evaluations and defines a process to more effectively evaluate properties and contain costs.

FISCAL NOTE. There will be no fiscal impact. The proposed revisions to the process of historic site evaluation will minimize the fiscal impact and contain costs in evaluating potential properties and be more cost effective to the state. Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules, as proposed.

PUBLIC BENEFIT/COST NOTE. The benefit to the public will be achieved by providing an improved and enhanced structured

approach in property evaluations. The proposed new three step procedure will insure that the process is the most effective and efficient in the deployment of state resources. Mr. Wolfe has also determined that for each year of the first five-year period the amended rules are in effect, the public benefit will be a clearer statement of the criteria to be used in evaluating potential historic sites and a more clearly defined process.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules as proposed. There is no effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and §2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed amendments do not impose a cost on regulated persons or entities; therefore, they are not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. The proposed rule amendments provide an opportunity for the historic sites division to operate more strategically in assessing properties with a preliminary in-house first step to determine if further investment of state resources is required in any property assessment. There is no anticipated economic impact of these amendments to the rule. Mr. Wolfe has also determined that there will be no negative impact on rural communities, small or micro-businesses because of implementing these rules amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. There are no anticipated economic costs to the public in compliance with the amendments to these rules, as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC 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. Comments on the proposal may be submitted to Joseph Bell, Deputy Executive Director of Historic Sites, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.0057 and §442.0058, which al-

low the Commission to accept donations of land or sell or exchange land; and Texas Government Code §442.0053(a), which provides that the Commission by rule shall adopt the criteria to determine to the eligibility for the inclusion of real property into the state historic sites system.

CROSS REFERENCE TO STATUTE. Texas Government Code §442.0053(a) provides the Commission with the authority to adopt the criteria to determine to the eligibility for real property's inclusion into the state historic sites system and Texas Government Code §442.0056(a) provides the Commission with the authority to acquire historic sites. No other statutes, articles, or codes are affected by this new rule.

§16.3. *Addition of Historic Sites to the Texas Historical Commission Historic Sites Program.*

(a) Criteria. The addition of new Historic Sites will follow the "State Historic Sites Historic Properties Collection Plan" in a three-step process ["~~Historic Sites Division Property Collection Plan~~"] as posted on the Texas Historical Commission's (Commission) website at thc.texas.gov detailing themes and subthemes in Texas history, site assessment, operational and managerial evaluations processes and the following criteria:

(1) The property must have recognized statewide or national significance based on the standards of the National Register of Historic Places.

(2) The property should be able to provide interpretation of a significant theme or event of Texas history that is not fully represented by the Commission's existing historic sites or other historic sites accessible to the public. The Commission will strive to maintain a geographic, cultural and thematic balance in its program.

(3) The property should have exceptional integrity of location (including surrounding environment), design, material, setting, feeling, and association.

(4) The property should have appropriate collections (objects, manuscript material, artifacts) associated with the historic site or necessary artifacts related to the site's history and period of significance should be identified and available.

(5) The property must be appropriate for use as an interpretive museum or historic site, have high potential to attract and accommodate diverse and new audiences, and be accessible to travelers as well as to the local community.

(6) The property must be available without restrictions that would limit the Commission's options for preservation and interpretation as a historic site (for example, a life estate retained by the grantor, restrictions against future sale or conveyance, or limits on alterations deemed appropriate by the Commission). The Commission encourages the use of easements or other restrictions to ensure the preservation of historic sites.

(7) Financial resources must be available or assured, including an endowment fund where appropriate, or sources of funding must be identified in a comprehensive funding plan to ensure the restoration, interpretation, development, long term operation and preservation of the site.

(8) The property must have the potential for strong supporting partnerships including community support.

(b) Evaluation Process. To evaluate the site against these criteria, the Commission will follow a three-step [~~two-step~~] process as follows.

(1) Phase 1. Staff will determine if the property should be recommended to be added to the Commission's portfolio of State Historic Sites. The preliminary evaluation will briefly address the following issues: [A staff committee will be appointed to conduct a preliminary review of the property with reference to criteria noted in subsection (a) of this section. The committee will make a recommendation to the Commission whether to proceed with the second step evaluation.]

(A) Importance of the property in Texas and/or American History;

(B) Property value - strategic comparison with other available properties for location, operation, cultural resources and marketability;

(C) Potential for generation of sustainable visitation and revenue;

(D) THC resources to operate the property;

(E) Property Condition - Improvements required for successful operation;

(F) Resources for interpretation of the property's themes and stories;

(G) Resources for preservation and care for the property's infrastructure and collections;

(H) Collections or endowment accompanying the property;

(I) Potential for development of Friends Organizations;

(J) Evaluation of other already organized local support;
and

(K) Limitation on site development, such as environmental regulations and local restrictions (zoning, land use).

(2) Phase 2. If the property is recommended for additional study, a staff committee will be assigned to conduct a preliminary review of the property with reference to criteria noted in subsection (a) of this section. The committee will make a recommendation to the Commission whether to proceed with the development of a historic site management plan in phase three of the evaluation process.

(3) Staff will obtain and use the following information in phase two:

(A) A description of the property, including land, structures and other features.

(B) A preliminary inventory of collections and equipment.

(C) A statement of significance or reference to its designation on the National Register of Historic Places/National Historic Landmark and an evaluation of the site's integrity.

(D) A statement from the current owner indicating a willingness to transfer the real and relevant personal property and the terms and conditions for such a transfer.

(E) Needed and available funding for development costs and continuing operational costs.

(F) Letters of support from interested parties, including an indication of willingness to create an appropriate support group.

(G) A statement identifying how the property would support the educational mission of the Historic Sites Program to serve a broad and diverse audience.

(H) A preliminary estimate of the visitation and costs for development and operation of the site.

(4) ~~(3)~~Phase 3. Upon positive action by the Commission on the recommendation noted in paragraph (2) ~~(4)~~ of this subsection, the staff will prepare or have prepared a management plan for the site's evaluation [site] including:

(A) Evaluation of the site, including but not limited to buildings, support facilities, infrastructure (including roads, trails, utility service/water and sewer systems), landscape features, and collections.

(B) Required staffing and services for operation of the site, including ongoing costs of preservation, operation, maintenance and marketing. ~~[Merits of the proposed site compared to other sites in Texas that embody the same or similar historical or physical characteristics.]~~

(C) Preservation and facility development needs.

(D) Costs and timeline for making the property available to the public.

(E) Required staffing and consultant services for development of the site. ~~[Any limitation on site development, such as environmental regulations and local restrictions (zoning, land use).]~~

~~[(F) Needed staffing and consultant services for development of the site.]~~

~~[(G) Needed staffing and services for operation of the site, including ongoing costs of preservation operation, and marketing.]~~

(F) ~~[(H)]~~ Projected ~~[Business plan for the site identifying projected]~~ audience/annual visitation, sources of funding to ~~[funds for all aspects of the program including available community]~~ support programming including community partnerships, potential earned to generate revenue, philanthropic and endowment.

(5) ~~(4)~~The management ~~[This]~~ plan will be reviewed by a panel of experts including an independent Texas historian, museum professional, and expert in heritage tourism and their recommendation will be taken into consideration by the Commission to determine whether the property should be accepted.

(6) ~~(5)~~ The decision to accept a site is within the sole discretion of the Commission, including determining whether acceptance of a property that meets all technical criteria is in the best interest of the State.

(c) A property that is adjacent to an existing THC State Historic Site that will enhance the preservation, protection or interpretation of the existing site, or a property that is needed to support the operations of the state historic sites as a program support facility may be acquired by purchase or donation by action of the Commission on recommendation of the Executive Director, without the evaluation process described in subsection (b) of this section.

(d) A right of way or easement required to allow for installation or connection of necessary utilities at a THC State Historic Site between regular meetings of the Commission, may be approved by the Executive Director with the approval of the Chairman. This action will be ratified at the next meeting of the Commission.

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

Filed with the Office of the Secretary of State on October 15, 2019.

TRD-201903760

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: December 1, 2019

For further information, please call: (512) 463-6100



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 3. RULES APPLYING TO ALL PUBLIC AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION IN TEXAS REGARDING ELECTRONIC REPORTING OPTION FOR CERTAIN OFFENSES; AMNESTY

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§3.1 - 3.10, 3.16 - 3.20

The Texas Higher Education Coordinating Board proposes new Chapter 3, Subchapter A, §§3.1 - 3.10, and 3.16 - 3.20 concerning sexual misconduct policies and procedures at institutions of higher education. The proposed new rules mandate that all institutions of higher education adopt policies on sexual harassment, sexual assault, dating violence, and stalking. The rules provide guidance for institutions on reporting requirements, disciplinary processes, and confidentiality. The proposed new rules were reviewed and approved by consensus by the Negotiated Rule-making Committee on Sexual Harassment/Assault on October 17, 2019. The newly added rules will affect students when the recommendations are adopted by the Board.

Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the new sections. There could be significant costs to public institutions of higher education to develop new policies, procedures, reporting mechanisms, and training for administrators, faculty, and staff.

Dr. Silverman as also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the new rules will be improvements in policies and procedures at public institutions of higher education for addressing incidents of sexual misconduct. There could be significant costs to public institutions of higher education to develop new policies, procedures, reporting mechanisms, and training for administrators, faculty, and staff. There is no impact on local employment. There is no impact on small businesses, micro businesses, and rural communities.

Comments on the proposal may be submitted to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit an existing rule; and
- (7) the rules will not change the number of individuals subject to the rule
- (8) the rules will positively affect the state's economy.

The new sections are proposed under the Texas Education Code, Sections 51.290 and 51.295, which provide the Coordinating Board with the authority to develop rules addressing sexual misconduct at institutions of higher education with the assistance of negotiated rulemaking and advisory committees.

The new sections affect the implementation of Texas Education Code, Chapter 51.

§3.1. Purpose.

The purpose of this subchapter is to establish rules to require public, private, and independent institutions of higher education to report incidents of sexual harassment, sexual assault, dating violence, and stalking; to adopt a policy on sexual harassment, sexual assault, dating violence, and stalking; implement electronic reporting protocols for such incidents; develop a comprehensive prevention and outreach program; and establish penalties for noncompliance; and provide amnesty or immunities to students and employees who report incidents of sexual harassment, sexual assault, dating violence, and stalking.

§3.2. Authority.

Texas Education Code Subchapters E-2, Chapter 51, §51.259 and Subchapter E-3, Chapter 51, §51.295 authorize the Texas Higher Education Coordinating Board to adopt rules necessary to administer these Subchapters.

§3.3. Definitions.

(a) Coordinating Board or Board--The Texas Higher Education Coordinating Board.

(b) Course and Scope of Employment--means an employee performing duties in the furtherance of the institution's interests.

(c) "Dating violence," "sexual assault," and "stalking" have the same meanings assigned by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Section 1092 (f)(6)(A)).

(d) Postsecondary educational institution--an institution of higher education or a private or independent institution of higher education, as those terms are defined by Texas Education Code, §61.003.

(e) Sexual harassment--unwelcome, sex-based verbal or physical conduct that:

(1) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or

(2) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.

(f) Substantial Compliance--a postsecondary educational institution has made a good faith effort to comply with the requirements under these rules provided that the deficiencies identified by the Coordinating Board can be readily corrected.

§3.4. Policy on Sexual Harassment, Sexual Assault, Dating Violence, and Stalking.

(a) Each postsecondary educational institution shall adopt a policy on sexual harassment, sexual assault, dating violence, and stalking applicable to each enrolled student and employee of the institution and have the policy approved by the institution's governing body. The policy must include:

(1) Definitions of prohibited behavior;

(2) Sanctions for violations;

(3) Protocol for reporting and responding to reports of sexual harassment, sexual assault, dating violence, and stalking that complies with the electronic reporting requirement in Subsection 3.7 of this section;

(4) Interim measures to protect victims of sexual harassment, sexual assault, dating violence, or stalking pending the institution's disciplinary process, including protection from retaliation, and any other accommodations or supportive measures available to those victims at the institution. This section is not intended to limit an institution's ability to implement accommodations to others as needed; and

(5) A statement regarding:

(A) the importance of a victim of sexual harassment, sexual assault, dating violence, or stalking going to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident;

(B) the right of a victim of sexual harassment, sexual assault, dating violence, or stalking to report the incident to the institution and to receive a prompt and equitable resolution of the report; and

(C) the right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime to law enforcement, or to decline to report the crime to law enforcement;

(b) Each postsecondary educational institution shall make its policy on sexual harassment, sexual assault, dating violence, and stalking available to students, faculty, and staff members by:

(1) including the policy in the student handbook and personnel handbook or the institution's equivalent(s); and

(2) creating and maintaining a web page dedicated solely to the policy that is easily accessible through a clearly identifiable link on the institution's homepage.

(c) Each postsecondary educational institution shall require each entering freshman or undergraduate transfer student to attend an orientation on the institution's sexual harassment, sexual assault, dating violence, and stalking policy before or during the first semester or term of enrollment at the institution. The orientation:

(1) may be provided online; and

(2) must include the statements described by Subsection (a)(5) of this section.

(d) Each postsecondary educational institution shall develop and implement a comprehensive prevention and outreach program on sexual harassment, sexual assault, dating violence, and stalking for enrolled students and employees of the institution. The program must:

(1) address a range of strategies to prevent sexual harassment, sexual assault, dating violence, and stalking, including a public awareness campaign; a victim empowerment program; primary prevention; bystander intervention; and risk reduction, and

(2) provide students with information regarding the protocol for reporting incidents of sexual harassment, sexual assault, dating violence, and stalking, including the name, office location, and contact information of the institution's Title IX coordinator, by:

(A) e-mailing the information to each student at the beginning of each semester or other academic term;

(B) including the information in the institution's orientation (which may be provided online); and

(C) as part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking adopted under Subsection (a), each postsecondary educational institution shall:

(i) to the greatest extent practicable based on the number of counselors employed by the institution, ensure each alleged victim or alleged perpetrator of a sexual harassment, sexual assault, dating violence, and stalking incident and any other person who reports such incidents are offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident and;

(ii) notwithstanding any other law, allow an alleged victim or alleged perpetrator of a sexual harassment, sexual assault, dating violence, and stalking incident to drop a course in which both parties are enrolled without any academic penalty.

(e) Each postsecondary educational institution shall review its sexual harassment, sexual assault, dating violence, and stalking policy at least each biennium and revise the policy as necessary and obtain approval from the institution's governing board.

§3.5. Reporting Required for Certain Incidents.

(a) An employee of a postsecondary educational institution who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator.

(1) The employee's duty to report an incident begins on the effective date of these regulations or January 1, 2020, whichever is later;

(2) The employee is required to report an incident regardless of when or where the incident occurred; and

(3) Institutions may establish additional reporting avenues to comply with this section provided that the reports are promptly routed to the Title IX coordinator or deputy Title IX coordinator.

(b) Except as provided by Subsection (c), the report must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident.

(c) In making a report under this section,

(1) the employees of a postsecondary educational institution identified below shall only report as follows:

(A) absent consent from the reporting student, an employee designated by the institution as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking shall only state the type of incident reported and may not include any information that would violate a student's expectation of privacy;

(B) absent consent from the reporting individual, an employee who receives information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking under circumstances that render the employee's communications confidential or privileged under other law shall only state the type of incident reported and may not include any information that would violate an expectation of privacy; or

(C) absent consent from the victim(s), an employee who receives information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking in the course and scope of employment as a healthcare provider, mental health care provider, or other medical provider shall only state the type of incident reported and may not include any information that would violate an expectation of privacy.

(2) This subsection does not affect the employee's duty to report an incident under any other law, including but not limited to, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Section 1092 (f)), Texas Family Code Section 261.101, or Health and Safety Code Section 611.004. When multiple confidential employees receive information about the same incident (e.g. student health center or counseling center), only a single report stating the type of incident is required.

(d) Notwithstanding Subsection (a), a person is not required to make a report under this section concerning:

(1) an incident in which the person was a victim of sexual harassment, sexual assault, dating violence, or stalking;

(2) an incident of which the person received information due to a disclosure made at a sexual harassment, sexual assault, dating violence, or stalking public awareness event sponsored by a postsecondary educational institution or by a student organization affiliated with the institution; or

(3) a sexual harassment, sexual assault, dating violence, or stalking incident in which the person has either learned of the incident during the course of their institution's review or process or has confirmed with the person or office overseeing the review or process, that the incident has been previously reported.

(e) A person acting in good faith who reports or assists in the investigation of a report of an incident described by this section or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such an incident may not be subjected to any disciplinary action by the postsecondary educational institution at which the person is enrolled or employed for any violation by the person of the institution's policy or code of conduct reasonably related to the incident for which suspension or expulsion from the institution is not a possible punishment.

(f) Subsection (e) does not apply to a person who perpetrates or assists in the perpetration of the incident reported under this section.

§3.6. Administrative Reporting Requirements.

(a) Not less than once every three months, the Title IX coordinator of a postsecondary educational institution shall submit to the institution's chief executive officer a written report ("Title IX Coordinator Report") on the reports received for the institution's reporting period under §3.5, including information regarding:

(1) the investigation of those reports;

(2) the disposition, if any, of any disciplinary processes arising from those reports; and

(3) the reports for which the institution determined not to initiate a disciplinary process, if any.

(b) The Title IX coordinator or deputy Title IX coordinator of a postsecondary educational institution shall immediately report to the institution's chief executive officer an incident reported to the coordinator under §3.5 if the coordinator has cause to believe that the safety of any person is in imminent danger as a result of the incident.

(c) Subject to Subsection (d), at least once annually, during either the fall or spring semester, the chief executive officer of a postsecondary educational institution shall submit to the institution's governing body and post on the institution's Internet website a report ("CEO Report") concerning the reports received under §3.5. The CEO report:

(1) may not identify any person; and

(2) must include:

(A) the number of reports received under §3.5;

(B) the number of investigations conducted as a result of those reports;

(C) the disposition, if any, of any disciplinary processes arising from those reports;

(D) the number of those reports for which the institution determined not to initiate a disciplinary process, if any; and

(E) any disciplinary actions taken under §3.8.

(d) If for any semester a postsecondary educational institution has fewer than 1,500 enrolled students, the chief executive officer of the institution shall submit and post a report required under Subsection (c) for that semester only if more than five reports were received under §3.5 during that semester.

(e) For purposes of this section, disposition means the final result under the institution's disciplinary process.

(f) For all reports under this section:

(1) When identifiable, reports may exclude duplicate reports of a single alleged incident;

(2) Reports may separately specify the number of confidential reports received by employees designated under section 3.5(c); and

(3) The Coordinating Board shall make available to institutions a recommended template for the Title IX Coordinator Report and the CEO Report, which satisfies the reporting requirements of this section.

§3.7. Electronic Reporting.

Each postsecondary educational institution shall provide an option for a student enrolled at or an employee of the institution to electronically report to the institution an allegation of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by the student or employee, regardless of the location at which the alleged offense occurred. The electronic reporting option must:

(1) Allow for anonymous reporting; and

(2) Be easily accessible via a clearly identifiable link on the institution's website home page.

§3.8. Failure to Report or False Report.

A postsecondary educational institution shall terminate the employment of an employee whom the institution determines, in accordance

with the institution's disciplinary procedure, to have committed an offense under Texas Education Code Sec. 51.255.

§3.9. Victim Request Not to Investigate.

(a) If an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking reported to a postsecondary educational institution requests the institution not to investigate the alleged incident, the institution may investigate the alleged incident in a manner that complies with the confidentiality requirements under Texas Education Code Section 51.291 and Section 3.17 of this Subchapter. In determining whether to investigate the alleged incident, the institution shall consider:

(1) the seriousness of the alleged incident;

(2) whether the institution has received other reports of sexual harassment, sexual assault, dating violence, or stalking committed by the alleged perpetrator or perpetrators;

(3) whether the alleged incident poses a risk of harm to others; and

(4) any other factors the institution determines relevant.

(b) If a postsecondary educational institution decides not to investigate an alleged incident of sexual harassment, sexual assault, dating violence, or stalking based on the alleged victim's request not to investigate, the institution shall take any reasonable steps the institution determines necessary and consistent with the institution's policy and applicable law to protect the health and safety of the institution's community in relation to the alleged incident.

(c) A postsecondary educational institution shall inform an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking who requests the institution not to investigate the alleged incident of the institution's decision whether to investigate the alleged incident.

§3.10. Disciplinary Process for Certain Violations.

A postsecondary educational institution that initiates a disciplinary process concerning an allegation that a student enrolled at the institution violated the institution's policy or code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking shall:

(1) provide to the student and the alleged victim a prompt and equitable opportunity to present witnesses and other evidence relevant to the alleged violation during the disciplinary process;

(2) ensure that both the student and the alleged victim have reasonable and equitable access to all evidence relevant to the alleged violation in the institution's possession, including any statements made by the alleged victim or by other persons, information stored electronically, written or electronic communications, social media posts, or physical evidence, redacted as necessary to comply with any applicable federal or state law regarding confidentiality; and

(3) take reasonable steps to protect the student and the alleged victim from retaliation and harassment during the pendency of the disciplinary process.

§3.16. Equal Access.

In implementing the requirements under this subchapter, a postsecondary educational institution shall, to the greatest extent practicable, ensure equal access for students enrolled at or employees of the institution who are persons with disabilities. The institution shall make reasonable efforts to consult with a disability services office of the institution, advocacy groups for people with disabilities, and other relevant stakeholders to assist the institution with complying with the institution's duties under this section.

§3.17. Confidentiality.

(a) The protections provided by this section apply to:

(1) an alleged victim;

(2) a person who reports an incident to an institution;

(3) a person who sought guidance from the institution concerning an incident;

(4) a person who participated in the institution's investigation of an incident; or

(5) a person who is alleged in a report made to an institution to have committed or assisted in the commission of sexual harassment, sexual assault, dating violence, or stalking, if after completing an investigation, the institution determines the report to be unsubstantiated or without merit.

(b) Unless waived in writing by the person, the identity of a person described by Subsection (a):

(1) is confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) may be disclosed only to:

(A) persons employed by or under contract with the postsecondary educational institution to which the report is made who are necessary for an investigation of the report or other related hearings;

(B) a law enforcement officer as necessary to conduct a criminal investigation of the report by persons described by Subsection (a);

(C) a health care provider in an emergency, as determined necessary by the institution;

(D) the person or persons alleged to have perpetrated the incident, to the extent required by other law; and

(E) potential witnesses to the incident as necessary to conduct an investigation of the report and to the extent required by other law.

(c) For the purposes of this section, investigation includes the coordination of the incident response, implementation of interim measures, adjudication of the report, and disclosure by the institution as required under state or federal law.

§3.18. Retaliation Prohibited.

(a) A postsecondary educational institution may not discipline or otherwise discriminate against an employee who in good faith:

(1) makes a report as required by §3.5; or

(2) cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to a report made by the employee as required by §3.5.

(b) Subsection (a) does not apply to an employee who:

(1) reports an incident of sexual harassment, sexual assault, dating violence, and stalking perpetrated by the employee; or

(2) cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to an allegation that the employee perpetrated an incident of sexual harassment, sexual assault, dating violence, and stalking.

§3.19. Compliance.

(a) The chief executive officer of each postsecondary educational institution shall annually certify in writing to the Coordinating Board, in October of each year, that the institution is in substantial compliance with Texas Education Code Subchapter E-2 (Sections

51.251-51.260). The Coordinating Board shall make available to institutions a required template for the certification which satisfies the requirements of this section.

(b) If the Coordinating Board determines that a postsecondary educational institution is not in substantial compliance with Texas Education Code Subchapters E-2 on or after January 1, 2020, and E-3 on or after August 1, 2020, the Coordinating Board may assess an administrative penalty against the institution in an amount not to exceed \$2 million. In determining the amount of the penalty, the Coordinating Board shall consider the nature of the violation and the number of students enrolled at the institution.

(c) If the Coordinating Board assesses an administrative penalty against a postsecondary educational institution under Subsection (b), the Coordinating Board shall provide to the institution written notice of the Coordinating Board's reasons for assessing the penalty.

(d) A postsecondary educational institution assessed an administrative penalty under Subsection (b) may appeal the penalty in the manner provided by Chapter 2001, Government Code.

(e) A postsecondary educational institution may not pay an administrative penalty assessed under Subsection (b) using state or federal money.

(f) The Coordinating Board shall deposit an administrative penalty collected under this section to the credit of the sexual assault program fund established under Section 420.008, Texas Government Code.

(g) The Coordinating Board shall annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing legislative committees with primary jurisdiction over legislation concerning sexual assault at postsecondary educational institutions a report regarding compliance with this subchapter, including a summary of the postsecondary educational institutions found not to be in substantial compliance as provided by this section and any penalties assessed under this section during the calendar year preceding the date of the report.

§3.20. Applicability.

Sections 3.1-3.3, 3.5-3.6, 3.8, 3.14, and 3.17-3.20 of this subchapter are effective on January 1, 2020 or 30 days after the publication of these rules in the *Texas Register*; whichever is later. The remainder of this subchapter is effective on August 1, 2020.

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 October 21, 2019.

TRD-201903832

William Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: December 1, 2019

For further information, please call: (512) 427-6206



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 182. USE OF EXPERTS

The Texas Medical Board (Board) proposes amendments to Chapter 182, Use of Experts, 22 TAC §§182.1, 182.3, 182.5, and 182.8. The Board also proposes the repeal of §§182.2, 182.4, 182.6, and 182.7, for the purpose of restructuring Chapter 182.

Amendments and repeals in Chapter 182 are proposed as follows:

Section 182.1, relating to Purpose, is amended to clarify the scope of the rule and its applicability.

Section 182.2, relating to Board's Role, is repealed.

Section 182.3, relating to Definitions, is amended to clarify definitions relating to role, purpose, and scope of various professionals utilized by the board.

Section 182.4, relating to Use of Consultants, is repealed.

Section 182.5, relating to Expert Panel, is renamed "Expert Reviewer Qualifications" and amended to delete obsolete language and to change the order of identified certifying boards.

Section 182.6, relating to Use of expert witnesses, is repealed.

Section 182.7, relating to Interim Appointment, is repealed.

Section 182.8, relating to Expert Physician Reviewers, is amended to delete obsolete language regarding the processes and procedures applicable to the expert physician reviewers. The amendments to §182.8 implement the legislative mandate passed in HB 1504 (86th Regular Legislative Session) relating to expert panel reports and providing each reviewer report to the affected licensee and the content of each report. This amendment also adds language requiring notice to the panel when a case involves Complementary and Alternative Medicine.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the subsection as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to provide greater information and due process to regulated licensees when addressing allegations of violations related to standard of care and other statutory violations.

Mr. Freshour has determined that for the first five-year period these rules are in effect, there will be no effect to individuals required to comply with these rules as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments, and has determined that for each year of the first five years the proposed amendments will be in effect there will be no effect on small businesses, micro businesses, or rural communities. 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 the agency has determined that for each year of the first five years these rule amendments, as proposed, are in effect:

(1) there will be no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rules;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rules;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rules; 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 rules.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

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

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

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

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

(5) The proposed rulemaking creates new regulations as described above.

(6) The proposed rulemaking does repeal existing regulations as described above. The proposed rule does not expand or limit an existing regulation.

(7) The proposed rulemaking increases the number of individuals subject to the rules' applicability.

(8) The proposed rulemaking 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-mailed to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

22 TAC §§182.1, 182.3, 182.5, 182.8

The amendments are proposed under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act.

No other statutes, articles or codes are affected by this proposal.

§182.1. Purpose.

Pursuant to §§154.056 - 154.0561 of the Medical Practice Act, the board is authorized to adopt rules relating to the use of expert physicians reviewers in the review of complaints involving standard of care [~~medical competency~~]. This chapter is promulgated to establish procedures, qualifications and duties of those professionals serving as expert physician reviewers [~~panel members, consultants and expert witnesses to the board~~].

§182.3. Definitions.

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

(1) Specialist [Consultant]--An individual with specialized knowledge or training selected by the agency to review and report on alleged non-standard of care complaints [and investigations and provide monitoring of compliance issues].

~~[(2) Expert Physician Panel (or Expert Panel)--Physicians appointed by the board who may serve as Expert Physician Reviewers.]~~

(2) ~~[(3)]~~ Expert Physician Reviewer (or Reviewer)--A qualified physician approved by the board as part of an [member of the] Expert Physician Panel [selected] to review and report on [consider a particular complaint involving] alleged violations of the standard of care as set out in §154.0561 and §154.058(b) [§154.058] of the Act.

(3) ~~[(4)]~~ Expert Witness--An individual with specialized knowledge or training who contracts with the board to provide [expert] opinions, testimony or other services in contested cases or temporary suspension proceedings [in the investigation and resolution of disciplinary matters] .

§182.5. Expert [Panel] Reviewer Qualifications.

(a) [Physicians may be appointed by the board to the Expert Panel as follows:]

~~[(1) Composition. The Expert Panel shall be composed of physicians approved by the board to act as Expert Physician Reviewers.]~~

~~[(2) Qualifications:]~~ To be eligible to serve on the Expert Panel, a physician must meet the following criteria:

~~(1) [(A)]~~ licensed to practice medicine in Texas;

~~(2) [(B)]~~ certification by [the American Board of Oral and Maxillofacial Surgery or] an organization that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists or the American Board of Oral and Maxillofacial Surgery;

~~(3) [(C)]~~ no history of licensure restriction;

~~(4) [(D)]~~ no history of peer discipline;

~~(5) [(E)]~~ acceptable malpractice complaint history; and

~~(6) [(F)]~~ in active practice as defined by §163.11 of this title (relating to the Active Practice of Medicine).

(b) Term; Resignation; Removal.

(1) An Expert Physician Reviewer shall serve on the Expert Panel until resignation or removal from the Expert Panel.

(2) An Expert Physician Reviewer may resign from the Expert Panel at any time.

(3) An Expert Physician Reviewer may be removed from the Expert Panel for good cause at any time on order of the Executive Director. Good cause for removal includes:

(A) failure to maintain the eligibility requirements set forth above;

(B) failure to inform the board of potential or apparent conflicts of interest;

(C) repeated failure to timely review complaints or timely submit reports to the board;

(D) repeated failure to prepare the reports in the prescribed format.

(c) Duties of the Expert Physician Panel. The Expert Physician Panel members will assist the board with complaints, investigations, and disciplinary actions relating to medical competency.

§182.8. Expert Physician Reviewers.

(a) Selection of Reviewers. Any complaint alleging a possible violation of the standard of care will be referred to Expert Physician Reviewers who will review all the medical information and records collected by the board and shall report findings in the prescribed format.

(1) Reviewers shall be randomly selected from among those Expert Panel members who practice in the same specialty as the physician who is the subject of the complaint. The practice area or specialty declared by the subject physician as his area of practice may be the specialty of the expert reviewers.

(2) If there are no Expert Panel Members in the same specialty or if the randomly selected Reviewer has a potential or apparent conflict of interest that would prevent the Reviewer from providing a fair and unbiased opinion, that Reviewer shall not review the case and another Reviewer shall be randomly selected from among those Expert Panel members who practice in the same or similar specialty as the physician who is the subject of the complaint, after excluding the previously selected Reviewer.

(A) A potential conflict of interest exists if the selected Reviewer practices medicine in the same geographical medical market as the physician who is the subject of the complaint; and

(i) is in direct competition with the physician; [or]

(ii) knows the physician; or

(iii) has treated or examined any of the patients at issue.

(B) An apparent conflict of interest exists if the Reviewer:

(i) has a direct financial interest or relationship with any matter, party, or witness that would give the appearance of a conflict of interest;

(ii) has a familial relationship within the third degree of affinity with any party or witness; or

(iii) determines that the Reviewer has knowledge of information that has not been provided by the Board and that the Reviewer cannot set aside that knowledge and fairly and impartially consider the matter based solely on the information provided by the Board.

(3) Notwithstanding the provisions of subsection (a)(2) of this section, if no Reviewer agrees to review the case who can qualify under the requirements of that subsection, a Reviewer who has a potential conflict may review the case, provided the Expert Reviewers' Report discloses the nature of the potential conflict.

(4) If any selected Reviewer has a potential or apparent conflict of interest, the Reviewer shall notify board staff of the potential or apparent conflict.

(b) Procedures for Expert Physician Review. The procedure for the use of Reviewers shall comply with §154.0561, Texas Occupations Code. Reviewers shall be specifically informed that they may communicate with other Reviewers selected to review the case and that they should communicate with other Reviewers to attempt to reach a consensus.

(c) Expert Reviewers' Reports. A report shall be prepared by [the] each Expert Physician Reviewer. Each Reviewer's report must include the specialty area of Reviewer. Any other biographical information must be redacted. [Reviewers to include the following:]

(1) The First Reviewers' report must include: [the specialty area of each Reviewer; and]

[(2) the opinions agreed to by at least a majority of the Reviewers regarding:]

- (A) relevant facts concerning the medical care rendered;
- (B) applicable standard of care;
- (C) application of the standard of care to the relevant facts;
- (D) a determination of whether the standard of care has been violated;
- (E) the clinical basis for the determinations, including any reliance on peer-reviewed journals, studies, or reports; and
- (F) the summation of the Reviewer opinion.

(2) The Second Reviewers' must do a complete review of the First Reviewers' report.

(3) The Second Reviewers' report may:

(A) concur with and adopt the First Reviewer's report as if it was their own report;

(B) concur in part and disagree in part with First Reviewers' report and state in writing the basis for the disagreement; or

(C) disagree with First Reviewers' report, and state in writing the basis for the disagreement.

(4) In the event of partial disagreement between the first two reviewers, the report will be sent back to the First Reviewer to determine if a consensus can be reached on the differing opinion.

(5) A Third Reviewers' report will only be required if First and Second Reviewers cannot reach a consensus. The Third Reviewer must do a complete review of the First and Second Reviewer reports; concur with and adopt the First Reviewer's report as if it was their own report;

(6) The Third Reviewers' report may:

(A) concur with and adopt either the First Reviewer's or Second Reviewer's report as if it was their own report; or

(B) write their own concurring report with either the First Reviewer's or Second Reviewer's report. A concurring report must include:

(i) relevant facts concerning the medical care rendered;

(ii) applicable standard of care;

(iii) application of the standard of care to the relevant facts;

(iv) a determination of whether the standard of care has been violated;

(v) the clinical basis for the determinations, including any reliance on peer-reviewed journals, studies, or reports; and

(vi) the summation of the Reviewer opinion.

(d) For each Expert Reviewers' Report that involves Complementary or Alternative Medicine (CAM) issues, Board staff shall insert immediately below Expert Reviewer's specialty in bold letters, "This review involves Complementary or Alternative Medicine."

(e) An Expert Reviewers' Report shall be deemed "investigative information" and an "investigative report" and is privileged and confidential, in accordance with §164.007(c).

(f) [(3)] Each Expert Reviewer Report shall have the following Notice to Respondent: "PURSUANT TO §164.007 OF THE MEDICAL PRACTICE ACT, THIS DOCUMENT CONSTITUTES INVESTIGATIVE INFORMATION AND IS PRIVILEGED AND CONFIDENTIAL. THE EXPERT REVIEWER REPORTS (REPORTS) ARE STATUTORILY LIMITED FOR USE AT THE INFORMAL PROCEEDING ONLY, UNDER TEXAS OCCUPATIONS CODE, SECTION 164.003(f). THE REVIEWERS' REPORTS ARE REQUIRED TO BE PROVIDED TO THE LICENSEE UNDER SECTION 164.003(f). THE REPORTS REMAIN CONFIDENTIAL AND PRIVILEGED UNDER SECTION 164.003(h) AND 164.007(c). THE REPORTS CANNOT BE RELEASED TO ANY PERSON OR ENTITY WITHOUT THE CONSENT OF THE BOARD. THE REPORTS CANNOT BE OFFERED, UTILIZED, OR SUBMITTED AS EVIDENCE OR DOCUMENTS IN A CONTESTED CASE PROCEEDING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS OR IN ANY LEGAL PROCEEDING." [THIS DOCUMENT IS PROVIDED FOR USE AT THE INFORMAL SETTLEMENT CONFERENCE ONLY AND MAY NOT BE USED FOR ANY OTHER PURPOSE. THIS DOCUMENT IS NOT SUBJECT TO OPEN RECORDS REQUESTS AND IS NOT ADMISSIBLE AS EVIDENCE IN ANY CIVIL JUDICIAL OR ADMINISTRATIVE PROCEEDING. THIS DOCUMENT MAY NOT BE USED BY OR DISSEMINATED BY ANY LICENSEE OR THEIR REPRESENTATIVE IN ANY CONTESTED CASE PROCEEDING, INCLUDING, BUT NOT LIMITED TO, A PROCEEDING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS. ACCORDINGLY, THIS DOCUMENT SHOULD NOT BE RELEASED TO ANY PERSON OR ENTITY WITHOUT THE CONSENT OF THE BOARD. PURSUANT TO §164.003 AND §164.007 OF THE MEDICAL PRACTICE ACT AND CHAPTER 179 OF THIS TITLE (RELATING TO CONFIDENTIALITY), RELEASE OF THIS DOCUMENT, OR ANY PORTION THEREOF, TO A LICENSEE OR THEIR REPRESENTATIVE PURSUANT TO §164.003 OF THE MEDICAL PRACTICE ACT AND CHAPTER 187 OF THIS TITLE (RELATING TO PROCEDURAL RULES), SHALL NOT CONSTITUTE WAIVER OF PRIVILEGE OR CONFIDENTIALITY.]

[(d) An Expert Reviewers' Report is:]

[(1) "investigative information" and an "investigative report" and is privileged and confidential, in accordance with §164.007(c), Texas Occupations Code; and]

[(2) an investigative report by a consulting-only expert as defined by Texas Rules of Civil Procedure §192.3(e) and §192.7(d).]

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 October 21, 2019.

TRD-201903833

Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: December 1, 2019

For further information, please call: (512) 305-7016



22 TAC §§182.2, 182.4, 182.6, 182.7

The repeals are proposed under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for

the Board to adopt rules necessary to administer and enforce the Medical Practice Act.

No other statutes, articles or codes are affected by this proposal.

§182.2. *Board's Role.*

§182.4. *Use of Consultants.*

§182.6. *Use of expert witnesses.*

§182.7. *Interim Appointment.*

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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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

SUBCHAPTER B. DUTIES OF A FUNERAL ESTABLISHMENT/LICENSEE

22 TAC §203.32

The Texas Funeral Service Commission (Commission) proposes to amend 22 Texas Administrative Code (TAC) §203.32, concerning Requirements Relating to Embalming.

BACKGROUND AND JUSTIFICATION. The Commission announced its intent to review its rules in accordance with Texas Government Code, §2001.039 in January 2019 and published notice in the April 19, 2019, issue of the *Texas Register* (44 TexReg 2064). The agency held five meetings with stakeholders during its review period. The Commission has determined the reasons for initially adopting the rules in Title 22, Part 10, Chapter 203, Subchapter B continue to exist. However, changes to the following rules are necessary to comply with statutory changes made during the 86th Legislative Session in HB 1540, as directed by the Texas Sunset Advisory Commission, or as requested by stakeholders to clarify the rules.

Rule §203.32, Requirements Relating to Embalming - The changes would eliminate the requirement clothing/personal effects be "thoroughly disinfected" and instead just state they should be "disinfected" as the Commission believes an item is either disinfected or it is not. The proposed amendment eliminates the specific requirement of one gallon of dilute solution per 50 pounds of body weight and instead allows for "sufficient" solution be used such that the embalmer is satisfied that the deceased will be presentable to the public.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Janice McCoy, Executive Director, has determined for the first five-

year period the amendments are in effect there will be no fiscal implication for local governments, or local economies and no state fiscal impact.

PUBLIC BENEFIT/COST NOTE. Ms. McCoy has determined that, for each year of the first five years the proposed amendments will be in effect, (1) the licensed community will no longer have to comply with unduly technical or cumbersome requirements that do not protect public health, safety, or welfare; and (2) the rules will provide greater clarity to the public and licensees. There will not be any economic cost to any individuals required to comply with the proposed amendments and there is no anticipated negative impact on local employment because the rules only further define and clarify statute.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. Ms. McCoy has determined that there will be no adverse economic effect on small or micro-businesses or rural communities because there are no costs on individuals due to the amendments. As a result, the preparation of an economic impact statement and regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

GOVERNMENT GROWTH IMPACT STATEMENT. Ms. McCoy also has determined that, for the first five years the amendments would be in effect: 1. The proposed amendments do not create or eliminate a government program; 2. The proposed amendments will not require a change in the number of employees of the agency; 3. The proposed amendments will not require additional future legislative appropriations; 4. The proposed amendments will not require an increase in fees paid to the agency; 5. The proposed amendments will not create a new regulation; 6. The proposed amendments will not expand, limit, or repeal an existing regulation; 7. The proposed amendments will not increase or decrease the number of individuals subject to the rule's applicability; and 8. The proposed amendments will neither positively nor negatively affect this state's economy.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT. Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c). The proposed amendments do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government and no new fee is imposed. Therefore, the agency is not required to take any further action under Government Code §2001.0045(c).

TAKINGS IMPACT ASSESSMENT: Ms. McCoy has determined Chapter 2007 of the Texas Government Code does not apply to this proposal because it affects no private real property interests. Accordingly, the Agency is not required to complete a takings impact assessment regarding this proposal.

ENVIRONMENTAL RULE ANALYSIS: Ms. McCoy has determined this proposal is not brought with the specific intent to protect the environment to reduce risks to human health from environmental exposure and asserts this proposal is not a major en-

vironmental Rule as defined by Government Code §2001.0225. As a result, an environmental impact analysis is not required.

PUBLIC COMMENT: Comments on the proposal may be submitted in writing to Mr. Kyle Smith at 333 Guadalupe Suite 2-110, Austin, Texas 78701, (512) 479-5064 (fax) or electronically to info@tfdc.texas.gov. Comments must be received no later than thirty (30) days after the date of publication of this proposal in the *Texas Register*.

This proposal is made pursuant to (1) Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; (2) Texas Occupations Code §651.201, which requires the Commission to prepare a consumer brochure; (3) Texas Occupations Code §651.261, which requires a license to be conspicuously posted in a funeral establishment; (4) Texas Occupations Code §651.351, which outlines requirements for funeral establishments including preparation rooms; (5) Texas Occupations Code §651.457, which outlines violations for improperly embalming a deceased human body; and (6) Texas Occupations Code §651.460, which outlines violations for failing to maintain records for two years.

No other statutes, articles, or codes are affected by this section.

§203.32. *Requirements Relating to Embalming.*

(a) In order to ensure the maximum inhibition of pathogenic organisms in the dead human body, the following minimum standards of performance shall be required of each licensed embalmer in the State of Texas in each instance in which he or she is authorized or required to embalm a dead human body.

(1) Embalming shall be performed only by embalmers licensed by the Commission, in properly equipped and licensed establishments, or in the event of a disaster of major proportions, in facilities designated by a Medical Examiner, Coroner, or state health official. Only three types of people may under certain circumstances assist licensed embalmers in embalming:

(A) provisional licensed embalmers under the personal supervision of a licensed embalmer;

(B) students who are enrolled in an accredited school of mortuary science working on a case intended toward completion of the student's clinical requirements, under the personal supervision of a licensed embalmer and with written permission to assist the embalmer from a family member or the person responsible for making arrangements for final disposition; and[;]

(C) in the event of a disaster of major proportions and with the prior approval of the Executive Director, embalmers licensed in another state as long as they are working with or under the general supervision of a person licensed as an embalmer in this state.

(2) Embalmers are required to utilize all personal protective equipment required by either OSHA or its corresponding state agency during the embalming procedure.

(3) Clothing and/or personal effects of the decedent shall either be [thoroughly] disinfected before delivery to any person or discarded in a manner consistent with the disposal of biohazardous material.

(4) The technique utilized to effect eye, mouth, and lip closure shall be any technique accepted as standard in the profession. Regardless of the technique chosen, the embalmer shall be required to achieve the best results possible under prevailing conditions.

(5) The entire body may be thoroughly cleaned before arterial injection and shall be cleaned immediately after the embalming procedure with an antiseptic soap or detergent.

(6) Body orifices (nostrils, mouth, anus, vagina, ear canals, and urethra) open lesions, and other surgical incisions shall be treated with appropriate topical disinfectants either before or immediately after arterial injection. After cavity treatment has been completed, body orifices shall be packed in cotton saturated with a suitable disinfectant of a phenol coefficient not less than one in cases where purge is evident or is likely to occur and/or when the body is to be transported out of state or by common carrier.

(7) The arterial fluid to be injected shall be one commercially prepared and marketed with its percent of formaldehyde, or other approved substance, by volume (index) clearly marked on the label or in printed material supplied by the manufacturer.

(8) The fluids selected shall be injected into all bodies in such dilutions and at such pressures as the professional experience of the embalmer shall indicate, except that in no instance shall dilute solution contain less than 1.0% formaldehyde, or an approved substance that acts the same as formaldehyde, and as the professional experience of the embalmer indicates, sufficient solution shall be used to the point where the embalmer is reasonably satisfied the deceased will be suitable for public presentation [~~one gallon of dilute solution shall be used for each 50 pounds of body weight~~]. Computation of solution strength is as follows: $C \times V = C' \times V'$, where C = strength of concentrated fluid, V = volume of ounces of concentrated fluid, C' = strength of dilute fluid, and V' = volume of ounces of dilute fluid.

(9) Abdominal and thoracic cavities shall be treated in the following manner.

(A) Liquid, semi-solid, and gaseous contents which can be withdrawn through a trocar shall be aspirated by the use of the highest vacuum pressure attainable.

(B) Concentrated, commercially prepared cavity fluid which is acidic in nature (6.5 pH or lower) and contains at least two preservative chemicals shall be injected and evenly distributed throughout the aspirated cavities. A minimum of 16 ounces of concentrated cavity fluid shall be used in any embalming case in which a minimum of two gallons of arterial solution has been injected.

(C) Should distension and/or purge occur after treatment, aspiration and injection as required shall be repeated as necessary.

(10) The embalmer shall be required to check each body thoroughly after treatment has been completed. Any area not adequately disinfected by arterial and/or cavity treatment shall be injected hypodermically with disinfectant and preservative fluid of maximum results. A disinfectant and preservative medium shall be applied topically in those cases which require further treatment.

(11) On bodies in which the arterial circulation is incomplete or impaired by advance decomposition, burns, trauma, autopsy, or any other cause, the embalmer shall be required to use the hypodermic method to inject all areas which cannot be properly treated through whatever arterial circulation remains intact (if any).

(12) In the event that the procedures in paragraphs (1) - (11) of this subsection leave a dead human body in condition to constitute a high risk of infection to anyone handling the body, the embalmer shall be required to apply to the exterior of the body an appropriate embalming medium in powder or gel form and to enclose the body in a zippered plastic or rubber pouch prior to burial or other disposal.

(13) Dead human bodies donated to the State Anatomical Board shall be embalmed as required by the State Anatomical Board and where conflicting requirements exist, those requirements of the State Anatomical Board shall prevail.

(14) All bodies should be treated in such manner and maintained in such an atmosphere as to avoid infestation by vermin, maggots, ants, and other insects; however, should these conditions occur, the body should be treated with an effective vermicide and/or insecticide to eliminate these conditions.

(15) No licensed establishment or licensed embalmer shall take into its or the embalmer's care any dead human body for embalming without exerting every professional effort, and employing every possible technique or chemical, to achieve the highest level of disinfecting.

(16) Nothing in this section shall be interpreted to prohibit the use of supplemental or additional procedures or chemicals which are known to and accepted in the funeral service profession and which are not specifically mentioned in this subsection.

(b) Minor variations in these procedures shall be permitted as long as they do not compromise the purpose of this rule as stated in subsection (a) of this section.

(c) All embalming case reports must contain, at a minimum, all the information on the case-report form promulgated by the Commission. Funeral establishments may use other forms, so long as the forms contain all the information on the promulgated form. A case report shall be completed for each embalming procedure not later than the date of disposition of the body which was embalmed. The embalmer shall ensure that all information contained in the case report is correct and legible. The completed form shall be retained for two years following the procedure date. The embalming case report must be completed and signed by the licensed embalmer who performed the embalming procedure.

(d) Nothing in this section shall be interpreted to require embalming if a family member or the person responsible for making arrangements for final disposition does not authorize embalming.

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 October 14, 2019.

TRD-201903751

Kyle E. Smith

Interim Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: December 1, 2019

For further information, please call: (512) 936-2469



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 512. CERTIFICATION BY RECIPROCITY

22 TAC §512.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §512.1, concerning Certification as a Certified Public Accountant by Reciprocity.

Background, Justification and Summary

The amendment to §512.1 deletes the reference to good moral character, to track the changes made to the Act effective September 1, 2019, and advises applicants that the Board will be reviewing applicants' criminal history records in order to ensure that licensees possess the integrity necessary to provide accounting services to the public.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be a rule that follows the Act and protects the public.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8) Texas Government Code).

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on December 2, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§512.1. Certification as a Certified Public Accountant by Reciprocity.

(a) The certificate of a "certified public accountant" shall be granted by reciprocity to an applicant who is qualified under §901.259 of the Act (relating to Certification Based on Reciprocity) or §901.260 of the Act (relating to Certificate Based on Foreign Credentials) and lacks a history of dishonest or felonious acts and any criminal activity that might be relevant to the applicant's qualifications [is of good moral character] as provided for [described] in §901.253 of the Act (relating to Background [Character] Investigation). The applicant must provide in the application for reciprocity the names of all the jurisdictions in which the applicant is or has been certified and/or licensed and all disciplinary actions taken or pending in those jurisdictions.

(b) Each applicant shall submit to the Department of Public Safety a complete and legible set of fingerprints from a vendor approved by the Department of Public Safety in conjunction with the application for the purpose of obtaining criminal history record information.

(c) An applicant from a domestic jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) satisfying one of the following conditions:

(A) the applicant holds a certificate or license to practice public accountancy from a domestic jurisdiction that has been determined by the board pursuant to §512.2 of this chapter (relating to NASBA Verified Substantially Equivalent Jurisdictions) as having substantially equivalent requirements for certification; or

(B) the applicant holds a certificate or license to practice public accountancy from a domestic jurisdiction that has not been determined by NASBA and the board to have substantially equivalent certification requirements but has had his education, examination and experience verified as substantially equivalent to those required by the UAA by NASBA; or

(C) the applicant meets all requirements for issuance of a certificate set forth in the Act; or

(D) the applicant met the requirements in effect for issuance of a certificate in this state on the date the applicant was issued a certificate or license by another domestic jurisdiction; or

(E) after passing the UCPAE, the applicant has completed at least four years of experience practicing public accountancy within the ten year period immediately preceding the date of application in this state; and

(2) meeting CPE requirements applicable to certificate holders contained in Chapter 523 of this title (relating to Continuing Professional Education).

(d) An applicant from a foreign jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) holding a credential that has not expired or been revoked, suspended, limited or probated, and that entitles the holder to issue reports on financial statements issued by a licensing authority or professional accountancy body of another country that:

(A) regulates the practice of public accountancy and whose requirements to obtain the credential have been determined by the board to be substantially equivalent to the requirements of education, examination and experience contained in the Act; and

(B) grants credentials by reciprocity to applicants certified to practice public accountancy by this state;

(2) receiving that credential based on education and examination requirements that were comparable to or exceeded those required by the Act at the time the credential was granted;

(3) completing an experience requirement in the foreign jurisdiction that issued the credential that is comparable to or exceeds the experience requirement of the Act or has at least four years of professional accounting experience in this state;

(4) passing an international qualifying examination (IQEX) covering national standards that has been approved by the board; and

(5) passing an examination that has been approved by the board covering the rules of professional conduct in effect in this state.

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 October 17, 2019.

TRD-201903779

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: December 1, 2019

For further information, please call: (512) 305-7842



CHAPTER 513. REGISTRATION SUBCHAPTER B. REGISTRATION OF CPA FIRMS

22 TAC §513.11

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.11, concerning Qualifications for Non-CPA Owners of Firm License Holders.

Background, Justification and Summary

The amendment to §513.11 deletes the reference to good moral character to track the changes made to the Act beginning September 1, 2019 and advises applicants that the Board will be reviewing applicants' criminal history records in order to ensure that licensees possess the integrity necessary to provide accounting services to the public.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be a rule that follows the Act and protects the public.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8) Texas Government Code).

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to

his attention at (512) 305-7854, no later than noon on December 2, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§513.11. Qualifications for Non-CPA Owners of Firm License Holders.

(a) A firm which includes non-CPA owners may not qualify for a firm license unless every non-CPA individual who is an owner of the firm:

(1) is actively providing personal services in the nature of management of some portion of the firm's business interests or performing services for clients of the firm or an affiliated entity;

(2) lacks a history of dishonest or felonious acts or any criminal activity that might be relevant to the applicant's qualifications; and

(3) is not a suspended or revoked licensee or certificate holder excluding those licensees that have been administratively suspended or revoked. (Administratively suspended or revoked are those actions against a licensee for Continuing Professional Education reporting deficiencies or failure to renew a license.)

(b) Each of the non-CPA individual owners who are residents of the State of Texas must also:

(1) pass an examination on the rules of professional conduct as determined by board rule;

(2) comply with the rules of professional conduct;

(3) maintain any professional designation held by the individual in good standing with the appropriate organization or regulatory body that is identified or used in an advertisement, letterhead, business card, or other firm-related communication; and

(4) provide to the board fingerprinting required in §515.1(d) of this title (relating to License) unless previously submitted to the board.

(c) A "Non-CPA Owner" includes any individual or qualified corporation who has any financial interest in the firm or any voting rights in the firm.

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 October 17, 2019.

TRD-201903780

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: December 1, 2019

For further information, please call: (512) 305-7842



TITLE 25. HEALTH SERVICES

PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

25 TAC §601.9

The Texas Medical Disclosure Panel (panel) proposes an amendment to §601.9, concerning informed consent of patients.

BACKGROUND AND PURPOSE

The amendment is proposed in accordance with the Texas Civil Practice and Remedies Code, §74.102, which requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. Section 601.9 contains the disclosure and consent form for anesthesia and/or perioperative pain management (analgesia).

SECTION-BY-SECTION SUMMARY

Language is being revised in §601.9 to update language that replaces the legacy agency from the "Department of State Health Services" to the "Health and Human Services Commission."

The proposed amendment to §601.9 revises the disclosure and consent form in English and Spanish for anesthesia and/or perioperative pain management (analgesia) to modify language ensuring the physician delegating/supervising or performing the anesthetic will be privileged with the rebuttable presumption intended.

FISCAL NOTE

Dr. Noah Appel, Chairman, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal impact to state or local governments as a result of administering the section as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of employee positions;
- (3) implementation of the proposed rule will not require an increase or decrease in future legislative appropriations to the agency;

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

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

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

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

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

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

Dr. Noah Appel has also determined that there will be no anticipated economic costs to small businesses, micro-businesses or rural communities required to comply with the amendment as proposed because regulated facilities already have an obligation to disclose risks and hazards related to medical care and surgical procedures. The amendment will not add additional costs.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

In addition, Dr. Noah Appel has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the amended disclosure rule will be that patients are better informed about the risks and hazards related to medical and surgical procedures they are considering.

In addition, Dr. Noah Appel, has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require any additional conduct for compliance.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The panel 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 for which an assessment is required under Texas Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Pamela Adams, Manager, Health Facility Licensing, Health and Human Services Commission, Mail Code 2835, P.O. Box 149347, Austin, Texas

78714-9347, phone (512) 834-4571, by fax to (512) 834-4514, or by email to pamela.adams@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 at 8407 Wall Street, Austin, Texas 78754 before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a weekend or holiday, comments that are postmarked, shipped, faxed, or emailed before midnight on the following business day will be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized under the Texas Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the form(s) for the treatments and procedures which do require disclosure.

The amendment implements the Texas Civil Practice and Remedies Code, Chapter 74.

§601.9. *Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia).*

The Texas Medical Disclosure Panel adopts the following form which shall be used to provide informed consent to a patient or person authorized to consent for the patient of the possible risks and hazards involved in anesthesia and/or perioperative pain management (analgesia). Providers shall have the form available in both English and Spanish language versions. Both versions are available from the [Health and Human Services Commission](#) [Department of State Health Services].

(1) English form.

Figure: 25 TAC §601.9(1)

[Figure: 25 TAC §601.9(1)]

(2) Spanish form.

Figure: 25 TAC §601.9(2)

[Figure: 25 TAC §601.9(2)]

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 October 21, 2019.

TRD-201903831

Noah Appel, M.D.

Chairman

Texas Medical Disclosure Panel

Earliest possible date of adoption: December 1, 2019

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



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

The Texas Department of Insurance (TDI) proposes new 28 TAC §5.4012 and amendments to §5.4011 and §§5.4601, 5.4603, 5.4621, 5.4622, and 5.4642, concerning windstorm building codes for structures insured by the Texas Windstorm Insurance Association (TWIA). The new and amended sections implement Insurance Code §2210.251(b) and §2210.252, which give the Commissioner authority to adopt windstorm building codes. The sections are also updated to reflect that the Texas Board of Professional Engineers is now the Texas Board of Professional Engineers and Land Surveyors.

EXPLANATION.

Section 5.4011. Amendments to §5.4011 are necessary to specify the end date of January 1, 2020, for compliance with the 2006 editions of the *International Residential Code (IRC)* and the *International Building Code (IBC)* with Texas Revisions, which are adopted by reference in the current §5.4011. The *IRC* specifies building code standards for residential structures; and the *IBC* specifies building code standards for other structures, including commercial buildings and government buildings.

Section 5.4012. Proposed new §5.4012 adopts the 2018 editions of the *IRC* and the *IBC*. Under the proposed rule, the 2018 editions apply to structures constructed, repaired, or to which additions are made on or after January 1, 2020. For construction to be eligible for windstorm coverage through TWIA, the construction must comply with the windstorm building code adopted by the Commissioner for the year in which the construction began. The International Code Council (ICC) publishes revised building codes every three years. Adopting newer editions of the building codes is periodically necessary to ensure that new construction incorporates advances in technology and greater understanding of wind engineering.

Proposed subsection (b) of §5.4012 provides an exemption from §5.4012(a) for repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a historic structure. Subsection (b)(1) - (3) defines the attributes that make a structure a historic structure. These subsections are consistent with previously adopted building code requirements.

Figure: 28 TAC §5.4012(a)(1), Figure: 28 TAC §5.4012(a)(2), and Figure: 28 TAC §5.4012(a)(3) provide the three-second gust wind speed for each risk category in that area. The figures consolidate the wind speed requirements for each of the five wind design methods referenced in the *IRC* and reduce the narrow range of wind speeds for each category and area to one number. Specifying a single wind speed reduces potential confusion regarding interpreting the codes.

Section 5.4601. The proposed amendment to §5.4601 will update the definition of "windstorm building code standards" to include the 2018 editions in the new §5.4012. The proposed amendment to §5.4601 also reflects that the Texas Board of Professional Engineers is now the Texas Board of Professional Engineers and Land Surveyors.

Section 5.4603. The proposed amendment to §5.4603, which lists windstorm inspection forms, conforms that section to the proposed new building codes. TDI also proposes to make non-

substantive changes to the names of some forms, to improve consistency.

Sections 5.4621, 5.4622, and 5.4642. The proposed amendments to §§5.4621, 5.4622, and 5.4642 update references to windstorm inspection forms consistent with the proposed amendments to §5.4603.

In addition, the proposed amendments update references to the Texas Board of Professional Engineers and Land Surveyors and make nonsubstantive capitalization and punctuation changes to conform the sections to the agency's current style.

TDI received comments on an informal draft of this rule, which was posted on TDI's website on January 18, 2019. TDI considered those comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. James D. "Donny" Cox, director of inspections, Regulatory Policy Division, has determined that during each year of the first five years the proposed new and amended sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections. This is because the proposed new and amended sections do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or administering the proposed new section and amended section.

Mr. Cox does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Cox expects that for each year of the first five years the proposed new and amended sections are in effect, the sections will have the public benefit of ensuring that new construction incorporates advances in technology and greater understanding of wind engineering. Studies conducted after recent hurricanes show that construction practices required in the newer editions of the building codes result in structures that perform better in high wind events, mitigating property damage and related risk to human life caused by wind and hail.

The adoption of the revised codes will have the public benefit of ensuring that new construction incorporates advances in technology and greater understanding in wind engineering. This will result in the mitigation of property damage and resulting human suffering in the designated catastrophe area in the event of a major hurricane. The 2018 edition of the *IRC* and the *IBC* will provide guidance and clarification for construction in the designated catastrophe areas, and when properly employed, will result in consistency and uniformity in the design, construction, and inspection of residences and businesses participating in the windstorm inspection process.

Mr. Cox expects that the costs associated with adopting the 2018 editions of the *IRC* and the *IBC* will be minimal. Costs include purchase of the code books or online access to the code books for use as a reference, labor to become familiar with the updated codes, and the construction costs associated with meeting the requirements of those codes. The proposed rules modify but do not add to the current rule requirements for conducting inspections and gathering substantiating information; therefore, this cost note does not consider these costs.

Engineers and construction supervisors may need to purchase a copy of the 2018 editions of the *IRC* and the *IBC*. A copy of the 2018 *IRC* costs \$144, and one month of online access costs \$9.67 from the ICC. A copy of the 2018 *IBC* costs \$147, and one month of online access costs \$9.83 from the ICC.

TDI anticipates that there may be labor costs to familiarize qualified inspectors and other stakeholders with the 2018 editions of the codes. Most appointed qualified inspectors are already generally familiar with the 2018 versions of the *IRC* and *IBC*. These codes are similar to existing adopted codes for windstorm inspections, and qualified inspectors are also familiar with codes adopted by local ordinances, including the communities that have already adopted the 2018 version of the *IRC* and *IBC*.

According to the U.S. Bureau of Labor Statistics, the mean hourly wage in the Coastal Plains Region of Texas non-metropolitan area is \$40.86 for civil engineers, \$19.45 for civil engineering technicians, and \$34.64 for first-line supervisors of construction trades (Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment Statistics, May 2018 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates, Coastal Plains Region of Texas nonmetropolitan area, accessed May 21, 2019, www.bls.gov/oes/current/oes_4800006.htm). According to the U.S. Bureau of Labor Statistics, the mean hourly wage in the Houston area is \$55.48 for civil engineers; \$28.67 for civil engineering technicians, and \$36.64 for first-line supervisors of construction trades (Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment Statistics, May 2015 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates, Houston-The Woodlands-Sugarland, Texas metropolitan area, accessed May 21, 2019, www.bls.gov/oes/current/oes_26420.htm). TDI estimates that affected individuals will require an average of eight hours to become familiar with the 2018 versions of the *IRC* and *IBC*. Affected individuals are in the best position to estimate this potential cost.

Replacement of one standardized building code by another is part of the nationwide construction industry's natural cost progression. Actual additional costs to comply with the revised standards will vary based on the individual circumstances of each property. Costs from slightly increased materials costs are offset by greater efficiencies created by technological changes in the manufacture and assemblage of building components, improved construction methods, and other standardization and modernization measures. This will offer greater protection and potentially lower repair costs following a wind event.

No individual or entity is required to comply with the proposed new section, because only structures that are insured through TWIA must be built in compliance with the new standards. However, in many areas of the designated catastrophe areas of the Texas sea coast, voluntary wind insurance is difficult to obtain, leaving many property owners with no option other than to insure through TWIA.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new and amended sections may have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses and rural communities. TDI estimates that the proposed new and amended sections may affect approximately 442 small or micro businesses and about 110 rural communities.

As of May 21, 2019, there were 442 appointed qualified inspectors. Almost all will be small and micro businesses. As stated in the Public Benefit and Cost Note section of this proposal, TDI an-

icipates that each person acting as a qualified inspector would incur some costs because of this proposal. Those costs would result from acquiring copies of the revised adopted codes, and the labor costs associated with becoming familiar with them.

Rural communities may be affected by these rules updating windstorm building codes for structures insured by TWIA. There are about 110 general-law or home-rule cities in the affected coastal counties. Some rural communities may have already adopted the 2018 versions of the *IRC* and *IBC*. However, in many areas of the designated catastrophe areas of the Texas sea coast, voluntary wind insurance is difficult to obtain, leaving many property owners with no option other than to insure through TWIA. Some rural communities may have their property insured by TWIA, and therefore may be affected by the same costs as detailed in the Public Benefit and Cost Note section of this proposal.

The primary objective of this proposal is to benefit the public by ensuring that new construction incorporates advances in technology and greater understanding of wind engineering, to reduce property damage and related risk to human life caused by wind and hail. TDI considered the following alternatives to minimize any adverse impact on small and micro businesses and rural communities while accomplishing the proposal's objectives:

- (1) not proposing the new and amended sections;
- (2) proposing a different requirement for small and micro businesses and rural communities; and
- (3) exempting small or micro businesses and rural communities from the proposed requirement that could create an adverse impact.

Not proposing the amendments and new section. The purpose of this rule proposal is to benefit the public by ensuring that new construction incorporates advances in technology and greater understanding of wind engineering. Without the proposal and adoption of amended rules for these subchapters, no one who uses a TWIA-insured structure would benefit from improved engineering requirements. Instead, they would be required to continue following standards set in 2006.

Failure to propose and adopt new rules would also undermine the purpose of Insurance Code §2210.251 and §2210.252, and it would reduce the potential eligibility to qualify for more assistance from the federal government in post-disaster recovery funding. For these reasons, TDI has rejected this option.

Proposing different requirements for small and micro businesses and rural communities. TDI believes that proposing different standards for small and micro businesses and rural communities than those included in this proposal would not provide a better option for these businesses. Alternative standards would be less relevant, less effective, and would lead to confusion. Adopting modified versions of the proposed building codes, or an earlier version of the proposed building codes, would not benefit small and microbusinesses or rural communities. This option would create confusion as to which codes are applicable. The proposed buildings codes are more current, and exceptions would mean that building codes for buildings owned by small and microbusinesses or in rural communities would be more vulnerable to wind and hail, and lead to higher losses to TWIA. Adopting uniform building codes helps building owners, contractors, and TWIA apply consistent standards. Failure to apply the proposed adopted building codes may reduce the potential eligibil-

ity to qualify for more assistance from the federal government in post-disaster recovery funding.

The potential for public harm resulting from adopting different regulatory requirements for small and micro businesses and rural communities would outweigh any potential benefit. TDI has considered the purpose of the applicable statute and the proposed amendments and has determined that it is not necessary, reasonable, legal, or feasible to waive or modify the proposed requirements for small or micro businesses who opt to comply with the new building standards and inspection process in order to obtain windstorm coverage through TWIA. For these reasons, TDI has rejected this option.

Excluding small and micro businesses and rural communities from applicability under the amendments and new section included in this proposal. As addressed in the Public Benefit and Cost Note section of this proposal, anticipated costs under the proposal are the result of adopting the 2018 editions of the *IRC* and the *IBC*. If TDI excluded small and micro businesses under the amendments and new section, they would not incur the anticipated costs. But if TDI excluded small and micro businesses, the building codes would not be uniformly adopted among TWIA's insureds. Some buildings would fall under the old standards, and others would fall under the new standards. This would make it more difficult for TWIA to predict losses. Because structures built to older building codes are more vulnerable to wind and hail, it could also lead to higher losses for TWIA.

Excluding small and microbusinesses and rural communities from applicability of these provisions would create potential harm for affected persons and the public that would outweigh the potential benefit to small or micro businesses. Excluding small and micro businesses and rural communities from applicability under the amendments and new section is also not practical. For this reason, TDI has rejected this option.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed new and amended sections reduce the regulatory burden the existing rule imposes on regulated persons and are necessary to receive a source of federal funds.

Adoption of the updated building codes will reduce the regulatory burden on builders and consumers by more closely conforming TDI's adopted code editions with local building requirements. Most cities in coastal counties that have adopted building codes have adopted newer editions of the *IRC* and the *IBC* than the current TDI-adopted code editions. Because of the length of time between TDI-adopted code editions and newer city-adopted code editions, there are differences between the codes. These differences would be resolved by adopting the 2018 editions of the codes because the 2012 and 2015 editions, that were widely adopted by cities, are more like the 2018 editions of the codes than the editions currently in use by TDI.

Finally, by adopting the 2018 editions of the codes, Texas can qualify for more assistance from the federal government in post-disaster recovery funding. The Federal Bipartisan Budget Act of 2018 included the Federal Cost Share Reform Incentive, which encourages states to adopt the latest building codes among other incentives. The Federal Cost Share Reform Initiative allows post-disaster federal cost-share with states to

increase from 75 percent to 85 percent on a sliding scale based on several factors, including the adoption and enforcement of the latest building codes. The proposed rule amendments are therefore necessary to receive a source of federal funds under Government Code §2001.0045(c)(4).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed new and amended sections are in effect, the rules:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation to adopt the 2018 editions of the *IRC* and the *IBC* for eligibility for wind and hail insurance, making the 2018 editions apply to structures constructed, repaired, or to which additions are made on or after January 1, 2020;
- will not expand, limit, or repeal an existing regulation, although the adoption of the 2018 editions will mean different building code standards will apply to structures constructed, repaired, or to which additions are made on or after January 1, 2020;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will positively affect the Texas economy because it will reduce the impact of future storms. Advances in technology and a greater understanding of wind engineering ensure that new construction is better able to resist and reduce damage from wind storms. Requiring more modern codes will reduce property damages caused by wind and hail, which may help TWIA have more predictable and limited losses for the property it insures.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on December 2, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on December 2, 2019. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

DIVISION 1. PLAN OF OPERATION

28 TAC §5.4011, §5.4012

STATUTORY AUTHORITY. TDI proposes amended §5.4011 and new §5.4012 under Insurance Code §§2210.008, 2210.251, 2210.252, and 36.001.

Insurance Code §2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules to implement Insurance Code Chapter 2210.

Insurance Code §2210.251(b) states that for geographic areas specified by the Commissioner, the Commissioner must adopt by rule the 2003 *International Residential Code* and may adopt subsequent editions of that code and amendments to that code.

Insurance Code §2210.252 provides that the Commissioner by rule may adopt an edition of the *International Residential Code* and a supplement published by the International Code Council or an amendment to that code.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.4011 and §5.4012 implement Insurance Code §2210.251 and §2210.252, enacted by Senate Bill 14, 78th Legislature, Regular Session, 2003.

§5.4011. Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008, and before January 1, 2020.

(a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in §5.4008 of this title [chapter] (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003) and which are constructed, repaired, or to which additions are made on and after January 1, 2008, and before January 1, 2020, shall comply with the 2006 Editions of the International Residential Code and the International Building Code, as each is revised by the 2006 Texas Revisions, and all of which are adopted by reference to be effective January 1, 2008. The codes are published by and available from the International Code Council, Publications, 4051 West Flossmoor Road, Country Club Hills, Illinois, 60478-5795, (Telephone: 888-422-7233), and the 2006 Texas Revisions to the 2006 Edition of the International Residential Code and the 2006 Texas Revisions to the 2006 Edition of the International Building Code are available from the Windstorm Inspections Section of the Inspections Division, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, MC 103-3A, Austin, Texas, 78714-9104 and on the Texas Department of Insurance website at www.tdi.state.tx.us. The following wind speed requirements shall apply:

(1) Areas Seaward of the Intracoastal Canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are seaward of the Intracoastal Canal and constructed, repaired, or to which additions are made on or after January 1, 2008, and before January 1, 2020, shall be designed and constructed to resist a 3-second gust of 130 miles per hour.

(2) Areas Inland of the Intracoastal Canal and Within Approximately 25 Miles of the Texas Coastline and East of the Specified Boundary Line and Certain Areas in Harris County. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in §5.4008(b)(2)(A) and (B) of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions

Are Made On and After September 1, 1998, and before February 1, 2003) [subsection (b)(2)(A) and (B) of §5.4008 of this chapter] and constructed, repaired, or to which additions are made on or after January 1, 2008, and before January 1, 2020, shall be designed and constructed to resist a 3-second gust of 120 miles per hour.

(3) Areas Inland and West of the Specified Boundary Line. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in §5.4008(c) of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003) [subsection (e) of §5.4008 of this chapter] and constructed, repaired, or to which additions are made on or after January 1, 2008, and before January 1, 2020, shall be designed and constructed to resist a 3-second gust of 110 miles per hour.

(b) Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. In order for a historic structure to be exempted, at least one of the following conditions shall apply to the structure:

(1) The structure is listed or is eligible for listing on the National Register of Historic places.

(2) The structure is a Recorded Texas Historic Landmark (RTHL).

(3) The structure has been specifically designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure, in order to maintain its historical designation.

§5.4012. Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made on or after January 1, 2020.

(a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in paragraphs (1), (2), and (3) of this subsection that are constructed, repaired, or to which additions are made on or after January 1, 2020, must comply with the 2018 editions of the International Residential Code and the International Building Code, which are adopted by reference and applicable beginning January 1, 2020. The codes are published by and available from the International Code Council at icsafe.org or by calling toll-free 1-888-422-7233. The following wind speed requirements apply:

(1) Areas seaward of the Intracoastal Canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas that are seaward of the Intracoastal Canal and constructed, repaired, or to which additions are made on or after January 1, 2020, must be designed and constructed to resist a three-second gust wind speed for the following risk categories of buildings and other structures:
Figure: 28 TAC §5.4012(a)(1)

(2) Areas inland of the Intracoastal Canal and within approximately 25 miles of the Texas coastline and east of the specified boundary line and certain areas in Harris County. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in §5.4008 (b)(2)(A) and (B) of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made on and after September 1, 1998, and before February 1, 2003)

and constructed, repaired, or to which additions are made on or after January 1, 2020, must be designed and constructed to resist a three-second gust wind speed for the following risk categories of buildings and other structures:

Figure: 28 TAC §5.4012(a)(2)

(3) Areas inland and west of the specified boundary line. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas as specified in §5.4008(c) of this title and constructed, repaired, or to which additions are made on or after January 1, 2020, must be designed and constructed to resist a three-second gust wind speed for the following risk categories of buildings and other structures:

Figure: 28 TAC §5.4012(a)(3)

(b) Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. For a historic structure to be exempted, at least one of the following conditions must apply to the structure:

(1) The structure is listed or is eligible for listing on the National Register of Historic Places.

(2) The structure is a Recorded Texas Historic Landmark by the Texas Historical Commission.

(3) The structure has been designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old, and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure to maintain its historical designation.

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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James Person
General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6541



DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

28 TAC §§5.4601, 5.4603, 5.4621, 5.4622, 5.4642

STATUTORY AUTHORITY. TDI proposes amending §§5.4601, 5.4603, 5.4621, 5.4622, and 5.4642 under Insurance Code §§2210.008, 2210.251, 2210.2515, 2210.252, and 36.001.

Insurance Code §2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules to implement Insurance Code Chapter 2210.

Insurance Code §2210.251(b) states that for geographic areas specified by the Commissioner, the Commissioner must adopt by rule the 2003 *International Residential Code* and may adopt subsequent editions of that code and amendments to that code.

Insurance Code §2210.2515 gives TDI the authority to prescribe forms on which a person may apply for a certificate of compliance.

Insurance Code §2210.252 provides that the Commissioner by rule may adopt an edition of the *International Residential Code* and a supplement published by the International Code Council or an amendment to that code.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.4601 implements Insurance Code §2210.251 and §2210.252, enacted by Senate Bill 14, 78th Legislature, Regular Session, 2003.

Section 5.4603 implements Insurance Code §§2210.2515, 2210.254, and 2210.2551, as enacted by House Bill 2439, 84th Legislature, Regular Session (2015).

Section 5.4621 and §5.4622 implement Insurance Code §2210.2515 and §2210.2551, as enacted by House Bill 2439, 84th Legislature, Regular Session (2015).

Section 5.4642 implements Insurance Code §2210.256, as enacted by House Bill 2439, 84th Legislature, Regular Session (2015).

§5.4601. *Definitions.*

The following definitions apply to this subchapter:

(1) Applicant--A person who submits a new or renewal application for appointment as an appointed qualified inspector.

(2) Appointed qualified inspector--An engineer licensed by the Texas Board of Professional Engineers and appointed by TDI as a qualified inspector under Insurance Code §2210.254(a)(2).

(3) Appointed qualified inspector number--A number TDI assigns to each appointed qualified inspector.

(4) Constructed or construction--The act of building or erecting a structure or repairing (including reroofing), altering, remodeling, or enlarging an existing structure.

(5) Completed improvement--

(A) An improvement in which the original transfer of title from the builder to the initial owner of the improvement has occurred; or

(B) if a transfer under subparagraph (A) of this paragraph is not contemplated, an improvement that is substantially completed.

(6) Improvement--The construction of or repair (including reroofing), alteration, remodeling, or enlargement of a structure to which the plan of operation applies.

(7) Ongoing improvement--

(A) An improvement in which the original transfer of title from the builder to the initial owner of the improvement has not occurred; or

(B) if a transfer under subparagraph (A) of this paragraph is not contemplated, an improvement that is not substantially completed.

(8) Substantially completed--An improvement for which the final framing stage, including attachment of component and cladding items and installation of windborne debris protection, has

been completed. If the improvement's windborne debris protection consists of wood structural panels, all the panels must be present at the improvement's location but need not be installed.

(9) TDI inspector--A qualified inspector authorized under Insurance Code §2210.254(a)(1) and employed by TDI.

(10) TDI--The Texas Department of Insurance.

(11) Texas Board of Professional Engineers and Land Surveyors, Texas Board of Professional Engineers, or TBPE --House Bill 1523, 86th Legislature, Regular Session, 2019, abolished the Texas Board of Professional Land Surveying and transferred its functions to the renamed Texas Board of Professional Engineers and Land Surveyors, effective September 1, 2019. All references to the Texas Board of Professional Engineers or the TBPE in this division are references to the Texas Board of Professional Engineers and Land Surveyors.

(12) [(H)] Association--The Texas Windstorm Insurance Association.

(13) [(H2)] Windstorm building code standards--The requirements for building construction in §§5.4007 - 5.4012 [§§5.4007 - 5.4014] of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made Prior to September 1, 1998; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After February 1, 2003 and before January 1, 2005; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2005, and before January 1, 2008; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008, and before January 1, 2020; and Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made on or after January 1, 2020; respectively).

§5.4603. *Windstorm Inspection Forms.*

(a) Inspection Verification, Form WPI-2-BC-6. TDI adopts by reference the Inspection Verification, Form WPI-2-BC-6, effective January 1, 2017, for use in windstorm inspection, for structures constructed, repaired, or to which additions are made on and after January 1, 2008, and before January 1, 2020.

(b) Application, inspection, and renewal forms. TDI will make available the following forms on its website:

(1) Application for Appointment as a Qualified Inspector [Appointment Application Form], Form AQI-1, effective January 1, 2017;

(2) Renewal Application for Appointment as a Qualified Inspector [Appointment Renewal Application Form], Form AQI-R, effective January 1, 2017;

(3) Application for Certificate of Compliance for Ongoing Improvement, Form WPI-1, January 1, 2017; [and]

(4) Application Form for Certificate of Compliance (WPI-8) for Completed Improvement, effective January 1, 2020; and [2017.]

(5) Inspection Verification, Form WPI-2, effective January 1, 2020, for structures constructed, repaired, or to which additions are made on and after January 1, 2020.

(c) TDI inspection and certification forms. When appropriate, TDI will issue the following forms:

(1) Field Form, Form WPI-7, effective January 1, 2017; and

(2) Certificate of Compliance for Ongoing Improvement, Form WPI-8, effective January 1, 2017.

§5.4621. *Certification of Ongoing Improvements Inspected by Appointed Qualified Inspectors.*

This section describes the procedure for the certification of ongoing improvements inspected by appointed qualified inspectors.

(1) Eligible structures. An appointed qualified inspector or a designated representative of an appointed qualified inspector may only inspect an ongoing improvement for which TDI has received the following information:

(A) the physical address (including street, street number, city, county, and ZIP code);

(B) the wind zone location;

(C) the type of structure the ongoing improvement is or is a part of, including the structure's name or number, and number of units, if applicable;

(D) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(E) the name and contact information of the appointed qualified inspector inspecting the ongoing improvement, or whose designated representative is inspecting the ongoing improvement;

(F) the storm code, if applicable;

(G) the date construction of the ongoing improvement began;

(H) the date of application for the certificate of compliance for the ongoing improvement;

(I) the name of the person submitting the application for the certificate of compliance for the ongoing improvement;

(J) the owner's name and contact information;

(K) the name and contact information of the builder or contractor making the ongoing improvement;

(L) whether the structure is located inside or outside city limits; and

(M) whether the structure is in a Coastal Barrier Resource Zone.

(2) Application for Certificate of Compliance, Form WPI-1. TDI will make available the Application for Certificate of Compliance, Form WPI-1, on which the information in paragraph (1) of this section may be provided.

(3) Inspection. The appointed qualified inspector or a designated representative of the appointed qualified inspector must inspect for compliance with the applicable windstorm building code each ongoing improvement during each major construction phase, including the foundation stage; rough framing stage; final framing stage, including attachment of component and cladding items and installation of windborne debris protection; and installation of mechanical equipment. The appointed qualified inspector's designated representatives may assist in conducting inspections, but the appointed qualified inspector must closely monitor and provide direct supervision of any designated representative assisting with the inspection process.

(4) Report. The appointed qualified inspector or a designated representative of the appointed qualified inspector must prepare all necessary construction inspection reports under §5.4625 of this title (relating to Inspection Reports).

(5) Verification of compliance. If the appointed qualified inspector determines that the ongoing improvement meets the applicable windstorm building code standard, the appointed qualified inspector must submit the following information to TDI:

(A) the information required by paragraph (1)(A) - (F) of this subsection;

(B) the building code standard and applicable wind load standard with which the ongoing improvement complies;

(C) the wind speed conditions the ongoing improvement is certified to withstand;

(D) the dates the ongoing improvement was inspected;

(E) the exposure category of the structure;

(F) information on the protection of exterior openings from windborne debris;

(G) the risk category of the structure;

(H) the appointed qualified inspector's appointment number; and

(I) the application number from TDI.

(6) Inspection Verification Form, Form WPI-2. TDI will make available the Inspection Verification Form, Form WPI-2 [WPI-2-BC-6], on which the inspector can provide the information required by paragraph (5) of this subsection.

(7) Notification of noncompliance. If the appointed qualified inspector determines that the ongoing improvement does not meet the applicable windstorm building code standard, the appointed qualified inspector must inform the person seeking certification in writing. The notice must:

(A) list specific deficiencies in the construction and deviations from the design;

(B) list other items of concern relating to the windstorm inspection and certification; and

(C) describe remedial actions required for compliance.

(8) Verification of noncompliance. If the remedial actions described in the notification of noncompliance in paragraph (7)(C) of this subsection are not taken, the appointed qualified inspector must submit the information required by paragraph (5) of this section to TDI, certifying that the ongoing improvement does not meet the applicable windstorm building code standard.

(9) Review. TDI will review the submitted information and any other relevant information, including information requested under §5.4626 of this title (relating to Substantiating Information), to determine whether the ongoing improvement meets the applicable windstorm building code standard.

(10) Certification. If TDI determines that the ongoing improvement meets the windstorm building code standards, TDI will issue a form with the following information:

(A) the information described in paragraph (1)(A) - (C) of this section;

(B) the subject of the certification (for example, entire structure, addition, alteration, or repair);

(C) the building code standard and applicable wind load standard with which the ongoing improvement complies;

(D) the date construction of the ongoing improvement began;

(E) whether the occupancy type is considered residential, commercial, agricultural, or religious;

(F) the certification date;

(G) TDI's certification number; and

(H) the type of inspector.

§5.4622. Inspection Verification.

In submitting an Inspection Verification, Form WPI-2, or a Form WPI-2-BC-6, an appointed qualified inspector verifies that:

(1) the ongoing improvement:

(A) complies with the wind load requirements of the applicable building code; ~~or~~

(B) conforms to a design of the ongoing improvement that complies with the wind load requirements of the applicable building code under the plan of operation and that has a seal affixed by a professional engineer licensed by the Texas Board of Professional Engineers and Land Surveyors; or

(C) does not comply with the wind load requirements of the applicable building code; and

(2) if the ongoing improvement meets the requirements of paragraph (1)(A) or (B) ~~[(1)(B)]~~ of this section, the appointed qualified inspector is able to provide TDI with information and evidence substantiating compliance.

§5.4642. Disciplinary Action.

(a) Revocation or denial of appointment. After notice and opportunity for hearing, the Commissioner ~~[eommissioner]~~ may revoke an appointed qualified inspector's appointment or deny an appointed qualified inspector's application for appointment if:

(1) the applicant or appointed qualified inspector violates or fails to comply with the Insurance Code or any rule in this chapter;

(2) the applicant has made a material misrepresentation in the appointment application;

(3) the applicant has attempted to obtain an appointment by fraud or misrepresentation; or

(4) the applicant or appointed qualified inspector has made a material misrepresentation in any form or report required to be filed with TDI, including an Application for Windstorm Inspection Certificate of Compliance, Form WPI-1; a construction inspection report; or an Inspection Verification, Form WPI-2 or Inspection Verification, Form WPI-2-BC-6.

(b) Cease and desist order. The Commissioner ~~[eommissioner]~~, ex parte, may enter an emergency cease and desist order under Insurance Code Chapter 83 against an appointed qualified inspector, or a person acting as an appointed qualified inspector, if:

(1) the Commissioner ~~[eommissioner]~~ believes that:

(A) the appointed qualified inspector has:

(i) failed to demonstrate, through submitting or failing to submit to TDI substantiating information as described in §5.4626 of this title (relating to Substantiating Information), that an ongoing improvement or a portion of an ongoing improvement subject to inspection

meets the requirements of Insurance Code Chapter 2210 and TDI rules; or

(ii) refused to comply with requirements imposed under this chapter or TDI rules; or

(B) a person acting as an appointed qualified inspector is acting without appointment under Insurance Code §2210.254 or §2210.255; and

(2) the Commissioner ~~[eommissioner]~~ determines that the conduct described by paragraph (1) of this subsection is fraudulent, hazardous, or creates an immediate danger to the public.

(c) Alternative sanctions. Under Insurance Code §2210.2551(b) and §2210.256(b), the Commissioner ~~[eommissioner]~~, instead of revocation or denial, may impose one or more of the following sanctions if the Commissioner ~~[eommissioner]~~ determines from the facts that the alternative sanction would be fair, reasonable, or equitable:

(1) suspension of the appointment for a specific period, not to exceed one year; or

(2) issuance of an order directing the appointed qualified inspector to cease and desist from the specified activity or failure to act determined to be in violation of Insurance Code Chapter 2210, Subchapter F, or rules of the Commissioner ~~[eommissioner]~~ adopted under Insurance Code Chapter 2210, Subchapter F.

(d) Failure to comply with order. Under Insurance Code §2210.2551(b) and §2210.256(d), if the Commissioner ~~[eommissioner]~~ finds, after notice and a hearing, that an appointed qualified inspector has failed to comply with an order issued under subsection (a), (b), or (c) of this section, the Commissioner ~~[eommissioner]~~ will, unless the Commissioner's ~~[eommissioner's]~~ order is lawfully stayed, revoke the appointed qualified inspector's appointment.

(e) Informal disposition. The Commissioner ~~[eommissioner]~~ may informally dispose of any matter under this section or under §5.4612 of this title (relating to Appointment as Qualified Inspector) by consent order or default.

(f) Automatic cancellation. If the Texas Board of Professional Engineers and Land Surveyors revokes or suspends an engineer's license, the engineer's appointment as an appointed qualified inspector is automatically canceled.

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 October 16, 2019.

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James Person

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6541



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.286

The Comptroller of Public Accounts proposes amendments to §3.286, concerning Seller's and Purchaser's Responsibilities. The comptroller implements House Bills 1525 and 2358, 86th Legislature, 2019. House Bill 1525 establishes tax responsibilities for marketplace providers and marketplace sellers. Additionally, House Bill 2358 addresses circumstances under which a seller may advertise, hold out, or state that it will pay the sales tax due for the purchaser.

The comptroller makes non-substantive changes throughout for consistency.

The comptroller amends subsection (a), related to definitions. The comptroller makes amendments to subsection (a)(2) and throughout the section to refer to the "place of business of seller" as the term is used in Tax Code, §321.002(a)(3)(A). The comptroller adds new paragraphs (8) through (10) to define "marketplace," "marketplace provider," and "marketplace seller," and renumbers the subsequent paragraphs. The comptroller amends renumbered paragraph (13) to include a "marketplace provider" in the definition of "seller."

The comptroller adds subsection (b)(2)(B)(ii) to address a seller's collection responsibility if a remote seller temporarily stores tangible personal property in Texas to be sold on a marketplace. The comptroller recognizes that a remote seller selling tangible personal property on a marketplace may not have control of where their tangible personal property is stored. Therefore, to ease the burden on remote seller, this provision explains the circumstances when these sellers do not have to obtain a permit or to collect use tax.

The comptroller further amends subsection (b) to implement House Bill 1525, 86th Legislature, 2019. The comptroller amends subsection (b)(2)(C) to require a remote seller to aggregate its sales made on all mediums for purposes of determining whether the safe harbor provisions apply.

The comptroller adds new subsection (b)(3) to explain the rights and duties of marketplace providers and marketplace sellers. Subsequent paragraphs are renumbered. The comptroller adds subsection (b)(3)(A) to state the duties of a marketplace provider. The comptroller adds subsection (b)(3)(B) to state the duties of a marketplace seller.

The comptroller adds subsection (b)(3)(C) to provide that a marketplace seller should exclude marketplace sales from the marketplace seller's sales and use tax report if the marketplace seller accepts in good faith a marketplace provider's certification. The subsection provides liability relief to a marketplace provider if the marketplace provider shows that its failure to collect and remit the correct amount of sales and use taxes resulted from its good faith reliance on incorrect or insufficient information provided by the marketplace seller.

The comptroller adds subsection (b)(3)(D) to state that the marketplace seller is liable for a deficiency resulting from incorrect or incomplete information provided to the marketplace provider.

The comptroller adds subsection (b)(3)(E) to explain the circumstances in which a marketplace provider and marketplace seller may be held jointly and severally liable.

The comptroller adds subsection (b)(3)(F) to explain the procedure for a marketplace provider to request a waiver of implementation. The comptroller adds subsection (b)(3)(G) to explain the circumstances in which the comptroller may issue an exception to certain marketplace providers.

The comptroller adds new subsection (d)(4) to implement House Bill 2358. The subsection requires sellers who represent that they will pay sales and use tax on behalf of the purchaser to collect and remit sales and use tax to the comptroller. The subsequent paragraphs are renumbered.

The comptroller adds subsection (h)(3)(C), to implement House Bill 2358. The subsection provides that a seller who pays the sales and use tax on behalf of a customer is presumed to have collected the state tax and is liable to the state for any tax that is not remitted including any penalties and interest.

The comptroller amends subsection (l)(2) to state that a show cause notice for suspension of a sales and use tax permit will serve as notice that the comptroller may suspend any other sales and use tax permits held by the entity. This provision eliminates the issuance of two show cause notices for the same entity. Furthermore, the comptroller deletes the reference to §1.5 from the subsection because it is not applicable.

The comptroller proposes to adopt these amendments without retroactive effect. Tax Code, §151.022 (Retroactive Effect of Rules).

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

Mr. Currah also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by conforming the rule to current statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The comptroller proposes this amendment under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which authorizes the adoption of rules for the enforcement of provisions of Tax Code, Title 2 (State Taxation) and the collection of taxes under that title, and under Tax Code, §151.021, which authorizes the prescription of rules required by Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax).

This amendment implements House Bills 1525 and House Bill 2358, 86th Legislature, 2019.

§3.286. *Seller's and Purchaser's Responsibilities.*

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

(1) Consignment sale--The sale, lease, or rental of tangible personal property by a seller who, under an agreement with another person, is entrusted with possession of tangible personal property with respect to which the other person has title or another ownership interest, and is authorized to sell, lease, or rent the tangible personal property without additional action by the person having title to or another ownership interest in the tangible personal property.

(2) Direct sales organization--A person that typically sells taxable items directly to purchasers through independent salespersons and not in or through a place of business of the seller. The term "independent salespersons" includes, but is not limited to, distributors, representatives, and consultants. Items are typically sold person-to-person through in-home product demonstrations, parties, catalogs, and one-on-one selling. The term includes, but is not limited to, direct marketing and multilevel marketing organizations.

(3) Disaster- or emergency-related work--Repairing, renovating, installing, building, rendering services, or performing other business activities relating to the repair or replacement of equipment and property, including buildings, offices, structures, lines, poles, and pipes, that:

(A) is owned or used by or for:

(i) a telecommunications provider or cable operator;

(ii) communications networks;

(iii) electric generation;

(iv) electric transmissions and distribution systems;

(v) natural gas and natural gas liquids gathering, processing, and storage, transmission and distribution systems; or

(vi) water pipelines and related support facilities, equipment, and property that serve multiple persons; and

(B) is damaged, impaired, or destroyed by a declared state disaster or emergency.

(4) Engaged in business--Except as provided in subparagraphs (L) and (M) of this paragraph, a seller is engaged in business in this state if the seller:

(A) maintains, occupies, or uses in this state, permanently or temporarily, directly or indirectly, or through an agent by whatever name called, a kiosk, office, distribution center, sales or sample room or place, warehouse or storage place, or any other physical location where business is conducted;

(B) has any representative, agent, salesperson, canvasser, or solicitor who operates under the authority of the seller to conduct business in this state, including selling, delivering, or taking orders for taxable items;

(C) promotes a flea market, arts and crafts show, trade day, festival, or other event in this state that involves sales of taxable items;

(D) uses independent salespersons, who may include, but are not limited to, distributors, representatives, or consultants, in this state to make direct sales of taxable items;

(E) derives receipts from the sale, lease, or rental of tangible personal property that is located in this state or owns or uses tangible personal property that is located in this state, including a computer

server or software to solicit orders for taxable items, unless the seller uses the server or software as a purchaser of an Internet hosting service;

(F) allows a franchisee or licensee to operate under its trade name in this state if the franchisee or licensee is required to collect sales or use tax in this state;

(G) otherwise conducts business in this state;

(H) is formed, organized, or incorporated under the laws of this state and the seller's internal affairs are governed by the laws of this state, notwithstanding the fact that the seller may not be otherwise engaged in business in this state pursuant to this section;

(I) engages in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items;

(J) solicits orders for taxable items by mail or through other media including the Internet or other media that may be developed in the future; or

(K) holds a substantial ownership interest in, or is owned in whole or substantial part by, another person who:

(i) maintains a distribution center, warehouse, or similar location in this state and delivers property sold by the seller to purchasers in this state;

(ii) maintains a location in this state from which business is conducted, sells the same or substantially similar lines of products as the seller, and sells such products under a business name that is the same or substantially similar to the business name of the seller; or

(iii) maintains a location in this state from which business is conducted if the person with the location in this state uses its facilities or employees:

(I) to advertise, promote, or facilitate sales by the seller to purchasers; or

(II) to otherwise perform any activity on behalf of the seller that is intended to establish or maintain a marketplace for the seller in this state, including receiving or exchanging returned merchandise.

(iv) For purposes of this subparagraph only, "ownership" includes direct ownership, common ownership, or indirect ownership through a parent entity, subsidiary, or affiliate, and "substantial," with respect to ownership, constitutes an interest, whether direct or indirect, of at least 50% of:

(I) the total combined voting power of all classes of stock of a corporation;

(II) the beneficial ownership interest in the voting stock of the corporation;

(III) the current beneficial interest in the corpus or income of a trust;

(IV) the total membership interest of a limited liability company;

(V) the beneficial ownership interest in the membership interest of a limited liability company; or

(VI) the profits or capital interest of any other entity, including, but not limited to, a partnership, joint venture, or association.

(L) Effective June 16, 2015, a seller is not engaged in business in this state if the seller is an out-of-state business entity whose physical presence in this state is solely from the entity's performance of disaster- or emergency-related work during a disaster response period. An out-of-state business entity that remains in this state after a disaster response period has ended is engaged in business in this state if the entity conducts any of the activities described in subparagraphs (A) - (K) of this paragraph.

(i) For purposes of this subparagraph only, an "affiliate" is a member of a combined group as that term is described by Tax Code, §171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business).

(ii) For purposes of this subparagraph only, a "disaster response period" is:

(I) the period that:

(-a-) begins on the 10th day before the date of the earliest event establishing a declared state of disaster or emergency by the issuance of an executive order or proclamation by the governor or a declaration of the president of the United States; and

(-b-) ends on the earlier of the 120th day after the start date or the 60th day after the ending date of the disaster or emergency period established by the executive order or proclamation or declaration, or on a later date as determined by an executive order or proclamation by the governor; or

(II) the period that, with respect to an out-of-state business entity:

(-a-) begins on the date that the out-of-state business entity enters this state in good faith under a mutual assistance agreement and in anticipation of a state of disaster or emergency, regardless of whether a state of disaster or emergency is actually declared; and

(-b-) ends on the earlier of the date that the work is concluded or the seventh day after the out-of-state business entity enters this state.

(iii) For purposes of this subparagraph only, a "mutual assistance agreement" is an agreement to which one or more business entities are parties and under which a public utility, municipally owned utility, or joint agency owning, operating, or owning and operating critical infrastructure used for electric generation, transmission, or distribution in this state may request that an out-of-state business entity perform work in this state in anticipation of a state of disaster or emergency.

(iv) For purposes of this subparagraph only, an "out-of-state business entity" is a foreign entity that:

(I) enters this state at the request of, or is an affiliate of, an in-state business entity and performs work in Texas under a mutual assistance agreement; or

(II) enters this state at the request of an in-state business entity, under a mutual assistance agreement, or is an affiliate of an in-state business entity and enters this state at the request of an in-state business entity, the state of Texas, or a political subdivision of this state to perform disaster- or emergency-related work in this state during the disaster response period, and:

(-a-) except with respect to the performance of disaster- or emergency-related work, has no physical presence in this state and is not authorized to transact business in this state immediately before a disaster response period; and

(-b-) is not registered with the secretary of state to transact business in this state, does not file a tax report with this state, or a political subdivision of this state, and is not engaged in business with this state for the purpose of taxation during the tax year immediately preceding the disaster response period.

(M) A broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher that broadcasts, publishes, displays, or distributes paid commercial advertising in this state that is intended to be disseminated primarily to consumers located in this state and is only secondarily disseminated to bordering jurisdictions, including advertising appearing exclusively in a Texas edition or section of a national publication, is considered for purposes of this subsection to be the agent of the person placing the advertisement and is not considered to be engaged in business in this state as a result of those acts.

(5) Internet hosting service--The provision to an unrelated user of access over the Internet to computer services using property that is owned or leased and managed by the service provider and on which the unrelated user may store or process the user's own data or use software that is owned, licensed, or leased by the unrelated user or service provider. The term does not include telecommunications services as defined in §3.344 of this title (relating to Telecommunications Services).

(6) Itinerant vendor--A seller who does not operate a place of business in this state and who travels to various locations in this state to solicit sales.

(7) Kiosk--A small, stand-alone area or structure that:

(A) is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;

(B) is located entirely within a location that is a place of business of another seller, such as a department store or shopping mall; and

(C) at which taxable items are not available for immediate delivery to a purchaser.

(8) Marketplace--A physical or electronic medium through which persons other than the owner or operator of the medium make sales of taxable items. The term includes a store, internet website, software application, or catalog.

(9) Marketplace provider--A person who owns or operates a marketplace and directly or indirectly processes sales or payments for marketplace sellers.

(10) Marketplace seller--A seller, other than the marketplace provider, who makes a sale of a taxable item through a marketplace.

(11) [(8)] Permit holder--A person to whom the comptroller has issued a sales and use tax permit. The term includes permitted sellers as well as permitted purchasers, but does not include a person who does not hold a Texas sales and use tax permit or whose sales and use tax permit is suspended, pursuant to subsection (l) of this section, or cancelled, pursuant to subsection (n) of this section, or a person who has not received a sales and use tax permit due to an unsigned or incomplete application.

(12) [(9)] Place of business of the seller--This term has the meaning given in §3.334 of this title (relating to Local Sales and Use Taxes).

(13) [(10)] Seller--Every retailer, wholesaler, distributor, manufacturer, marketplace provider, or any other person who sells, leases, rents, or transfers ownership of tangible personal property or

performs taxable services for consideration. Seller is further defined as follows:

(A) A promoter of a flea market, trade day, or other event that involves the sales of taxable items is a seller responsible for the collection and remittance of the sales tax that dealers, salespersons, or individuals collect at such events, unless those persons hold active sales and use tax permits that the comptroller has issued.

(B) A direct sales organization that is engaged in business in this state is a seller responsible for the collection and remittance of the sales and use tax collected by the organization's independent salespersons.

(C) Pawnbrokers, storage facility operators, mechanics, artisans, or others who sell property to enforce a lien are sellers responsible for the collection and remittance of sales and use tax on the sale of such tangible personal property.

(D) A person engaged in business in this state who sells, leases, or rents tangible personal property owned by another person by means of a consignment sale is a seller responsible for the collection and remittance of the sales tax on the consignment sale.

(E) An auctioneer who owns tangible personal property or to whom tangible personal property has been consigned is a seller responsible for the collection and remittance of the sales and use tax on tangible personal property sold at auction. For more information, auctioneers should refer to §3.311 of this title (relating to Auctioneers, Brokers, and Factors).

(14) ~~[(H)]~~ Taxable item--Tangible personal property and taxable services. Except as otherwise provided in Tax Code, Chapter 151, the sale or use of a taxable item in electronic form instead of on physical media does not alter the item's tax status.

(A) Tangible personal property means property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner, including a computer program as defined in §3.308 of this title (relating to Computers--Hardware, Computer Programs, Services, and Sales) and a telephone prepaid calling card, as defined in §3.344 of this title.

(B) Taxable services are those identified in Tax Code, §151.0101 (Taxable Services).

(b) Who must have a sales and use tax permit.

(1) Sellers. Except as provided in paragraph (2) of this subsection, each seller who is engaged in business in this state, including itinerant vendors, persons who own or operate a kiosk, and sellers operating temporarily in this state, must apply to the comptroller and obtain a sales and use tax permit for each place of business of the seller operated in this state and a single permit for its out-of-state places of business.

(2) Safe harbor for remote sellers.

(A) Remote seller defined. For purposes of this paragraph, a remote seller is a seller engaged in business in this state whose only activity in the state is described in subsection (a)(4)(I) or (J) of this section.

(B) Safe harbor.

(i) Permitting and collection obligations. The comptroller will not enforce the permit requirement of this subsection or the collection obligation of subsection (d) of this section on a remote seller whose total Texas revenue in the preceding twelve calendar months is less than \$500,000. If a remote seller's total Texas revenue exceeds that amount, the remote seller shall obtain a permit and begin collecting

as provided in subparagraph (E) of this paragraph and shall continue to collect unless it terminates its collection obligation under subparagraph (F) of this paragraph.

(ii) Temporary storage of inventory. A remote seller that is temporarily storing tangible personal property in Texas to be used for fulfillment at a facility of a marketplace provider that has certified that it will assume the rights and duties of a seller with respect to the tangible personal property, as provided for in this subsection, will not have to obtain a permit or have a collection obligation. This subsection is not applicable to those remote sellers who are above the safe harbor amount under clause (i) of this subparagraph.

(C) Total Texas revenue defined ~~for~~ purposes of this paragraph.

(i) ~~Total~~ Texas revenue means the gross revenue from the sale of tangible personal property and services for storage, use, or other consumption in this state recognized under the accounting method used by the seller, and includes separately stated handling, transportation, installation, and other similar fees collected by the seller in connection with the sale.

(ii) A remote seller shall include in total Texas revenue, the aggregate sum of all sales made on all mediums, including all marketplaces and the remote seller's own website.

(iii) Total Texas revenue includes taxable, nontaxable, and tax-exempt sales. A sale of an item for delivery in this state is presumed to be a sale for storage, use, or other consumption in this state. With respect to a service, "use" means the derivation in this state of direct or indirect benefit from the service.

(D) Consolidation of total Texas revenue. The comptroller may consolidate the total Texas revenue of sellers engaged in conduct that circumvents the safe harbor amount in subparagraph (B) of this paragraph.

(E) When to obtain a permit and begin collecting. No later than the first day of the fourth month after the month in which a remote seller exceeds the safe harbor amount in subparagraph (B) of this paragraph, the remote seller shall obtain a permit and begin collecting use tax. For example, if during the period of July 1, 2018, through June 30, 2019, a remote seller's total Texas revenue exceeds the safe harbor amount in subparagraph (B) of this paragraph, the remote seller shall obtain a permit by October 1, 2019, and begin collecting use tax no later than October 1, 2019.

(F) Terminating collection obligation. A remote seller that is required to be permitted may terminate its collection obligation under this paragraph after twelve consecutive months in which the remote seller's total Texas revenue for the preceding twelve calendar months is below the safe harbor amount in subparagraph (B) of this paragraph. In order to terminate its collection obligation, a remote seller must submit a form prescribed by the comptroller. Thereafter, the remote seller shall resume collection on the first day of the second month following any twelve calendar months in which the remote seller's total Texas revenue exceeds the safe harbor amount in subparagraph (B) of this paragraph. For example, if the total Texas revenue of a remote seller that previously terminated its collection obligation exceeds the safe harbor amount in subparagraph (B) of this paragraph during the period of January 1, 2020, through December 31, 2020, the remote seller shall resume collection on February 1, 2021.

(G) Records retention required. For purposes of this paragraph, a remote seller that terminates its collection obligation shall comply with the record retention requirement of §3.281 of this title (relating to Records Required; Information Required) and §3.282 of this title (relating to Auditing Taxpayer Records). The remote seller

must maintain sufficient documentation to verify the date on which the remote seller terminated its collection obligation under subparagraph (F) of this paragraph or ceases to engage in business in this state.

(H) Transition rule. Remote sellers will be subject to the permit requirement of this subsection and the collection obligation of subsection (d) of this section beginning on October 1, 2019. The initial twelve calendar months for determining a remote seller's total Texas revenue will be July 1, 2018, through June 30, 2019. If a remote seller's total Texas revenue during that period exceeds the safe harbor amount in subparagraph (B) of this paragraph, the seller shall obtain a permit by October 1, 2019, and begin collecting use tax no later than October 1, 2019.

(3) Marketplace providers and marketplace sellers.

(A) Duties of marketplace providers. A marketplace provider shall:

(i) certify in writing to each marketplace seller that the marketplace provider assumes the rights and duties of a seller with respect to sales made by the marketplace seller through the marketplace (no specific language or format is required for the certification);

(ii) collect sales and use tax on Texas sales of taxable items made through the marketplace;

(iii) report and remit the sales and use taxes on all Texas sales made through a marketplace;

(iv) provide to each marketplace seller records of the marketplace sales made on behalf of the marketplace seller; and

(v) comply with the record retention requirement of §3.281 of this title and §3.282 of this title.

(B) Duties of marketplace sellers. A marketplace seller shall:

(i) retain records for all marketplace sales made on a marketplace as required in §3.281 of this title and §3.282 of this title;

(ii) furnish to the marketplace provider information that is required to correctly collect and remit sales and use tax (the information may include a certification of taxability that an item being sold is a taxable item, is not a taxable item, or is exempt from taxation); and

(iii) not be required to obtain a permit if only selling through a marketplace provider that has certified that it will assume the rights and duties of a seller, as provided in this subsection.

(C) Good faith requirements for marketplace sellers and marketplace providers.

(i) A marketplace seller who in good faith accepts a marketplace provider's certification under subparagraph (A)(i) of this paragraph shall exclude sales made through the marketplace from the marketplace seller's sales tax report if the marketplace seller is otherwise required to collect and remit tax.

(ii) Except as provided by subparagraph (E) of this paragraph, a marketplace provider is not liable for failure to collect and remit the correct amount of sales and use taxes if the marketplace provider shows the failure resulted from the marketplace provider's good faith reliance on incorrect or insufficient information provided by the marketplace seller.

(D) A marketplace seller is liable for any deficiency resulting from incorrect or incomplete information provided by the marketplace seller to the marketplace provider.

(E) Joint and several liability. A marketplace provider and marketplace seller that are affiliates or associates, as defined by Business Organizations Code, §1.002, are jointly and severally liable for a deficiency resulting from a sale made by the marketplace seller through the marketplace.

(F) Marketplace Provider waiver requests. A marketplace provider may request a waiver of the requirements of subparagraph (A) of this paragraph by sending a written request to the Texas Comptroller of Public Accounts, Tax Policy Division that explains the basis for the waiver. The comptroller will review the waiver request and issue a letter granting, conditionally granting, or denying the waiver request. If the information below, or any additional information requested by the comptroller, is not provided, the comptroller will not issue a waiver. The requestor does not have the right to a hearing. The request for the waiver must include:

(i) the name of the marketplace provider;

(ii) an explanation of the marketplace provider's business model, including information on the services offered by the marketplace provider and the charges for those services;

(iii) the basis for the waiver request;

(iv) a statement providing whether the waiver is permanent or temporary; and

(v) if temporary, the date the marketplace provider expects the waiver to expire.

(G) Exceptions. The comptroller may except marketplace providers in certain industries from some or all of the statutory and regulatory requirements for marketplace providers based on the industries' business models and practices. The comptroller will provide written notification to the excepted marketplace providers.

(4) [(3)] A seller that no longer intends to engage in business and make sales of taxable items in the state shall submit a form prescribed by the comptroller to terminate its permit and must obtain a new permit before it commences sales of taxable items in the state thereafter. The seller must maintain sufficient documentation to verify the date on which the seller ceases to engage in business in this state.

(5) [(4)] Direct sales organizations. Independent salespersons of direct sales organizations are not required to hold sales and use tax permits to sell taxable items for direct sales organizations. Direct sales organizations engaged in business in this state are sellers responsible for holding sales and use tax permits and for the collection and remittance of sales and use tax on all sales of taxable items by their independent salespersons. See subsection (d)(3) of this section for more information about the collection and remittance of sales and use tax by direct sales organizations.

(6) [(5)] Non-permitted purchasers. Persons who are not required to have a sales and use tax permit or who do not have a direct payment permit are still responsible for paying to the comptroller sales or use tax due on purchases of taxable items from sellers who do not collect and remit tax. See subsection (g)(9) of this section for return and payment information and §3.346 of this title (relating to Use Tax).

(7) [(6)] Non-permitted sellers. Failure to obtain a sales and use tax permit does not relieve a seller required by this section or other applicable law to have a sales and use tax permit from the obligation to properly collect and remit sales and use taxes. Sellers whose sales and use tax permits are suspended, pursuant to subsection (l) of this section, or cancelled, pursuant to subsection (n) of this section, and sellers who have not received sales and use tax permits due to unsigned or incomplete applications, are still responsible for properly collecting

and remitting sales and use taxes. See subsection (g) of this section for return and payment information.

(c) Obtaining a sales and use tax permit.

(1) A seller must complete an application that the comptroller furnishes and must return that application to the comptroller, together with bond or other security that may be required by §3.327 of this title (relating to Taxpayer's Bond or Other Security). A seller who files an electronic application furnished by the comptroller is deemed to have signed the application and is not required to print and mail a signed application to the comptroller. A separate sales and use tax permit under the same taxpayer account number is issued to the applicant for each place of business of the seller. Sales and use tax permits are issued without charge.

(2) Each seller must apply for a sales and use tax permit. An individual or sole proprietor must be at least 18 years of age unless the comptroller allows an exception from the age requirement. The sales and use tax permit cannot be transferred from one seller to another. The sales and use tax permit is valid only for the seller to whom it was issued and for the transaction of business only at the address that is shown on the sales and use tax permit. If a seller operates two or more types of business at the same location, then only one sales and use tax permit is required.

(3) The sales and use tax permit must be conspicuously displayed at the place of business of the seller for which it is issued. A permit holder that has traveling sales persons who operate from a central office needs only one sales and use tax permit, which must be displayed at that office.

(4) All sales and use tax permits of the seller will have the same taxpayer account number; however, each place of business of the seller will have a different outlet number. The outlet numbers assigned may not necessarily correspond to the number of business locations operated by the seller.

(d) Collecting sales and use tax due.

(1) Bracket system.

(A) Each seller must collect sales or use tax on each separate retail sale in accordance with the statutory bracket system in Tax Code, §151.053 (Sales Tax Brackets). The practice of rounding off the amount of sales or use tax that is due on the sale of a taxable item is prohibited. Copies of the bracket system should be displayed in each place of business of the seller so both the seller and the purchaser may easily use them.

(B) The sales and use tax applies to each total sale, not to each item of each sale. For example, if two items are purchased at the same time and each item is sold for \$.07, then the seller must collect the tax on the total sum of \$.14. Sales and use tax must be reported and remitted to the comptroller as provided by Tax Code, §151.410 (Method of Reporting Sales Tax; General Rule). When sales and use tax is collected properly under the bracket system, the seller is not required to remit any amount that is collected in excess of the sales and use tax due. Conversely, when the sales and use tax collected under the bracket system is less than the sales and use tax due on the seller's total receipts, the seller is required to remit sales and use tax on the total receipts even though the seller did not collect sales and use tax from the purchasers.

(2) Sales and use tax due is debt of the purchaser; document requirements.

(A) The sales and use tax due is a debt of the purchaser to the seller until collected. Unpaid sales or use tax is recoverable by the seller in the same manner as the original sales price of the taxable item

itself, if unpaid, would be recoverable. The comptroller may proceed against either the seller or purchaser, or against both, until all applicable tax, penalty, and interest due has been paid.

(B) The amount of sales and use tax due must be separately stated on the bill, contract, or invoice to the purchaser or there must be a written statement to the purchaser that the stated price includes sales or use tax. Contracts, bills, or invoices that merely state that "all taxes" are included are not specific enough to relieve either party to the transaction of its sales and use tax responsibilities. The total amount that is shown on such documents is presumed to be the taxable item's sales price, without sales and use tax included. The seller or purchaser may overcome the presumption by using the seller's records to show that sales or use tax was included in the sales price. Sellers located outside of Texas must identify the tax as Texas sales or use tax on their bill, contract, or invoice to the purchaser. If the out-of-state seller does not identify the tax as Texas sales or use tax at the time of the transaction, the seller is presumed not to have collected Texas sales or use tax. Either the seller or the purchaser may overcome the presumption by submitting evidence that clearly demonstrates that the Texas sales or use tax was remitted to the comptroller.

(3) Direct sales organizations. A direct sales organization is responsible for the collection and remittance of the sales and use tax on all sales of taxable items in this state by the independent salespersons who sell the organization's product or service as explained in this paragraph. See subsection (b)(4) of this section for information about sales and use tax permits required to be held by direct sales organizations.

(A) If an independent salesperson purchases a taxable item from a direct sales organization after taking the purchaser's order, then the direct sales organization must collect from the independent salesperson, and remit to the comptroller, the sales and use tax on the actual sales price for which the independent salesperson sold the taxable item to the purchaser.

(B) If an independent salesperson purchases a taxable item from a direct sales organization before the purchaser's order is taken, then the direct sales organization must collect from the independent salesperson, and remit to the comptroller, the sales and use tax based on the organization's suggested retail sales price of the taxable item.

(C) Taxable items that are sold to an independent salesperson for the salesperson's use are taxed based on the actual sales price for which the item was sold to the salesperson at the tax rate in effect for the salesperson's location.

(D) Incentives, including rewards, gifts, and prizes.

(i) Direct sales organizations owe sales and use tax on the cost of all taxable items used as incentives that are transferred to a recipient in this state, including purchasers, independent salespersons, and persons who host a direct sales event.

(ii) Direct sales organizations must collect sales or use tax on the total amount of consideration received in exchange for taxable items, including items purchased with hostess points or similar forms of compensation paid to a person for hosting a direct sales event and items that are earned by the host based on the volume of purchases. The redemption of reward points in exchange for taxable items is subject to sales tax under Tax Code, §151.005(2) ("Sale" or "Purchase"). See also §3.283 of this title (relating to Bartering Clubs and Exchanges).

(4) Payment of certain sales and use taxes by a seller. A seller may directly or indirectly advertise, hold out, or state to a pur-

chaser or to the public that the seller will pay the sales and use tax for the customer if:

(A) the seller indicates in the advertisement, holding out, or statement that the seller is paying the tax for the purchaser;

(B) the seller does not indicate or imply in the advertisement, holding out, or statement that the sale is exempt or excluded from taxation; and

(C) any purchaser's receipt or other statement given to the purchaser identifying the sales price paid or to be paid by the purchaser separately states the amount of the tax and indicates that the tax will be paid by the seller.

(5) [(4)] Printers. A printer is a seller of printed materials and is required to collect sales and use tax on sales of those materials in this state. A printer who is engaged in business in this state, however, is not required to collect the sales and use tax if:

(A) the printed materials are produced by a web offset or rotogravure printing process;

(B) the printer delivers those materials to a fulfillment house or to the United States Postal Service for distribution to third parties who are located both inside and outside of this state; and

(C) the purchaser issues a properly completed exemption certificate that contains the statement that the printed materials are for multistate use and the purchaser agrees to pay to this state all the sales and use taxes that are or may become due to the state on the taxable items that are purchased under the exemption certificate. See subsection (g)(4) of this section for additional reporting requirements.

(6) [(5)] Fundraisers by exempt entities. Regardless of the contractual terms between a for-profit entity and a non-profit exempt entity relating to the sale of taxable items, other than amusement services, as part of any fundraiser, the for-profit entity will be considered the seller of the items under Tax Code, §151.024 (Persons Who May be Regarded as Retailers), must be a permit holder, and is responsible for the proper collection and remittance of any sales or use tax due. The exempt entity and its representatives will be considered as representatives of the for-profit entity. The for-profit entity may advertise in a sales catalog or state on each invoice that sales and use tax is included, as provided under paragraph (2) of this subsection, or may require that the sales and use tax be calculated and collected by its representatives based on the sales price of each taxable item. Fundraisers conducted by exempt entities in this manner do not qualify as a tax-free sale day. For more information on exempt entities and tax-free sales days, see §3.322 of this title (relating to Exempt Organizations). For more information on amusement services, see §3.298 of this title (relating to Amusement Services).

(7) [(6)] Local sales and use tax. A seller who is required to be permitted in this state is required to properly collect and remit local sales and use tax even if no sales and use tax permit is required at the location where taxable items are sold. For more information on the proper collection of local taxes, see §3.334 of this title.

(e) Sales and use tax returns and remitting tax due.

(1) Forms prescribed by the comptroller. Sales and use tax returns must be filed on forms that the comptroller prescribes. The fact that a person does not receive or obtain the correct forms from the comptroller does not relieve a person of the responsibility to file a sales and use tax return and to remit the required sales and use tax.

(2) Signatures. Sales and use tax returns must be signed by the person who is required to file the sales and use tax return or by the person's duly authorized agent, but need not be verified by oath.

(3) Permit holders.

(A) Each permit holder is required to file a sales and use tax return for each reporting period, even if the permit holder has no sales or use tax to report for the reporting period.

(B) Each permit holder must remit sales and use tax on all receipts from sales or purchases of nonexempt taxable items, less any applicable discounts as provided by subsection (h) of this section.

(C) Each permit holder shall file a single sales and use tax return together with the tax payment for all businesses that operate under the same taxpayer number. The sales and use tax return for each reporting period must reflect the total sales, taxable sales, and taxable purchases for each outlet.

(D) Consolidated reporting by affiliated entities is not allowed. Each legal entity engaged in business in this state is responsible for filing a separate sales and use tax return.

(4) Electronic returns and remittances. Certain persons must file returns and transfer payments electronically as provided by Tax Code, §111.0625 (Electronic Transfer of Certain Payments) and §111.0626 (Electronic Filing of Certain Reports). For more information, see §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

(f) Due dates.

(1) General rule. Sales and use tax returns and remittances are due no later than the 20th day of the month following each reporting period end date unless otherwise provided by this section. Sales and use tax returns and remittances that are due on Saturdays, Sundays, or legal holidays may be submitted on the next business day.

(A) Sales and use tax returns submitted by mail must be postmarked on or before the due date to be considered timely.

(B) Sales and use tax returns filed electronically must be completed and submitted by 11:59 p.m., central time, on the due date to be considered timely.

(2) Due dates for payments made using an electronic funds transfer method approved by the comptroller are provided at §3.9(c) of this title.

(3) Extensions for persons located in an area designated in a state of disaster or state of emergency declaration. The comptroller may grant an extension of not more than 90 days to make or file a sales and use tax return or pay sales and use tax that is due by a person located in an area designated in an executive order or proclamation issued by the governor declaring a state of disaster or state of emergency, or an area that the president of the United States declares a major disaster or emergency, if the comptroller finds the person to be a victim of the disaster or emergency. The person owing the sales and use tax may file a written request for an extension at any time before the expiration of 90 days after the original due date. If an extension is granted, interest on the unpaid tax does not begin to accrue until the day after the day on which the extension expires, and penalties are assessed and determined as though the last day of the extension were the original due date.

(g) Reporting periods.

(1) Quarterly filers. Permit holders who have less than \$1,500 in state sales and use tax per quarter to report may file sales and use tax returns quarterly. The quarterly reporting periods end on March 31, June 30, September 30, and December 31.

(2) Yearly filers. Permit holders who have less than \$1,000 in state sales and use tax to report during a calendar year may file yearly sales and use tax returns upon authorization from the comptroller.

(A) Authorization to file sales and use tax returns on a yearly basis is conditioned upon the correct and timely filing of prior returns.

(B) Authorization to file sales and use tax returns on a yearly basis will be denied if a permit holder's liability exceeded \$1,000 in the prior calendar year.

(C) A permit holder who files on a yearly basis without authorization is liable for applicable penalty and interest on any previously unreported quarter.

(D) Authority to file on a yearly basis is automatically revoked if a permit holder's state sales and use tax liability is greater than \$1,000 during a calendar year. The permit holder must file a sales and use tax return for that month or quarter, depending on the amount, in which the sales and use tax payment or liability is greater than \$1,000. On that return, the permit holder must report all sales and use taxes that are collected and all accrued liability for the year, and must file monthly or quarterly, as appropriate, thereafter for as long as the yearly sales and use tax liability is greater than \$1,000.

(E) Once each year, the comptroller reviews all accounts to confirm yearly filing status and to authorize permit holders who meet the filing requirements to file yearly sales and use tax returns.

(F) Yearly filers must report on a calendar year basis. The sales and use tax return and payment are due on or before January 20 of the next calendar year.

(3) Monthly filers. Permit holders who have \$1,500 or more in state sales and use tax per quarter to report must file monthly sales and use tax returns except for permit holders who prepay the sales and use tax as provided in subsection (h) of this section.

(4) Printers. A printer who is not required to collect sales and use tax on the sale of printed materials because the transaction meets the requirements of subsection (d)(4) of this section must file a quarterly special use tax report, Form 01-157, Texas Special Use Tax Report for Printers, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form, with the comptroller on or before the last day of the month following the quarter. The report must contain the name and address of each purchaser with the sales price and date of each sale. The printer is still required to file sales and use tax returns to report and remit sales and use taxes that the printer collected from purchasers on transactions that do not meet the requirements of subsection (d)(4) of this section.

(5) Local sales and use tax. Each permit holder who is required to collect, report, and remit a city, county, special purpose district, or metropolitan transit authority/city transit department sales and use tax must report the amount subject to local sales and use tax on the state sales and use tax return described in subsection (e) of this section.

(6) State agencies. Sales and use taxes must be deposited with the comptroller within the time period specified by law for deposit of state funds. State agencies may file sales and use tax returns through electronic reporting methods provided by the comptroller, which allocates total sales and use tax deposits by state and local taxing authority. State agencies that deposit sales and use taxes according to Accounting Policy Statement Number 8 are not required to file a separate sales and use tax return, but must manually allocate total sales and use tax deposits by state and local taxing authority and deposit those amounts in accordance with the policy. Paragraphs (1) - (3) of this subsection

do not apply to agencies following Accounting Policy Statement Number 8, as a fully completed deposit request voucher is deemed to be the sales and use tax return filed by these agencies.

(7) Refunds on exports. Sellers who refund sales tax on exports based on customs broker certifications should refer to §3.360 of this title (relating to Customs Brokers).

(8) Direct payment permit holders. Yearly and quarterly filing requirements, as discussed in this subsection, and prepayment discounts and discounts for timely filing, as discussed in subsection (h) of this section, do not apply to holders of direct payment permits. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(9) Non-permitted purchasers. A person who does not hold a sales and use tax permit or a direct payment permit must pay sales or use tax that is due on purchases of taxable items when the sales or use tax is not collected by the seller. The sales or use tax is to be remitted on comptroller Form 01-156, Texas Use Tax Return, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form.

(A) A non-permitted purchaser who owes less than \$1000 in sales and use tax on all purchases made during a calendar year on which sales and use tax was not collected by the seller must file the return on or before the 20th of January following the year in which the purchases were made.

(B) A non-permitted purchaser who owes \$1000 or more in sales and use tax on all purchases made during a calendar year on which sales and use tax was not collected by the seller must file a return and remit sales and use taxes due on or before the 20th of the month following the month when the \$1000 threshold is reached and thereafter file monthly returns and make sales and use tax payments on all purchases on which sales and use tax is due.

(h) Discounts; prepayments; penalties and interest relating to filing sales and use tax returns.

(1) Discounts. Unless otherwise provided by this section, each permit holder may claim a discount for timely filing a sales and use tax return and paying the taxes due as reimbursement for the expense of collecting and remitting the sales and use tax. The discount is equal to 0.5% of the amount of sales and use tax due and may be claimed on the return for each reporting period and is computed on the amount timely reported and paid with that return.

(2) Prepayments. Prepayments may be made by permit holders who file monthly or quarterly sales and use tax returns. The amount of the prepayment must be a reasonable estimate of the state and local sales and use tax liability for the entire reporting period. "Reasonable estimate" means at least 90% of the total amount due or an amount equal to the actual net tax liability due and paid for the same reporting period of the immediately preceding year.

(A) A permit holder who makes a timely prepayment based upon a reasonable estimate of sales and use tax liability may retain an additional discount of 1.25% of the amount due.

(B) The monthly prepayment is due on or before the 15th day of the month for which the prepayment is made.

(C) The quarterly prepayment is due on or before the 15th day of the second month of the quarter for which the sales and use tax is due.

(D) A permit holder who makes a timely prepayment must file a sales and use tax return showing the actual liability and remit any amount due in excess of the prepayment on or before the 20th day

of the month that follows the quarter or month for which a prepayment was made. If there is an additional amount due, the permit holder may retain the 0.5% reimbursement on the additional amount due, provided that both the sales and use tax return and the additional amount due are timely filed. If the prepayment exceeded the actual liability, the permit holder will be mailed an overpayment notice or refund warrant.

(E) Remittances that are less than a reasonable estimate, as described by this paragraph, are not regarded as prepayments and the 1.25% discount will not be allowed. If the permit holder owes more than \$1,500 in a calendar quarter, the permit holder is regarded as a monthly filer. All monthly sales and use tax returns that are not filed because of the invalid prepayment are subject to late filing penalty and interest.

(3) Penalties and interest.

(A) If a person does not file a sales and use tax return together with payment on or before the due date, the person forfeits all discounts and incurs a mandatory 5.0% penalty. After the first 30 days delinquency, an additional mandatory penalty of 5.0% is assessed against the person, and after the first 60 days delinquency, interest begins to accrue at the prime rate, as published in the Wall Street Journal on the first business day of each calendar year, plus 1.0%. For taxes that are due on or before December 31, 1999, interest is assessed at the rate of 12% annually.

(B) A person who fails to timely file a sales and use tax return when due shall pay an additional penalty of \$50. The penalty is due regardless of whether the person subsequently files the sales and use tax return or whether no taxes are due for the reporting period.

(C) A seller who advertises, holds out, or states that the seller will pay the sales and use tax as provided by subsection (d)(4) of this section and makes a sale of a taxable item:

(i) is presumed to have received or collected the amount of the sales and use taxes on the sale or storage, use, or consumption in this state of the taxable item;

(ii) must hold the amount described by clause (i) of this subparagraph in trust for the benefit of the state; and

(iii) is liable to the state for the amount described by clause (i) of this subparagraph plus any accrued penalties and interest on the amount.

(i) Reports of alcoholic beverage sales to retailers. Each brewer, manufacturer, wholesaler, winery, distributor, or package store local distributor shall electronically file a report of alcoholic beverage sales to retailers, as that term is defined in §3.9(e)(2) of this title, as provided in that section.

(j) Records required for comptroller inspection. See §3.281 of this title and §3.282 of this title.

(k) Resale and exemption certificates. See §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).

(l) Suspension of sales and use tax permit.

(1) If a permit holder fails to comply with any provision of Tax Code, Title 2, or with the rules issued by the comptroller under those statutes, the comptroller may suspend the permit holder's sales and use tax permit or permits.

(2) Before a permit holder's sales and use tax permit is suspended, the permit holder is entitled to a hearing before the comptroller

to show cause why the permit should not be suspended. The comptroller shall give the permit holder at least 20 days notice. The notice will include a statement of the matters asserted and procedures to be followed. A show cause notice for suspension of a sales and use tax permit shall serve as notice that the comptroller may suspend any other sales and use tax permits held by the entity. [See §1.5(d) of this title (relating to Initiation of a Hearing).]

(3) After a sales and use tax permit has been suspended, a new permit will not be issued to the same person until the person has posted sufficient security and satisfied the comptroller that the person will comply with both the provisions of the law and the comptroller's rules and regulations.

(m) Refusal to issue sales and use tax permit. The comptroller is required by Tax Code, §111.0046 (Permit or License), to refuse to issue any sales and use tax permit to a person who:

(1) is not permitted or licensed as required by law for a different tax or activity administered by the comptroller; or

(2) is currently delinquent in the payment of any tax or fee collected by the comptroller.

(n) Cancellation of sales and use tax permits with no reported business activity.

(1) Permit cancellation due to abandonment. Any holder of a sales and use tax permit who reported no business activity in the previous calendar year is deemed to have abandoned the sales and use tax permit, and the comptroller may cancel the sales and use tax permit. "No business activity" means zero total sales, zero taxable sales, and zero taxable purchases.

(2) Re-application. If a sales and use tax permit is cancelled, the person may reapply and obtain a new sales and use tax permit upon request, provided the issuance is not prohibited by subsection (m) of this section, or by Tax Code, §111.0046.

(o) Liability related to acquisition of a business or assets of a business. Tax Code, §111.020 (Tax Collection on Termination of Business) and §111.024 (Liability in Fraudulent Transfers), provides that the comptroller may impose a tax liability on a person who acquires a business or the assets of a business. See §3.7 of this title (relating to Successor Liability: Liability Incurred by Purchase of a Business).

(p) Criminal penalties. Tax Code, Chapter 151, imposes criminal penalties for certain prohibited activities or for failure to comply with certain provisions under the law. See §3.305 of this title (relating to Criminal Offenses and Penalties).

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 October 21, 2019.

TRD-201903826

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: December 1, 2019

For further information, please call: (512) 475-0387

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 12. TEXAS A&M FOREST SERVICE

CHAPTER 216. RURAL VOLUNTEER FIRE DEPARTMENT ASSISTANCE PROGRAM

4 TAC §216.5, §216.6

The Texas A&M Forest Service (Agency) adopts amendments to Chapter 216 of the Texas Administrative Code, Title 4, Part 12, concerning the Rural Volunteer Fire Department Assistance Program, without changes to the proposed text as published in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5216) and will not be republished.

The adopted amendments add language to the award criteria and process in determining eligibility for volunteer fire department grants, as passed in HB 3070.

No comments were received regarding the adoption of the amendment.

The amendments are adopted pursuant to Texas Government Code, §614.102, which authorizes the agency director to adopt rules considered necessary for the administration of the program and Texas Government Code, §614.106, which mandates that the agency adopt rules to administer the program.

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

Filed with the Office of the Secretary of State on October 21, 2019.

TRD-201903827

Robby DeWitt

Associate Director for Finance and Administration
Texas A&M Forest Service

Effective date: November 10, 2019

Proposal publication date: September 20, 2019

For further information, please call: (979) 458-7341



TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 2. RESIDENTIAL MORTGAGE LOAN ORIGINATORS REGULATED BY THE OFFICE OF CONSUMER CREDIT COMMISSIONER

SUBCHAPTER A. APPLICATION PROCEDURES

7 TAC §2.108

The Finance Commission of Texas (commission) adopts new §2.108 (relating to Military Licensing), in 7 TAC, Chapter 2, concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner.

The commission adopts new §2.108 without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4599).

In general, the purpose of new §2.108 is to specify residential mortgage loan originator licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55 of the Texas Occupations Code, as amended by SB 1200, which the Texas Legislature passed in the 2019 legislative session.

Chapter 55 of the Texas Occupations Code describes licensing requirements for military service members, military veterans, and military spouses. Chapter 55 applies to licenses that "must be obtained by an individual to engage in a particular business." Tex. Occ. Code §55.001(3). Chapter 55 includes an exemption for fees or penalties based on late renewal; an expedited license application procedure for certain previously licensed individuals; and a provision to credit military service, training, or education toward licensing requirements. SB 1200 adds a new section to Chapter 55, providing that a military spouse may engage in a licensed occupation in Texas without an applicable license, if the spouse is licensed in good standing in another jurisdiction with licensing requirements that are substantially equivalent to Texas's requirements.

Adopted new §2.108 specifies residential mortgage loan originator licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55. Subsection (a) explains the purpose of the section. Subsection (b) incorporates definitions from Texas Occupations Code, §55.001. Subsection (c) describes an exemption for fees or penalties based on late renewal. Subsection (d) describes the expedited license application procedure for certain previously licensed individuals. Subsection (e) describes the authority for a military spouse licensed in another jurisdiction to operate in Texas, in accordance with SB 1200. Under subsection (e), the OCCC will consider a residential mortgage loan originator to be licensed in a jurisdiction with substantially equivalent require-

ments if the residential mortgage loan originator is licensed in accordance with the federal S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117. Subsection (f) explains that military service, training, or education will be credited toward licensing requirements as part of an applicant's employment history.

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.

The commission received no written comments on the proposal.

The new rule is adopted under Texas Occupations Code, §§55.002, 55.004(a), 55.0041(e) (as added by SB 1200), and 55.007(b), which authorize a state agency to adopt rules implementing requirements of Chapter 55 of the Texas Occupations Code. In addition, Texas Finance Code, §180.004(b) grants the commission the authority to implement rules to comply with Texas Finance Code, Chapter 180.

The statutory provisions affected by the adoption are contained in Texas Occupations Code, Chapter 55 and Texas Finance Code, Chapter 180.

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 October 18, 2019.

TRD-201903821

Matthew J. Nance

Deputy General Counsel

Finance Commission of Texas

Effective date: November 7, 2019

Proposal publication date: August 30, 2019

For further information, please call: (512) 936-7660



PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 31. PRIVATE CHILD SUPPORT ENFORCEMENT AGENCIES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the repeal of Chapter 31, §§31.1, 31.11 - 31.20, 31.31 - 31.34, 31.36 - 31.39, 31.51 - 31.56, 31.72 - 31.76, 31.91 - 31.96, and 31.111 - 31.115, concerning private child support enforcement agencies. The repeals are adopted without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4600). The repealed rules will not be republished.

The repeal of Chapter 31, Subchapter A, §31.1, is in response to the passage of Senate Bill 614 (SB 614) in the 86th Regular Session of the Texas Legislature. Per recommendation of the Sunset Advisory Commission, SB 614 removes the requirement that private child support enforcement agencies register with the department.

The department received no comments regarding the proposed repeal.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §31.1

The repeal of Chapter 31, Subchapter A, §31.1 is adopted under Texas Finance Code, §396.051(b), which requires the commission to adopt rules as necessary for administration of the chapter.

Texas Finance Code, Chapter 396 is affected by the repealed section.

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 October 18, 2019.

TRD-201903799

Catherine Reyer

General Counsel

Texas Department of Banking

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



SUBCHAPTER B. HOW DO I REGISTER MY AGENCY TO ENGAGE IN THE BUSINESS OF CHILD SUPPORT ENFORCEMENT?

7 TAC §§31.11 - 31.20

The repeal of Chapter 31, Subchapter B, §§31.11 - 31.20, is adopted under Texas Finance Code, §396.051(b), which requires the commission to adopt rules as necessary for administration of the chapter.

Texas Finance Code, Chapter 396.203 is affected by the repealed sections.

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

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Catherine Reyer

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Texas Department of Banking

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



SUBCHAPTER C. WHAT ARE MY AGENCY'S RESPONSIBILITIES AFTER REGISTRATION?

7 TAC §§31.31 - 31.34, 31.36 - 31.39

The repeal of Chapter 31, Subchapter C, §§31.31 - 31.34, 31.36 - 31.39, is adopted under Texas Finance Code, §396.051(b),

which requires the commission to adopt rules as necessary for administration of the chapter.

Texas Finance Code, Chapter 396 is affected by the repealed sections.

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

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TRD-201903801
Catherine Reyer
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Texas Department of Banking
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SUBCHAPTER D. WHAT ARE THE DEPARTMENT REQUIREMENTS FOR ADDING AN OFFICE, CLOSING AN OFFICE, RELOCATING AN OFFICE, TRANSFERRING CONTROL OF MY AGENCY, CEASING TO DO BUSINESS, OR CHANGING MY EMAIL OR WEB SITE ADDRESSES?

7 TAC §§31.51 - 31.56

The repeal of Chapter 31, Subchapter D, §§31.51 - 31.56, is adopted under Texas Finance Code, §396.051(b), which requires the commission to adopt rules as necessary for administration of the chapter.

Texas Finance Code, Chapter 396 is affected by the repealed sections.

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

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TRD-201903802
Catherine Reyer
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1301



SUBCHAPTER E. HOW DOES THE DEPARTMENT EXERCISE ITS ENFORCEMENT AUTHORITY?

7 TAC §§31.72 - 31.76

The repeal of Chapter 31, Subchapter E, §§31.72 - 31.76, is adopted under Texas Finance Code, §396.051(b), which requires the commission to adopt rules as necessary for administration of the chapter.

Texas Finance Code, Chapter 396 is affected by the repealed sections.

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

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General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1301



SUBCHAPTER F. FOREIGN AGENCIES REGISTERED IN OTHER STATES

7 TAC §§31.91 - 31.96

The repeal of Chapter 31, Subchapter F, §§31.91 - 31.96, is adopted under Texas Finance Code, §396.051(b), which requires the commission to adopt rules as necessary for administration of the chapter.

Texas Finance Code, Chapter 396 is affected by the repealed sections.

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

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Catherine Reyer
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1301



SUBCHAPTER G. CIVIL REMEDIES

7 TAC §§31.111 - 31.115

The repeal of Chapter 31, Subchapter G, §§31.111 - 31.115, is adopted under Texas Finance Code, §396.051(b), which requires the commission to adopt rules as necessary for administration of the chapter.

Texas Finance Code, Chapter 396 is affected by the repealed sections.

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

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TRD-201903805

Catherine Reyer
General Counsel

Texas Department of Banking

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



CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §§33.3, 33.13, 33.15, 33.27, 33.51

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §§33.3, 33.13, 33.15, 33.27, and 33.51, concerning bullion depository agents, without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4603). The amended rule will not be republished.

The amendments to §§33.3, 33.13, 33.15, 33.27, and 33.51 are in response to the passage of House Bill 2458 (HB 2458) in the 86th Regular Session of the Texas Legislature.

In 2015, the Texas Legislature passed House Bill 483 (HB 483), which established the Texas Bullion Depository within the Office of the Comptroller of Public Accounts. HB 483 amended sections of Texas Finance Code Chapter 151 regarding regulation of money services businesses, outlining basic requirements for licensure of bullion depository agents by the department. The commission subsequently amended various sections of Chapter 33 to implement the new legislation.

HB 2458 removes all statutory references to licensed depository agents, instead allowing the depository to use private, independently managed financial institutions to provide retail locations for the provision of depository services to the public. These amendments delete references to bullion depository agents in various sections of Chapter 33.

The department received no comments regarding the proposed amendments.

The amendments to Chapter 33 are adopted under Texas Finance Code §151.102, which authorizes the commission to adopt rules for the regulation of money services businesses.

Texas Finance Code, §§151.002, 151.003, 151.201, 151.207, 151.302, 151.502, 151.602, and 151.702 are affected by the amended sections.

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 October 18, 2019.

TRD-201903806

Catherine Reyer
General Counsel

Texas Department of Banking

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



7 TAC §§33.71 - 33.75

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the repeal of §§33.71 - 33.75 without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4607). The repealed sections will not be republished.

The repeal of §§33.71 - 33.75 is in response to the passage of House Bill 2458 (HB 2458) in the 86th Regular Session of the Texas Legislature.

In 2015, the Texas Legislature passed House Bill 483 (HB 483), which established the Texas Bullion Depository within the Office of the Comptroller of Public Accounts. HB 483 amended sections of Texas Finance Code, Chapter 151 regarding regulation of money services businesses, outlining basic requirements for licensure of bullion depository agents by the department. The commission subsequently amended various sections of Chapter 33 to implement the new legislation.

HB 2458 removes all statutory references to licensed depository agents, instead allowing the depository to use private, independently managed financial institutions to provide retail locations for the provision of depository services to the public. This repeal deletes those sections that deal exclusively with bullion depository agents.

The department received no comments regarding the proposed repeal.

The repeal of §§33.71 - 33.75 is adopted under Texas Finance Code, §151.102, which authorizes the commission to adopt rules for the regulation of money services businesses.

Texas Finance Code, §§151.002, 151.003, 151.201, 151.207, 151.302, 151.502, 151.602, and 151.702 are affected by the repealed sections.

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

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TRD-201903807

Catherine Reyer
General Counsel

Texas Department of Banking

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



PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 79. RESIDENTIAL MORTGAGE LOAN SERVICERS

SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

7 TAC §79.20

The Finance Commission of Texas (the commission) adopts amendments to 7 TAC §79.20, concerning investigations.

The Finance Commission adopts amendments to 7 TAC §79.20 with changes to the proposed text as published in the July 19, 2019, issue of the *Texas Register* (44 TexReg 3599). The rules will be republished.

The amendments are adopted to provide consistent procedures for persons to complain about conduct of entities regulated by the department. The amendments are adopted in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions to be 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 amendments implement the applicable recommendations contained in the Sunset Model.

The Department distributed a draft of the proposed amendment to the Office of the Governor, who had no comments. The Department then held a stakeholders meeting, to which it did not receive any formal written precomments, but did receive verbal feedback. The Department appreciates the thoughtful input provided by stakeholders and believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The Department received no comments on the proposal.

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

Other statutes affected by the adopted amendments are found in Finance Code Chapter 156, 157, 158, and 180.

§79.20. Investigations.

(a) Investigations will be conducted as 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, registrants, and third parties;

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

(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.

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

(c) A complaint investigation fee may be assessed against a person required to be registered under this Act. The amount of the complaint investigation fee assessed is limited to costs incurred, will be at the discretion of the Commissioner, and may not exceed \$975 per complaint.

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

The agency certifies that legal counsel has reviewed the 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 October 18, 2019.

TRD-201903815

Ernest C. Garcia

General Counsel

Department of Savings and Mortgage Lending

Effective date: November 7, 2019

Proposal publication date: July 19, 2019

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



SUBCHAPTER C. HEARINGS AND APPEALS

7 TAC §79.30

The Finance Commission of Texas (the commission) adopts amendments to 7 TAC §79.30, concerning hearings and appeals.

The Finance Commission adopts amendments to 7 TAC §79.30 without changes to the proposed text as published in the July 19, 2019, issue of the *Texas Register* (44 TexReg 3600). The rules will not be republished.

The Department received no comments on the proposal.

The amendments are adopted to provide consistent procedures for resolving complaints concerning entities regulated by the department. The amendments are adopted in response to a recommendation of the Sunset Advisory Commission that the department update its complaint resolution provisions to be 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 resolution, hearings, and appeals are topics covered in the Sunset Model. The amendments implement the applicable recommendations contained in the Sunset Model.

The Department distributed a draft of the proposed amendment to the Office of the Governor, who had no comments. The Department then held a stakeholders meeting, to which it did not receive any formal written precomments, but did receive verbal feedback. The Department appreciates the thoughtful input provided by stakeholders and believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

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

Other statutes affected by the adopted amendments are found in Finance Code Chapter 156, 157, 158, and 180.

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

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Ernest C. Garcia

General Counsel

Department of Savings and Mortgage Lending

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Proposal publication date: July 19, 2019

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



CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §80.201

The Finance Commission of Texas (the commission) adopts amendments to 7 Texas Administrative Code Chapter 80, Subchapter C, §80.201, concerning loan status forms. The amended rule is adopted with changes to the proposed text as published in the April 26, 2019, issue of the *Texas Register* (44 TexReg 2131) and will be republished.

The commission received numerous comments on the proposed amendments in May 2019. In addition, a stakeholders meeting

was held on September 9, 2019, at which time additional comments were received.

The adoption regarding 7 TAC §80.201 is to clarify the usage of conditional pre-qualification and conditional loan approval forms, when such forms are provided by mortgage loan companies to mortgage applicants or prospective mortgage applicants. Adopted Graphic Form A the conditional pre-qualification letter content and Form B the conditional loan approval letter content: (1) make the content of the conditional pre-qualification forms or letters used by mortgage loan companies, mortgage bankers and residential mortgage loan originators more uniform; (2) help emphasize to the mortgage applicants that the pre-qualification form is not a loan approval or commitment to lend; (3) make the content of the conditional loan approval forms or letters used by mortgage loan companies, mortgage bankers and residential mortgage loan originators more uniform; and (4) help emphasize to the mortgage applicant that the conditional loan approval form states that the applicant is in fact approved for a mortgage loan, provided that certain conditions are met prior to loan closing.

Public comment received from various individuals, business entities and the Texas Mortgage Bankers Association stated that the effective date of any rule / form amendment should not be effective for 90 to 150 days to allow for systems to be updated with any amended forms. The commission agrees with these comments and therefore the adopted rule amendments will not take effect until May 1, 2020.

Mr. John Fleming on behalf of the Texas Mortgage Bankers Association commented that the proposed language in subsections (a) and (b), referencing that there was no requirement for the forms to be issued, could lead to confusion regarding voluntary usage of the forms and he suggested alternate language. The commission believes that language in such paragraphs as existing and adopted convey that issuance of the forms is not mandatory, but rather, when written confirmation is provided, the substance in the loan status forms should be conveyed to an applicant or prospective applicant.

Stacy G. London commented that Forms A and B, should include the contact information of the originator. The commission agrees with such comment and therefore Forms A and B shall require an originator to provide their mailing address, email address and a phone number, as well as their NMLS number.

Comments received from the Texas Realtors association recommended that any rule amendment state that conditional loan approvals should not be issued absent verification by the company or originator. The commission agrees with this comment and therefore the adopted rule amendment will state this explicitly in subsection (b).

Comments received from various individuals, business entities (including Encompass Lending Group) and the Association of Texas Mortgage Professionals, (through both Mr. Everett Ives and Daniel Jara) stated that any amendments should recognize that verifications are often accomplished through automated or electronic means. The commission agrees with these comments and therefore the adopted rule amendments will state explicitly in subsection (b) that verifications may be conducted manually or by electronic means.

Comments received from the firm of Pepper Hamilton suggested that the title of Form A should be Conditional Approval or Pre-Approval and that the title to Form B should be changed to Loan Commitment. The commission agrees that it would be helpful to

modify the title of Form A for further clarification and as adopted Form A shall be entitled Conditional Pre-Qualification Letter. As to changing the title of Form B to Loan Commitment, the commission believes that such a title would convey more than is intended to a prospective applicant or applicant and therefore as adopted the title to Form B shall remain Conditional Approval Letter.

Mr. Everett Ives on behalf of the Association of Texas Mortgage Professionals as to Form B commented that the word "encumbrances" in paragraph 2 should be changed to the broader "conditions or exceptions". Similarly, Stacy G. London commented that the language used could be broader, such as a "title commitment acceptable to lender". The commission agrees with such comments and therefore the adopted form B deletes the word encumbrances and instead the sentence will read that "(t)he lender receives an acceptable title commitment".

Mr. Everett Ives on behalf of the Association of Texas Mortgage Professionals as to Form B commented that paragraph 3 could also make reference to ingress, setbacks, easements and shortages in area or deletions on Schedule B of a title commitment. Similarly, Stacy G. London commented that such paragraph should simply read that the "title commitment is acceptable to lender and title company". The commission agrees that broader language is preferable and therefore such paragraph shall read "(t)he lender receives an acceptable survey".

Mr. Everett Ives on behalf of the Association of Texas Mortgage Professionals as well as Wayne King and Paul Marsh of Encompass Lending Group commented that the forms when referring to "loan" documents that the lender may require should be changed to refer to "all" documents that the lender may require as many documents that require signature, such as disclosures, are not strictly "loan" documents. The commission agrees with this comment and therefore the adopted forms in paragraph 6 will refer to all documents a lender may require.

Several comments received stated that depositories were not required to use loan status forms and placed non depositories at somewhat of a disadvantage as non-depositories were required to use loan status forms. However, Tex. Fin. Code §§156.105 and 157.02012 require the Finance Commission to adopt loan status forms applicable to non-depositories and there is no jurisdiction to require depositories to use similar forms.

The proposed amendments as published considered adding language that a Form B loan approval form would not be issued until all "credit requirements" had been met. Mr. Everett Ives on behalf of the Texas Mortgage Professionals objected to such phrase as being too broad and thus limiting the possible usage of Form B. John Fleming on behalf of the Texas Mortgage Bankers Association commented that use of such phrase would require further clarification. The commission agrees with such comments and the phrase "credit requirements" will be omitted in reference to Form B, in this adopted version.

The proposed amendments as published contemplated the addition of a subsection to state that an individual was required to be licensed to issue a loan status form, but it was thereafter decided that such statement was not required in this rule. In addition, the firm of Pepper Hamilton, LLP objected to the inclusion of such language.

The adoption is made under the authority of Texas Finance Code §11.306 and §156.102.

The statutory provisions affected by the adoptions are contained in Texas Finance Code, Chapter 156.

§80.201. *Loan Status Forms.*

(a) Except as otherwise provided by subsection (c) of this section, when provided to a mortgage applicant or prospective mortgage applicant, written confirmation of conditional pre-qualification shall include the information in Form A, Figure: 7 TAC §80.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. There is no requirement to issue a written confirmation of conditional pre-qualification. Form A or an alternate form may be modified by adding any of the following as needed:

Figure: 7 TAC §80.201(a)

- (1) Any additional aspects of the loan as long as not misleading;
- (2) Any additional items that the originator has reviewed in determining conditional qualifications; or
- (3) Any additional terms, conditions, and requirements.

(b) When provided to a mortgage applicant or prospective mortgage applicant, written notification of conditional loan approval on the basis of credit worthiness, but not on the basis of collateral, shall include the information in Form B, Figure: 7 TAC §80.201(b). This information can be provided by utilizing Form B or an alternate form that includes all of the information found on Form B. There is no requirement to issue a written notification of conditional loan approval. Form B or an alternate form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, or disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations. A conditional loan approval should not be issued unless the company or originator has verified that, absent any material changes prior to closing, the mortgage applicant or prospective mortgage applicant has satisfied all loan requirements related to credit, income, assets, and debts. Verification may be conducted manually or by electronic means.

Figure: 7 TAC §80.201(b)

(c) Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined in 15 U.S.C. §1681a (l).

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 October 18, 2019.

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Ernest C. Garcia

General Counsel

Department of Savings and Mortgage Lending

Effective date: May 1, 2020

Proposal publication date: April 26, 2019

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

SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §80.301, §80.302

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to 7 TAC §80.301, concerning

complaints and investigations, and to 7 TAC 80.302, concerning hearings. The amendments are adopted without changes to the proposed text as published in the July 19, 2019, issue of the *Texas Register* (44 TexReg 3601). The rules will not be republished.

The Department received no comments on the proposal.

The amendments are adopted to provide consistent procedures for persons to complain about conduct of entities regulated by the department and for resolving complaints concerning entities regulated by the department. The amendments are adopted in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing and resolution provisions to be 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, recordkeeping, resolution, hearings, and appeals are topics covered in the Sunset Model. The amendments implement the applicable recommendations contained in the Sunset Model.

The Department distributed a draft of the proposed amendment to the Office of the Governor, who had no comments. The Department then held a stakeholders meeting, to which it did not receive any formal written precomments, but did receive verbal feedback. The Department appreciates the thoughtful input provided by stakeholders and believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

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

Other statutes affected by the adopted amendments are found in Finance Code Chapter 156, 157, 158, and 180.

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 October 18, 2019.

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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 B. LICENSING

7 TAC §81.110

The Finance Commission of Texas (the commission) adopts new 7 TAC §81.110, concerning licensing military service members, military veterans, and military spouses.

The Finance Commission adopts new 7 TAC §81.110 without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4608). The rule will not be republished.

The Department received no comments on the proposal.

The new rule is adopted to implement the requirements of Occupations Code Chapter 55 regarding licensing Military Service Members, Military Veterans, and Military Spouses, as they pertain to the Department and to Residential Mortgage Loan Originators generally.

Occupations Code Chapter 55 contains sections regarding penalty exemptions, extensions of deadlines, alternative licensing arrangements, out of state licenses, expedited procedures, eligibility requirements, fees, and notice provisions.

The Department distributed a draft of the proposed new rule to the Office of the Governor, who had no comments.

The new rule is adopted under Occupations Code §55.002, which provides that a state agency that issues a license shall adopt rules regarding exempting certain individuals from penalties for failure to renew a license; Occupations Code §55.004(a), which provides that a state agency that issues a license shall adopt rules regarding alternative licensing for Military Service Members, Military Veterans, and Military Spouses; Occupations Code §55.0041(e), which provides that a state agency that issues a license shall adopt rules regarding recognizing out-of-state licenses of Military Spouses; Occupations Code §55.007(b), which provides that a state agency that issues a license shall adopt rules regarding license eligibility requirements for applicants with military experience; 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; 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 adopted new rule are found in Finance Code Chapter 156, 157, and 180.

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 October 18, 2019.

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Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Effective date: November 7, 2019
Proposal publication date: August 30, 2019
For further information, please call: (512) 475-2534



SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §81.201

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to 7 Texas Administrative Code Chapter 81, Subchapter C, §81.201 concerning loan status forms. The amendments are adopted with changes to the proposed text as published in the April 26, 2019, issue of the *Texas Register* (44 TexReg 2132). The rule will be republished.

The commission received numerous comments on the proposed amendments in May of 2019. In addition, a stakeholders meeting was held on September 9, 2019, at which time additional comments were received.

The adoption regarding 7 Texas Administrative Code §81.201 is to clarify the usage of conditional pre-qualification and conditional loan approval forms, when such forms are provided by mortgage bankers and residential mortgage loan originators to mortgage applicants or prospective mortgage applicants. Adopted Graphic Form A the conditional pre-qualification letter content and Form B the conditional loan approval letter content: (1) make the content of the conditional pre-qualification forms or letters used by mortgage loan companies, mortgage bankers and residential mortgage loan originators more uniform; (2) help emphasize to the mortgage applicants that the pre-qualification form is not a loan approval or commitment to lend; (3) make the content of the conditional loan approval forms or letters used by mortgage loan companies, mortgage bankers and residential mortgage loan originators more uniform; and (4) help emphasize to the mortgage applicant that the conditional loan approval form states that the applicant is in fact approved for a mortgage loan, provided that certain conditions are met prior to loan closing.

Public comment received from various individuals, business entities and the Texas Mortgage Bankers Association stated that the effective date of any rule / form amendment should not be effective for 90 to 150 days to allow for systems to be updated with any amended forms. The commission agrees with these comments and therefore the adopted rule amendments will not take effect until May 1, 2020.

Mr. John Fleming on behalf of the Texas Mortgage Bankers Association commented that the proposed language in subsections (a) and (b) referencing that there was no requirement for the forms to be issued could lead to confusion regarding voluntary usage of the forms and he suggested alternate language. The commission believes that language in such paragraphs as existing and adopted convey that issuance of the forms is not mandatory. But rather, when written confirmation is provided, the substance in the loan status forms should be conveyed to an applicant or prospective applicant.

Stacy G. London commented that Forms A and B, should include the contact information of the originator. The commission agrees with such comment and therefore Forms A and B, shall require an originator to provide their mailing address, email address and a phone number as well as their NMLS number.

Comments received from the Texas Realtors association recommended that any rule amendment state that conditional loan approvals should not be issued absent verification by the company or originator. The commission agrees with this comment and therefore the adopted rule amendment will state this explicitly in subsection (b).

Comments received from various individuals, business entities (including Encompass Lending Group) and the Association of Texas Mortgage Professionals, (through both Mr. Everett Ives and Daniel Jara) stated that any amendments should recognize that verifications are often accomplished through automated or electronic means. The commission agrees with these comments and therefore the adopted rule amendments will state explicitly in subsection (b) that verifications may be conducted manually or by electronic means.

Comments received from the firm of Pepper Hamilton suggested that the title of Form A should be Conditional Approval or Pre-Approval and that the title to Form B should be changed to Loan Commitment. The commission agrees that it would be helpful to modify the title of Form A for further clarification and as adopted Form A shall be entitled Conditional Pre-Qualification Letter. As to changing the title of Form B to Loan Commitment, the commission believes that such a title would convey more than is intended to a prospective applicant or applicant and therefore as adopted the title to Form B shall remain Conditional Approval Letter.

Mr. Everett Ives on behalf of the Association of Texas Mortgage Professionals as to Form B commented that the word "encumbrances" in paragraph 2 should be changed to the broader "conditions or exceptions". Similarly, Stacy G. London commented that the language used could be broader, such as a "title commitment acceptable to lender". The commission agrees with such comments and therefore the adopted form B deletes the word encumbrances and instead the sentence will read that "[t]he lender receives an acceptable title commitment".

Mr. Everett Ives on behalf of the Association of Texas Mortgage Professionals as to Form B commented that paragraph 3 could also make reference to ingress, setbacks, easements and shortages in area or deletions on Schedule B of a title commitment. Similarly, Stacy G. London commented that such paragraph should simply read that the "title commitment is acceptable to lender and title company". The commission agrees that broader language is preferable and therefore such paragraph shall read "[t]he lender receives an acceptable survey".

Mr. Everett Ives on behalf of the Association of Texas Mortgage Professionals as well as Wayne King and Paul Marsh of Encompass Lending Group commented that the forms when referring to "loan" documents that the lender may require should be changed to refer to "all" documents that the lender may require as many documents that require signature, such as disclosures, are not strictly "loan" documents. The commission agrees with this comment and therefore the adopted forms in paragraph 6 will refer to all documents a lender may require.

Several comments received stated that depositories were not required to use loan status forms and placed non depositories at somewhat of a disadvantage as non-depositories were required to use loan status forms. However, Texas Fin. Code §§156.105

and 157.02012 require the Finance Commission to adopt loan status forms applicable to non-depositories and there is no jurisdiction to require depositories to use similar forms.

The proposed amendments as published considered adding language that a Form B loan approval form would not be issued until all "credit requirements" had been met. Mr. Everett Ives on behalf of the Texas Mortgage Professionals objected to such phrase as being too broad and thus limiting the possible usage of Form B. John Fleming on behalf of the Texas Mortgage Bankers Association commented that use of such phrase would require further clarification. The commission agrees with such comments and the phrase "credit requirements" will be omitted in reference to Form B, in this adopted version.

The proposed amendments as published contemplated the addition of a subsection to state that an individual was required to be licensed to issue a loan status form, but it was thereafter decided that such statement was not required in this rule and it has therefore been omitted from this adopted version. In addition, the firm of Pepper Hamilton, LLP objected to the inclusion of such language.

The adoption is made under the authority of Texas Finance Code §§11.306 and 157.0023.

The statutory provisions affected by the adoptions are contained in Texas Finance Code, Chapter 157.

§81.201. *Loan Status Forms.*

(a) Except as otherwise provided by subsection (c) of this section, when provided to a mortgage applicant or prospective mortgage applicant written confirmation of conditional pre-qualification shall include the information in Form A, Figure: 7 TAC §81.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. There is no requirement to issue a written confirmation of conditional pre-qualification. Form A or an alternate form may be modified by adding any of the following as needed:

Figure: 7 TAC §81.201(a)

- (1) Any additional aspects of the loan as long as not misleading;
- (2) Any additional items that the originator has reviewed in determining conditional qualifications; or
- (3) Any additional terms, conditions, and requirements.

(b) When provided to a mortgage applicant or prospective mortgage applicant, written notification of conditional loan approval on the basis of credit worthiness, but not on the basis of collateral, shall include the information in Form B, Figure 7: TAC §81.201(b). This information can be provided by utilizing Form B or an alternate form that includes all of the information found on Form B. There is no requirement to issue a written notification of conditional loan approval. Form B or an alternate form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, or disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations. A conditional loan approval should not be issued unless the company or originator has verified that, absent any material changes prior to closing, the mortgage applicant or prospective mortgage applicant has satisfied all loan requirements related to credit, income, assets, and debts. Verification may be conducted manually or by electronic means.

Figure: 7 TAC §81.201(b)

(c) Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined in 15 U.S.C. §1681a(1).

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

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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

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**PART 5. OFFICE OF CONSUMER
CREDIT COMMISSIONER**

**CHAPTER 83. REGULATED LENDERS AND
CREDIT ACCESS BUSINESSES**

**SUBCHAPTER A. RULES FOR REGULATED
LENDERS**

**DIVISION 5. INTEREST CHARGES ON
LOANS**

7 TAC §83.501

The Finance Commission of Texas (commission) adopts amendments to §83.501 (relating to Maximum Interest Charge) in 7 TAC, Chapter 83, concerning Regulated Lenders and Credit Access Businesses.

The commission adopts the amendments without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4610). The rule will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments to §83.501 is to implement HB 3855, which the Texas Legislature passed in the 2019 legislative session, by adding a reference to the single equivalent daily rate authorized under HB 3855.

Texas Finance Code, §342.201(e) allows a lender to charge a three-tiered interest rate on a loan subject to Chapter 342, Subchapter E of the Texas Finance Code. HB 3855 adds a new subsection at Texas Finance Code, §342.201(e-1), specifying that the lender may charge this amount by either: (1) applying an applicable daily rate to each bracket of the unpaid principal balance, or (2) applying a single equivalent daily rate to the entire principal balance.

The adopted amendments to §83.501 implement HB 3855 by specifying that a lender may apply the single equivalent daily rate. In subsection (c), an amendment to paragraph (2) specifies that the currently authorized method for applying a daily rate to brackets applies when the loan is made under Texas Finance Code, §342.201(e) and (e-1)(1). New paragraph (3) explains that interest may be calculated by applying the single equivalent

lent daily rate if the loan is made under Texas Finance Code, §342.201(e) and (e-2).

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 received one informal written precomment on the rule text draft. The precomment relates primarily to proposed amendments to model plain language clauses at §90.203. For this reason, the precomment is discussed in connection with the separate adopted amendments to §90.203.

The amendments to §83.501 are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Chapter 342.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

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TRD-201903813

Matthew J. Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

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Proposal publication date: August 30, 2019

For further information, please call: (512) 936-7660



CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS

SUBCHAPTER A. RULES OF OPERATION FOR PAWNSHOPS

DIVISION 3. PAWNSHOP EMPLOYEE LICENSE

7 TAC §85.309

The Finance Commission of Texas (commission) adopts new §85.309 (relating to Military Licensing), in 7 TAC, Chapter 85, concerning Pawnshops and Crafted Precious Metal Dealers.

The commission adopts new §85.309 without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4611).

The commission received no written comments on the proposal.

In general, the purpose of new §85.309 is to specify pawnshop employee licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55 of the Texas Occupations Code, as amended by SB 1200, which the Texas Legislature passed in the 2019 legislative session.

Chapter 55 of the Texas Occupations Code describes licensing requirements for military service members, military veterans, and military spouses. Chapter 55 applies to licenses that "must

be obtained by an individual to engage in a particular business." Tex. Occ. Code §55.001(3). Chapter 55 includes an exemption for fees or penalties based on late renewal; an expedited license application procedure for certain previously licensed individuals; and a provision to credit military service, training, or education toward licensing requirements. SB 1200 adds a new section to Chapter 55, providing that a military spouse may engage in a licensed occupation in Texas without an applicable license, if the spouse is licensed in good standing in another jurisdiction with licensing requirements that are substantially equivalent to Texas's requirements.

Adopted new §85.309 specifies pawnshop employee licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55. Subsection (a) explains the purpose of the section. Subsection (b) incorporates definitions from Texas Occupations Code, §55.001. Subsection (c) describes an exemption for fees or penalties based on late renewal. Subsection (d) describes the expedited license application procedure for certain previously licensed individuals. Subsection (e) describes the authority for a military spouse licensed in another jurisdiction to operate in Texas, in accordance with SB 1200. Under subsection (e), the OCCC will determine whether a license issued in another jurisdiction is substantially equivalent by reviewing applicable legal requirements in the jurisdiction, as well as the application review process in the other jurisdiction. Subsection (f) explains that military service, training, or education will be credited toward licensing requirements as part of an applicant's employment history.

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.

Regarding the effective date of this new rule, Texas Finance Code, §371.006 contains a provision requiring notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the delayed effective date for the new rule will be December 1, 2019.

The new rule is adopted under Texas Occupations Code, §§55.002, 55.004(a), 55.0041(e) (as added by SB 1200), and 55.007(b), which authorize a state agency to adopt rules implementing requirements of Chapter 55 of the Texas Occupations Code. In addition, Texas Finance Code, §371.006, authorizes the Finance Commission to adopt rules to enforce Chapter 371 of the Texas Finance Code, and Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code.

The statutory provisions affected by the adoption are contained in Texas Occupations Code, Chapter 55 and Texas Finance Code, Chapter 180.

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

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Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
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Proposal publication date: August 30, 2019
For further information, please call: (512) 936-7660



CHAPTER 86. RETAIL CREDITORS SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §86.201

The Finance Commission of Texas (commission) adopts amendments to §86.201 (relating to Documentary Fee) in 7 TAC, Chapter 86, concerning Retail Creditors.

The commission adopts the amendments without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4612). The rule will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments to §86.201 is to remove references to the obsolete term "motor-driven cycle," in accordance with HB 3171, which the Texas Legislature passed in the 2019 legislative session.

HB 3171 amends various provisions in the Texas Transportation Code and Texas Finance Code relating to motorcycles and mopeds. The bill amends the definitions of "motorcycle" and "moped," and removes the term "motor-driven cycle," which was considered a type of motorcycle under previous law. In particular, the bill removes "motor-driven cycle" from the list of vehicles for which a documentary fee is authorized for a retail installment transaction under Texas Finance Code, §345.251.

The adopted amendments to §86.201 remove the definition of "motor-driven cycle," remove the term "motor-driven cycle" from the definition of "covered land vehicle," and renumber other definitions accordingly. This will ensure consistency with the Texas Finance Code and Texas Transportation Code as amended by HB 3171.

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.

These amendments are adopted under Texas Finance Code, §345.251(e), which authorizes the commission to adopt rules to implement and enforce the statutory provision authorizing a documentary fee for certain retail installment transactions under Texas Finance Code, Chapter 345. In addition, Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 345.

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

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Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7660



CHAPTER 90. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS SUBCHAPTER B. SECURED CONSUMER INSTALLMENT LOANS (SUBCHAPTER E)

7 TAC §90.203

The Finance Commission of Texas (commission) adopts amendments to §90.203 (relating to Model Clauses) in 7 TAC, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

The commission adopts the amendments without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4614). The rule will not be republished.

In general, the purpose of the adopted amendments to §90.203 is to implement HB 3855, which the Texas Legislature passed in the 2019 legislative session, by adding model plain language provisions for loan contracts using the single equivalent daily rate authorized under HB 3855.

Texas Finance Code, §342.201(e) allows a lender to charge a three-tiered interest rate on a loan subject to Chapter 342, Subchapter E of the Texas Finance Code. HB 3855 adds a new subsection at Texas Finance Code, §342.201(e-1), specifying that the lender may charge this amount by either: (1) applying an applicable daily rate to each bracket of the unpaid principal balance, or (2) applying a single equivalent daily rate to the entire principal balance.

The adopted amendments to §90.203 implement HB 3855 by adding model clauses for loans where the lender uses the single equivalent daily rate. In paragraphs (7)(C) and (7)(E), amendments to clauses (i) and (ii) specify that the currently authorized model clauses can be used when the interest charge is computed by applying a daily rate to brackets under Texas Finance Code, §342.201(e-1)(1). In paragraphs (7)(C) and (7)(E), new clauses (iii) and (iv) contain model clauses that can be used when the interest charge is computed as a single equivalent daily rate under Texas Finance Code, §342.201(e-1)(2).

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 received one informal written precomment on the rule text draft. The precomment recommends including language in the model clauses specifying that the lender has used the single equivalent daily rate as defined by the Texas Finance Code. In response to this precomment, each new model clause in the amendments to §90.203 includes the following sentence: "The

interest rate is computed by applying a single equivalent daily rate under the Texas Finance Code."

The commission received no written comments on the proposal.

The amendments to §90.203 are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §341.502 authorizes the commission to adopt rules governing the form of plain language contracts for loans under Chapter 342.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 341 and 342.

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

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 13. TEXAS HISTORIC PRESERVATION TAX CREDIT PROGRAM

13 TAC §13.6

The Texas Historical Commission (Commission) adopts amendments to 13 Texas Administrative Code §13.6, relating to the application review process for the state tax credit for certified rehabilitation of historic structures with changes to the text as published in the August 16, 2019, issue of the *Texas Register* (44 TexReg 4267). The rule will be republished.

Amended §13.6 describes the process by which the Commission staff will accept and review applications for tax credit projects, and will allow staff to close inactive applications, which includes those applications that have had no activity for at least twenty-four months, are missing information, or have not paid review fees. Closure of an inactive application will disqualify that applicant from receiving tax credits. The purpose of these amendments is to allow for more accurate tracking of active applications and to assist compliance with record retention requirements.

PUBLIC COMMENT

The Commission received written comments from Kennedy Sutherland, LLP providing recommendations for minor language changes to clarify elements of the rule and provide clear expectations for reopening closed projects. Kennedy Sutherland, LLC did not expressly support or oppose the rule, but asked that the rule be revised to clarify that the sole effect of the closure of an application is to require its reopening before the application

process may proceed. The comment also questioned the statement in §13.6(f)(6) as to whether the Commission may refuse to reopen an application if all conditions in §13.6(f)(5) have been met. Lastly, this comment requested that the 60-day deadline for responding to a request from Commission staff for additional information be extended to 120 days.

COMMISSION RESPONSE

The Commission agrees with Kennedy Sutherland, LLP that the language in §13.6(f) should be clarified to indicate that closed applications will not be denied the opportunity to seek tax credits if other parts of the new rules have been met and projects are reopened. §13.6(f) has been changed to indicate that closed applications are not eligible for the tax credit unless the application is reopened in line with the requirements of §13.6(f)(6).

The Commission declines to extend the deadline for responding to a request from Commission staff to 120 days. If applicants cannot prepare all necessary materials within 60 days, they may request an extension, which staff will readily grant. This ensures that the applicant maintains communication with staff as the project progresses. A sentence was added to §13.6(f)(3) to provide assurance that extension requests will be granted.

Finally, the Commission agrees with Kennedy Sutherland, LLC that the proposed language in §13.6(f)(6) could be construed as allowing the Commission to refuse to reopen an application even if all requirements in §13.6(f)(5) were satisfied. That is not the intention of the Commission. Accordingly, the Commission changes §13.6(f)(5) to state that applications will be reopened if the conditions of that paragraph are satisfied.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and the Texas Tax Code §171.909, which requires the Commission to adopt rules for the implementation of the rehabilitation tax credit program. The Commission interprets Texas Tax Code §171.909 as an authorization to administer the rehabilitation tax credit program, which includes the administrative closure of applications that are inactive due to applicant inaction.

§13.6. Application Review Process.

(a) Application form. The Commission staff will develop the application and may modify it as needed over time. All required forms, including application Parts A, B, C, and amendment forms, are available from the Commission at no cost.

(b) Delivery. Applications will be accepted beginning on January 1, 2015, and continuously thereafter. Applications should be delivered to the Commission by mail, hand delivery, or courier service. Faxed or emailed applications will not be accepted.

(c) Application Part A - Evaluation of Significance. Part A of the application will be used by the Commission to confirm historic designation or to determine if the property is eligible for qualification as a certified historic structure.

(1) If a property is individually listed in the National Register of Historic Places or designated as a Recorded Texas Historic Landmark or State Antiquities Landmark, the property is qualified as a certified historic structure.

(2) The applicant will be responsible for providing sufficient information to the Commission with which the Commission staff may make a determination. If all requested information is not provided to make a determination that a building is eligible for designation as a

certified historic structure, the staff may request additional information from the applicant. If the additional information requested is not provided in a timely manner, the application will be considered incomplete and review of the application will be placed on hold until sufficient information is received.

(3) The Commission staff review of Part A of a complete application, unless otherwise provided in §13.8 of this title (relating to Relationship with the Federal Rehabilitation Tax Credit Program), and shall notify the applicant in writing of any determination it makes upon completing the review of Part A of the application.

(4) There is no fee to review Part A of the application.

(d) Application Part B - Description of Rehabilitation. Part B of the application will be used by the Commission to review proposed projects for compliance with the Standards for Rehabilitation.

(1) The applicant will be responsible for providing sufficient information, including photographs taken prior to the project, to the Commission with which the Commission staff may make a determination. If all requested information is not provided to make a determination that a project is eligible as a certified rehabilitation, staff may request additional information from the applicant, usually required to be submitted within 30 days. If the additional information requested is not provided in a timely manner, the application will be considered incomplete and review of the application will be placed on hold until sufficient information is received.

(2) The Commission staff will review Part B of a complete application, unless otherwise provided in §13.8 of this title, and shall notify the applicant in writing of any determination it makes upon completing the review of Part B of the application. In reviewing Part B of the application, the Commission shall determine if Part B is approved or not as follows:

(A) Consistent with the Standards for Rehabilitation as determined by the Commission. If all aspects of the Part B of the application meet the standards for rehabilitation, no additional information is required, and no conditions are imposed on the work, Part B is approved.

(B) Consistent with the Standards for Rehabilitation with specific conditions of work required. The Commission may determine that the work described in the plan must be performed in a specific manner or with specific materials in order to fully comply with the Standards for Rehabilitation. In such cases, the Part B may be approved with specific conditions required. For applications found to be consistent with the Standards for Rehabilitation with specific conditions required, the applicant shall provide written acceptance to the Commission of all specific conditions required. Otherwise the application will be determined to be not consistent with the Standards for Rehabilitation; applications found to be consistent with the Standards for Rehabilitation with specific conditions required may proceed with the work but will only be eligible for the credit if the conditions listed are met as part of the rehabilitation work. Failure to follow the conditions may result in a determination by the Commission that the project is not consistent with the Standards for Rehabilitation.

(C) Not consistent with the Standards for Rehabilitation. Applications found not to be consistent with the Standards for Rehabilitation will be considered to be ineligible applications; the Commission shall make recommendations to the applicant that might bring the project into conformance with the Standards for Rehabilitation, however no warranty is made that the recommendations will bring the project into compliance with the Standards for Rehabilitation; the applicant may reapply and it will be treated as a new application and will be subject to a new application fee.

(3) An application fee is required to be received by the Commission before Commission review of Part B of the application. The fee is based on the estimated amount of eligible costs and expenses listed by the applicant on Part B of the application.

(A) Applicants must submit the fee with their Part B application or the application will be placed on hold until the fee is received. The fee is calculated according to a fee schedule approved by the Commission and included in the application.

(B) The fee is based on the estimated aggregate eligible costs and expenses indicated in the Part B application and is not refundable. Resubmission of a rejected application or under any other circumstances will require a new fee. Amendments to a pending application or approved project do not require additional fees.

(4) Amendment Sheet. Changes to the project not anticipated in the original application shall be submitted to the Commission on an amendment sheet and must be approved by the Commission as consistent with the Standards for Rehabilitation before they are included in the project. The Commission shall review the amendment sheet and issue a determination in writing regarding whether or not the proposed change in the project is consistent with the Standards for Rehabilitation.

(5) Scope of Review. The review encompasses the building's site and environment as well as any buildings that were functionally related historically. Therefore, any new construction and site improvements occurring on the historic property are considered part of the project. Individual condominiums or commercial spaces within a larger historic building are not considered individual properties apart from the whole. The scope of review for a project is not limited to the work that qualifies as an eligible expense. Likewise, all work completed by the current owner twenty-four (24) months before the submission of the application is considered part of the project, as is the cumulative effect of any work in previously completed or future phases.

(A) An applicant may elect to apply to receive the credit on only the exterior portions of a larger project that includes other work, in which case the scope of review will be limited to the exterior work. For properties that are individually listed on the National Register of Historic Places, are designated as a Recorded Texas Historic Landmark or State Antiquities Landmark, or determined to be eligible for these designations, the scope of review must also include primary interior spaces.

(B) For these projects described in subparagraph (A) of this paragraph, all work completed by the current owner twenty-four (24) months before the submission of the application, and within the same scope of review (e.g. exterior and/or primary interior) is considered part of the project, as is the cumulative effect of any work in previously completed or future phases within the same scope of review.

(e) Application Part C - Request for Certification of Completed Work. Part C of the application will be used by the Commission to review completed projects for compliance with the work approved under Part B.

(1) The applicant shall file Part C of the application after the building is placed in service.

(2) The applicant will be responsible for providing sufficient information, including photographs before and after the project, to the Commission by which the Commission staff may verify compliance with the approved Part B. If all requested information is not provided to make a determination that a project is eligible as a certified rehabilitation, the application is incomplete and review of the application will be placed on hold until sufficient information is received.

(3) The Commission staff will review Part C of a complete application, unless otherwise provided in §13.8 of this title, and shall notify the applicant in writing of any determination it makes upon completing the review of Part C of the application.

(A) If the completed project is found to be in compliance with the approved Part B and any required conditions; consistent with the Standards for Rehabilitation, and the building is a certified historic structure at the time of the application, the Commission shall approve the project. The Commission then shall issue to the applicant a certificate of eligibility that confirms the property to which the eligible costs and expenses relate is a certified historic structure and the rehabilitation qualifies as a certified rehabilitation and specifies the date the certified historic structure was first placed in service after the rehabilitation.

(B) If the completed project is not consistent with the Standards for Rehabilitation, with the approved Part B, and/or the specific conditions required, and the project cannot, in the opinion of the Commission, be brought into compliance, or if the building is not a certified historic structure at the time of the application, then the Commission shall deny Part C of the application and no certificate of eligibility shall be issued.

(C) If the completed project is not consistent with the Standards for Rehabilitation, with the approved Part B, and/or the specific conditions required, and the project can, in the opinion of the Commission, be brought into compliance, the Commission may issue remedial conditions that will bring the project into compliance. The applicant shall complete the remedial work and file an amended Part C. If the remedial work, in the opinion of the Commission, brings the project into compliance, then the Commission shall issue a certificate of eligibility.

(4) An application fee is charged before Commission review of the Part C of the application based on the amount of eligible costs and expenses listed by applicant on Part C of the application.

(A) Applicants must submit the fee with their Part C application or the application will be placed on hold until the fee is received. The fee is calculated according to a fee schedule approved by the Commission and included in the application.

(B) The fee is based on the eligible costs and expenses as indicated in the audited cost report and is not refundable. Resubmission of a rejected application or under any other circumstances will require a new fee. Amendments do not require additional fees.

(f) Closure of Inactive Applications. The Commission staff may close applications that have been deemed inactive. Closed applications do not qualify as certified rehabilitations and are not eligible for the Texas Historic Preservation Tax Credit unless reopened per paragraph (6) of this subsection.

(1) Applications may be deemed inactive and closed under any of the following circumstances: Part B and Part C application fees have not been received within sixty (60) days of receipt of the application parts; written requests for information necessary to complete the application and provide sufficient documentation to fully review the application are not responded to within sixty (60) days; or, approved application Parts have not progressed to subsequent Parts (for example: a Part B has not been submitted following approval of a Part A, etc.) and there has been no communication from the applicant to the Commission for a period of twenty-four (24) months or greater.

(2) Applications for projects that are simultaneously applying for federal historic tax credits, per §13.8 of this title may also be closed upon closure of the federal application by the National Park Service.

(3) Applicants will be notified in writing of the potential closure and given sixty (60) days to respond, in writing, with a request for the application to remain open; supplying missing or requested information; or to request an extension allowing additional time to compile missing or requested information. If no response is received, the application will be closed. Such requests shall not be unreasonably denied but shall not exceed an additional 60 days.

(4) Extensions will be granted, in writing, for a period of time agreed upon by the Commission and the Applicant, based on the status of the project. If an extension is not met, further extensions may be granted if the Applicant documents to the Commission that the project is progressing.

(5) Applications that have been closed will be reopened under the following conditions: the project applicant has not changed; the overall scope of work presented in the Part B application has not substantially changed; and the request to reopen the application is made in writing within twenty-four (24) months from the date the application was closed.

(6) If all conditions in paragraph (5) of this subsection are not met, a new application must be filed, including new Part B and Part C application fees.

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

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Mark Wolfe

Executive Director

Texas Historical Commission

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Proposal publication date: August 16, 2019

For further information, please call: (512) 463-6100



CHAPTER 16. HISTORIC SITES

13 TAC §16.2

The Texas Historical Commission (Commission) adopts amendments to 13 TAC §16.2, relating to Historic Sites. The amendments are adopted without changes to the proposed text as published in the August 16, 2019, issue of the *Texas Register* (44 TexReg 4271). The rule will not be republished.

The amendments provide, in part, that a site partner organization may enter into an agreement with the THC to set their own admission price. Two of the new site transfers, Port Isabel Lighthouse and San Jacinto Monument Battleground have been added to that provision. The amendments are adopted as part of the Commission's overall effort to clarify language in order to implement necessary updates, additions, and changes to more precisely reflect the procedures of the historic sites division.

There were no comments received during the public period.

The amendments to §16.2 of Chapter 16 (Title 13, Part II of the Texas Administrative Code), relating to Historic Sites are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonable affect the purposes of the Commission; Texas Government Code §442.106, which allows

the Commission to operate or grant contracts to operate concessions on the grounds of historic sites; Texas Government Code §442.072(c), which allows the commission to enter into agreements; and Texas Government Code §§442.101(a), 442.101(b), and 442.101(c), which allow the Commission to adopt policies and procedures by rule to contract for services necessary to carry out its responsibilities regarding historic sites.

No other statutes, articles, or codes are affected by this new rule.

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

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER EE. COMMISSIONER'S RULES ON REPORTING CHILD ABUSE OR NEGLECT, INCLUDING TRAFFICKING OF A CHILD

19 TAC §61.1051

The Texas Education Agency (TEA) adopts an amendment to §61.1051, concerning reporting child abuse and neglect. The amendment is adopted with changes to the proposed text as published in the August 23, 2019 issue of the *Texas Register* (44 TexReg 4433) and will be republished. The adopted amendment incorporates definitions; requires additional reporting under certain circumstances; details what must be included in the policy addressing sexual abuse, trafficking, and other maltreatment of children; and describes training requirements for new employees and employees not previously trained.

REASONED JUSTIFICATION: Section 61.1051 relates to the reporting of child abuse and neglect and related training requirements for school districts and open-enrollment charter schools as required by TEC, §38.004 and §38.0041.

The adopted amendment adds new subsection (a) to incorporate definitions for *child abuse or neglect*, *other maltreatment*, and *trafficking of a child* to align with statute.

Language is added in subsection (b)(1) to align with Texas Family Code requirements regarding mandatory reporting notification.

Language is added in subsection (b)(2) to require school district and open-enrollment charter school policy to require a report to the Texas Department of Family and Protective Services if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

New subparagraphs (b)(3), (7), and (8) are added to describe the school district's or open-enrollment charter school's policy addressing sexual abuse, trafficking, and other maltreatment of children.

Former subsection (c), which contains outdated training dates, has been removed.

Language is added to subsection (d) to specify that training must be provided to all new school district and open-enrollment charter school employees and to existing school district and open-enrollment charter school employees not previously trained. This requirement implements TEC, §38.0041. The new language in subsection (d) also addresses what must be included in the training, requires records of each staff member who participated in the training to be maintained locally, and describes the resources that may be used to provide the training.

In response to public comment, a change was made to the rule since published as proposed. Language that was proposed in subsection (b)(1) was removed and original language relating to suspected abuse or neglect was reinstated in order to align with the Texas Family Code requirements regarding mandatory notification.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 23, 2019, and ended September 23, 2019. Following is a summary of public comments received and corresponding agency responses.

Comment: An individual and a representative of the Hill Country Alliance Against Trafficking commented in support of the proposal, which they stated will train educators to recognize and report the signs and symptoms of human trafficking, and reiterated the importance of educating children how to avoid becoming victims of traffickers.

Agency Response: The agency agrees that the new training requirements for educators in 19 TAC §61.1051 will increase educators' knowledge and awareness so they can report and help prevent human trafficking.

Comment: An individual and a representative of the Big Country Human Trafficking Coalition commented in support of the proposed amendment, noting the importance of properly training educators to identify and report cases of human trafficking in efforts to combat this crime in our state.

Agency Response: The agency agrees educators will play an instrumental role in identifying and reporting trafficking of children, as well as facilitating the rescue of trafficked children by law enforcement.

Comment: A representative of the Noah Project Inc. commented in support of requiring educators to be trained specifically on trafficking and prevention and stated that trafficking is becoming more prevalent in Texas public schools.

Agency Response: The agency agrees that trafficking can occur in any neighborhood, community, and school. This new training requirement will equip educators and school districts to identify and report cases of human trafficking.

Comment: A Texas counselor commented in support of addressing the issue of human trafficking and assisting educators in recognizing behavioral indicators.

Agency Response: The agency agrees that the training requirements will assist educators in recognizing behavioral indicators and addressing the issue of human trafficking.

Comment: A Texas teacher commented in support of the proposal's training requirements for educators to recognize indicators of human trafficking.

Agency Response: The agency agrees the training requirements will assist educators in identifying the indicators of human trafficking.

Comment: A Texas counselor commented that the new training requirement will have a monetary impact on schools and would require time and effort from staff members to ensure the implementation of the proposal. The Texas counselor also commented that the effective date for this rule in November is an ambitious goal with no review of materials.

Agency Response: The agency disagrees that there will be a monetary impact on the schools to implement the required training. Districts will be able to utilize a training module developed by TEA at no-cost. Districts will also be able to collaborate with local law enforcement agencies and community resources, however, there might be costs if the district chooses an outside entity to facilitate and document their training. Additionally, school district staff and open-enrollment charter school staff are required to receive training on the prevention and mandated reporting requirements of child abuse or neglect.

Comment: A director of education from the Big Country Human Trafficking Coalition Regional Victim Crisis Center (RVCC) commented in support of the proposal, stating that all school district staff should be mandated to receive training on prevention and awareness of human trafficking.

Agency Response: The agency agrees all staff members should receive training on human trafficking in alignment with the child abuse and neglect definitions in the Family Code and Penal Code.

Comment: The legal director of policy and program support at the Texas Department of Family and Protective Services commented that the rule text is not accurate because it states that the professional reporting must have cause to believe a child's physical or mental health or welfare has been adversely affected by abuse or neglect, while in the Texas Family Code, Chapter 261, it states a professional shall make a report when they have cause to believe the child has been or may be abused or neglected or when a person has cause to believe the child's physical or mental health or welfare has been adversely affected by abuse or neglected.

Agency Response: The agency agrees and has modified subsection (b)(1) at adoption to reinstate original language relating to suspected abuse or neglect in order to align with the Texas Family Code requirements regarding mandatory notification.

Comment: The Texas Classroom Teachers Association recommended that rule text revisions should reflect changes to the Texas Family Code, §261.110, made by House Bill (HB) 621, 86th Texas Legislature, 2019, that expanded the protections for professionals who in good faith report child abuse or neglect by providing that an employer may not take any adverse employment action against a professional who in good faith reports child abuse or neglect.

Agency Response: The agency disagrees. The changes made by HB 621 are not legally required. Immunity provisions for a person who reports child abuse or neglect or otherwise assists in an investigation in good faith is already addressed in 19 TAC §61.1051(b)(2)(C).

Comment: A parent recommended that the prohibition of a policy that school personnel report suspicions of child abuse or neglect to a school administrator prior to making a report to an identified agency should be extended to prohibit a policy that school personnel report suspicions of child abuse or neglect to a school administrator after making a report to an identified agency in proposed subsection (b)(5). The parent stated that staff members would be less likely to report suspicions of abuse and neglect if required to make a report to an administrator after making a report to an identified agency. The parent also recommended the rule text include a training requirement for abuse in a school setting, including restraints and seclusion as a behavior management practice.

Agency Response: The agency disagrees. The agency has determined that the rule text as written is more likely to result in reports. Any additional training requirements will be addressed in guidance.

Comment: A representative of the Texas American Federation of Teachers suggested adding a requirement that a copy of a report made to the Texas Department of Family and Protective Services and Child Protective Services must be sent to the home address of the employee making the report of possible child abuse or neglect.

Agency Response: The agency disagrees. The Texas Education Agency is not the appropriate state entity to address this reporting requirement.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §38.004, which requires Texas Education Agency (TEA) to develop a policy governing the reports of child abuse or neglect, including reports related to the trafficking of a child under Texas Penal Code, §20A.02(a)(5), (6), (7), or (8), as required by Texas Family Code, Chapter 261; TEC, §38.0041, as amended by HB 111, 86th Texas Legislature, 2019, which requires each school district and open-enrollment charter school to adopt and implement a policy addressing sexual abuse and other maltreatment of children, including the sexual abuse, trafficking, and other maltreatment of children with significant cognitive disabilities; Texas Family Code, §261.001, which defines child abuse and neglect, which includes knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Texas Penal Code, §20A.02(a)(5)-(8); and Texas Penal Code, §20A.02(a)(5)-(8), which provides a person commits an offense if the person knowingly: traffics a child with the intent that the trafficked child engage in forced labor or services; receives a benefit from participating in such a venture; traffics a child and by any means causes the trafficked child to engage in, or become of a victim of, conduct prohibited by §20A.02(a)(7)(A)-(K); or receives a benefit from participating in such a venture or engages in sexual conduct with a child trafficked in this manner.

CROSS REFERENCE TO STATUTE. Texas Education Code, §38.004 and §38.0041, as amended by House Bill (HB) 111, 86th Texas Legislature, 2019; Texas Family Code, §261.001; and Texas Penal Code, §20A.02(a)(5)-(8).

§61.1051. Reporting Child Abuse or Neglect, Including Trafficking of a Child.

(a) The following words and terms, when used in this subchapter, have the following meanings.

(1) Child abuse or neglect--The definition of child abuse or neglect includes the trafficking of a child in accordance with Texas Education Code (TEC), §38.004.

(2) Other maltreatment--This term has the meaning assigned by Human Resources Code, §42.002.

(3) Trafficking of a child--This term has the meaning assigned by Texas Penal Code, §20A.02(a)(5), (6), (7), or (8).

(b) The board of trustees of a school district or governing body of an open-enrollment charter school shall adopt and annually review policies for reporting child abuse and neglect. The policies shall follow the requirements outlined in Texas Family Code, Chapter 261.

(1) The policies must require that every school employee, agent, or contractor who suspects a child's physical or mental health or welfare has been adversely affected by abuse or neglect submit a written or oral report to at least one of the following authorities within 48 hours or less, as determined by the board of trustees, after learning of facts giving rise to the suspicion:

(A) a local or state law enforcement agency;

(B) the Texas Department of Family and Protective Services, Child Protective Services Division;

(C) a local office of Child Protective Services, where available; or

(D) the state agency that operates, licenses, certifies, or registers the facility in which the alleged child abuse or neglect occurred.

(2) The policies must require a report to the Texas Department of Family and Protective Services if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child and must notify school personnel of the following:

(A) penalties under Texas Penal Code, §39.06; Texas Family Code, §261.109; and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) for failure to submit a required report of child abuse or neglect;

(B) applicable prohibitions against interference with an investigation of a report of child abuse or neglect, including the following:

(i) Texas Family Code, §261.302 and §261.303, prohibiting school officials from denying an investigator's request to interview a student at school; and

(ii) Texas Family Code, §261.302, prohibiting school officials from requiring the presence of a parent or school administrator during an interview by an investigator;

(C) immunity provisions applicable to a person who reports child abuse or neglect or otherwise assists an investigation in good faith;

(D) confidentiality provisions relating to reports of suspected child abuse or neglect;

(E) any disciplinary action that may result from non-compliance with the district's reporting policy; and

(F) the prohibition under TEC, §26.0091, against using or threatening to use the refusal to consent to administration of a psychotropic drug to a child or to any other psychiatric or psychological testing or treatment of a child as the sole basis for making a report of neglect, except as authorized by TEC, §26.0091.

(3) Each school district and open-enrollment charter school shall adopt and implement a policy addressing sexual abuse, trafficking, and other maltreatment of children. The policy must be included in any informational handbook provided to students and parents and must address the following:

(A) methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, trafficking, and other forms of maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim;

(B) actions a child who is a victim of sexual abuse, trafficking, or other maltreatment should take to obtain assistance and intervention; and

(C) available counseling options for students affected by sexual abuse, trafficking, or other maltreatment.

(4) The policies must be consistent with Texas Family Code, Chapter 261, and 40 TAC Chapter 700 (relating to Child Protective Services) regarding investigations by the Texas Department of Family and Protective Services, including regulations governing investigation of abuse by school personnel and volunteers.

(5) The policies may not require that school personnel report suspicions of child abuse or neglect to a school administrator prior to making a report to one of the agencies identified in paragraph (1) of this subsection.

(6) The policies must include the current toll-free telephone number of the Texas Department of Family and Protective Services.

(7) The policies must provide for cooperation with law enforcement child abuse investigations without the consent of the child's parent, if necessary, including investigations by the Texas Department of Family and Protective Services.

(8) The policies must include child abuse anti-victimization programs in elementary and secondary schools consisting of age-appropriate, research-based prevention designed to promote self-protection and prevent sexual abuse and trafficking.

(c) The policies required by this section and adopted by the board of trustees shall be distributed to all school personnel at the beginning of each school year. The policies shall be addressed in staff development programs at regular intervals determined by the board of trustees.

(d) Training concerning prevention techniques for, and recognition of, sexual abuse, trafficking, and all other maltreatment of children, including the sexual abuse, trafficking, and other maltreatment of children with significant cognitive disabilities, must be provided as a part of new employee orientation to all new school district and open-enrollment charter school employees and to existing school district and open-enrollment charter school employees not previously trained as required by TEC, §38.0041.

(1) The training must include:

(A) factors indicating a child is at risk for sexual abuse, trafficking, or other maltreatment;

(B) warning signs indicating a child may be a victim of sexual abuse, trafficking, or other maltreatment;

(C) internal procedures for seeking assistance for a child who is at risk for sexual abuse, trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;

(D) techniques for reducing a child's risk for sexual abuse, trafficking, or other maltreatment; and

(E) information on community organizations that have relevant research-based programs that are able to provide training or

other education for school district or open-enrollment charter school staff, students, and parents.

(2) Each school district and open-enrollment charter school must maintain records that include the name of each staff member who participated in training.

(3) To the extent that resources are not yet available from the Texas Education Agency or commissioner of education, school district and open-enrollment charter schools shall implement the policies and trainings with existing or publicly available resources. The school district or open-enrollment charter school may also work in conjunction with a community organization to provide the training at no cost to the district or charter school.

(e) Using a format and language that is clear, simple, and understandable to students, each public school and open-enrollment charter school shall post, in English and in Spanish:

(1) the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number;

(2) instructions to call 911 for emergencies; and

(3) directions for accessing the Texas Department of Family and Protective Services website (www.txabusehotline.org) for more information on reporting abuse, neglect, and exploitation.

(f) School districts and open-enrollment charter schools shall post the information specified in subsection (e) of this section at each school campus in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students. The information must be on a poster (11x17 inches or larger) in large print and placed at eye-level to the student for easy viewing. Additionally, the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number should be in bold print.

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 October 17, 2019.

TRD-201903782

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 6, 2019

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



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 165. MEDICAL RECORDS

22 TAC §165.1

The Texas Medical Board (Board) adopts amendments to Title 22, Part 9, §165.1, concerning Medical Records with changes, described below, to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4817). The rule will be republished.

The adopted amendment to §165.1 adds a requirement that physicians must retain forensic medical examination records of a sexual assault victim for 20 years from the date of exami-

nation. This change is in accordance with and pursuant to the passage of HB531 (86th Reg. Session) which amended Section 153.003 of the Texas Occupations Code.

The Board sought stakeholder input through the Enforcement Stakeholder Group, which made comments on the proposed changes to the rules that were incorporated in the proposed text.

The Board also received one written comment from the Texas Medical Association (TMA), suggesting specific revisions to the proposed rule change that, in essence, would result in a restatement of the statute, Texas Occupations Code Section 153.003, as amended by the Legislature.

The Board disagreed with the TMA and declined to make the suggested revisions. However, in an effort to not restate the statute in the rule, the Board adopts the proposed amendment to §165.1(b)(3) with changes to reflect that a licensed physician is required to retain records from a forensic medical examination in accordance with Section 153.003 of the Medical Practice Act.

The Board received no other written comments. No one appeared in person to testify regarding the rules at the public hearing on October 18, 2019.

The amendments are adopted 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.

§165.1. Medical Records.

(a) Contents of Medical Record. Regardless of the medium utilized, each licensed physician of the board shall maintain an adequate medical record for each patient that is complete, contemporaneous and legible. For purposes of this section, an "adequate medical record" should meet the following standards:

(1) The documentation of each patient encounter should include:

(A) reason for the encounter and relevant history, physical examination findings and prior diagnostic test results;

(B) an assessment, clinical impression, or diagnosis;

(C) plan for care (including discharge plan if appropriate); and

(D) the date and legible identity of the observer.

(2) Past and present diagnoses should be accessible to the treating and/or consulting physician.

(3) The rationale for and results of diagnostic and other ancillary services should be included in the medical record.

(4) The patient's progress, including response to treatment, change in diagnosis, and patient's non-compliance should be documented.

(5) Relevant risk factors should be identified.

(6) The written plan for care should include when appropriate:

(A) treatments and medications (prescriptions and samples) specifying amount, frequency, number of refills, and dosage;

(B) any referrals and consultations;

(C) patient/family education; and

(D) specific instructions for follow up.

(7) Include any written consents for treatment or surgery requested from the patient/family by the physician.

(8) Include a summary or documentation memorializing communications transmitted or received by the physician about which a medical decision is made regarding the patient.

(9) Billing codes, including CPT and ICD-9-CM codes, reported on health insurance claim forms or billing statements should be supported by the documentation in the medical record.

(10) All non-biographical populated fields, contained in a patient's electronic medical record, must contain accurate data and information pertaining to the patient based on actual findings, assessments, evaluations, diagnostics or assessments as documented by the physician.

(11) Any amendment, supplementation, change, or correction in a medical record not made contemporaneously with the act or observation shall be noted by indicating the time and date of the amendment, supplementation, change, or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction.

(12) Salient records received from another physician or health care provider involved in the care or treatment of the patient shall be maintained as part of the patient's medical records.

(13) The board acknowledges that the nature and amount of physician work and documentation varies by type of services, place of service and the patient's status. Paragraphs (1) - (12) of this subsection may be modified to account for these variable circumstances in providing medical care.

(b) Maintenance of Medical Records.

(1) A licensed physician shall maintain adequate medical records of a patient for a minimum of seven years from the anniversary date of the date of last treatment by the physician.

(2) If a patient was younger than 18 years of age when last treated by the physician, the medical records of the patient shall be maintained by the physician until the patient reaches age 21 or for seven years from the date of last treatment, whichever is longer.

(3) A licensed physician is required to retain records from a forensic medical examination in accordance with Section 153.003 of the Medical Practice Act.

(4) A physician may destroy medical records that relate to any civil, criminal or administrative proceeding only if the physician knows the proceeding has been finally resolved.

(5) Physicians shall retain medical records for such longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

(6) Physicians may transfer ownership of records to another licensed physician or group of physicians only if the physician provides notice consistent with §165.5 of this title (relating to Transfer and Disposal of Medical Records) and the physician who assumes ownership of the records maintains the records consistent with this chapter.

(7) Medical records may be owned by a physician's employer, to include group practices, professional associations, and non-profit health organizations, provided records are maintained by these entities consistent with this chapter.

(8) Destruction of medical records shall be done in a manner that ensures continued confidentiality.

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 October 21, 2019.

TRD-201903829

Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER D. DISASTER EMERGENCY RULE

22 TAC §172.21

The Texas Medical Board adopts amendments to Title 22, Part 9, Subchapter D, Disaster Emergency Rule, §172.21, concerning Other Health Care Providers Practice and Limited License for Disasters and Emergencies. The rule is adopted with non-substantive changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4818). The rule will be republished.

Section 172.21, relating to Other Health Care Providers Practice and Limited License for Disasters and Emergencies, is amended to include Advance Practice Nurses (APRN) as being exempt from the requirement for a written Prescriptive Authority Agreement during a disaster, as the APRNs were inadvertently omitted from the rule when it was initially adopted. The inclusion of APRNs is consistent with the practice in previous disasters.

The Board sought stakeholder input through the Licensure Stakeholder Group, which made comments on the proposed changes to the rules that were incorporated in the proposed text.

The Board also received a written comment from the Texas Board of Nursing (TBON) suggesting that the rule be further amended to delete the word "onsite" in subsection (c) from the proposed version.

The Board agreed with the TBON and adopts the proposed amendment to rule 172.21(c) with the non-substantive deletion of the word "onsite", as maintaining Prescriptive Authority Agreements "onsite" during a disaster was not the intent of the Board in creating this rule.

The Board received no other written comments. No one appeared in person to testify regarding the rules at the public hearing on October 18, 2019.

For these reasons, the Board adopts the amendments to rule 172.21(c) with the non-substantive change described above to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4818). The amendment will be republished.

The amendments are adopted 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.

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

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

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

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

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

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

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

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

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

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

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

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CHAPTER 175. FEES AND PENALTIES

22 TAC §175.1, §175.2

The Texas Medical Board (Board) adopts amendments to rule §175.1, concerning Application and Administrative Fees, and §175.2, concerning Registration and Renewal Fees. The amendments to §175.1 and §175.2 are being adopted without changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3757). The adopted rules will not be republished.

The adopted amendments to §175.1 and §175.2 reinstate fees for initial and renewal approval for instructor and medical radiologic technology and non-certified technician (NCT) training programs, in anticipation for approval processes to be implemented in accordance with recently adopted rules by the Texas Board of Medical Radiologic Technology (MRT Board). The amendments proposed for §175.1 and §175.2 seek to reinstate initial and renewal fees for instructor approval at \$50, which is not an increase or decrease from initial approval fees required by the Department of State Health Services (DSHS). However, for both Limited MRT and NCT programs the proposed instructor approval fee represents a decrease from fees formerly imposed by DSHS, as renewal will be required every three years rather than every two (for Limited MRT programs) or annually (for NCT programs).

The adopted amendments under §175.1 set forth a \$500 fee for initial approval of limited curriculum training programs, with proposed amendments to §175.2 requiring a \$500 renewal fee every three years, a decrease from \$900 (for a two-year term) fee formerly in effect under DSHS. A fee of \$500 is proposed under §175.1 for initial approval for NCT training programs, with a triennial renewal fee of \$500 proposed under §175.2. While an increase from the \$350 approval fee formerly in place under DSHS, the proposed fees will overall represent a decrease in cost for NCT training programs, as renewal of approval will be required triennially, rather than annually.

Finally, the adopted amendments to §175.1 and §175.2 repeal language setting forth obsolete fees related to a secondary permit no longer required for NCTs employed by physicians.

The Board has determined that the public benefit anticipated as a result of enforcing this adoption will be to set forth fees reasonable and necessary to cover the costs related to implementation and ongoing administration of approval processes for MRT and NCT training program and instructors and limited MRT exam authorization processes, without the use of additional general revenue.

No written comments were received and no one appeared in person to testify regarding the rules at the public hearing on October 18, 2019.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §601.054 and §601.057, which allow the board to set and collect fees in amounts that are rea-

sonable and necessary to cover the costs of administering and enforcing Chapter 601.

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 October 18, 2019.

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Scott Freshour

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Texas Medical Board

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 131. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §131.61

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §131.61, concerning Reporting Requirements, in Texas Administrative Code (TAC) Title 25, Part 1, Chapter 131, Subchapter C with changes to the proposed text as published in the July 19, 2019, issue of the *Texas Register* (44 TexReg 3611) and therefore will be republished.

BACKGROUND AND JUSTIFICATION

This amendment is necessary to implement House Bill (H.B.) 13, 85th Legislature, Special Session, 2017, which amended the Texas Health and Safety Code, Chapter 171 by adding new abortion complication reporting requirements for freestanding emergency medical care facilities (FEMCs). This legislation requires HHSC to adopt rules necessary to implement this chapter.

COMMENTS

The 30-day comment period ended August 19, 2019.

During this period, HHSC received comments regarding the proposed rule from three commenters, including the Texans for Life Coalition, the Texas Medical Association, and the Texas Conservative Coalition Research Institute. A summary of comments relating to the rule and HHSC's responses follows.

Comment: Two commenters supported the proposal and its adherence to the requirements of H.B. 13.

Response: HHSC thanks the commenters for their participation in the public comment period. No revision is needed.

Comment: Regarding proposed §131.61 (Reporting Requirements), the commenter suggested amending proposed §131.61(e) to read, "A facility at which an abortion complication...is diagnosed or treated" rather than the previous, "A facility

that diagnoses or treats an abortion complication," because it is a physician or other medical professional that diagnoses and treats abortion complications, not a facility. The commenter suggests that this change allows for greater clarity in the rule language and is more consistent with underlying statute.

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

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

§131.61. Reporting Requirements.

(a) A facility shall report the following incidents to the department:

- (1) the death of a patient while under the care of the facility;
- (2) a patient stay exceeding 23 hours; and
- (3) 9-1-1 activation.

(b) Reports under subsection (a) of this section shall be on a form provided by the department. The report shall contain a written explanation of the incident and the name of the individual responsible. The report shall be faxed or mailed to the department not later than the 10th business day after the incident.

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

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

(e) A facility at which an abortion complication, as defined in §139.2 of this title (relating to Definitions), is diagnosed or treated shall comply with §139.5 of this title (relating to Additional Reporting Requirements).

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 October 15, 2019.

TRD-201903764

Karen Ray

Chief Counsel

Department of State Health Services

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Proposal publication date: July 19, 2019

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



CHAPTER 139. ABORTION FACILITY REPORTING AND LICENSING

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §139.1

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §139.1, concerning Purpose and Scope, in Texas Administrative Code Title 25, Part 1, Chapter 139, Subchapter A, without changes to the proposed text as published in the July 19, 2019, issue of the *Texas Register* (44 TexReg 3613) and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

This amendment is necessary to correct a reference to abortion reporting procedures for abortion facilities and implement House Bill (H.B.) 13, 85th Legislature, Special Session, 2017, which amended the Texas Health and Safety Code Chapter 171. This legislation requires HHSC to adopt rules necessary to implement this chapter.

COMMENTS

The 30-day comment period ended August 19, 2019.

During this period, HHSC received comments regarding the proposed rule from two commenters, including the Texans for Life Coalition and the Texas Conservative Coalition Research Institute. A summary of comments relating to the rule and HHSC's responses follows.

Comment: Two commenters supported the proposal and its adherence to the requirements of H.B. 13.

Response: HHSC thanks the commenters for their participation in the public comment period. No rule change is needed.

STATUTORY AUTHORITY

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

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 October 15, 2019.

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Karen Ray

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



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

SUBCHAPTER E. NOTICE OF TOLL-FREE TELEPHONE NUMBERS AND PROCEDURES FOR OBTAINING INFORMATION AND FILING COMPLAINTS

28 TAC §1.601, §1.602

The Commissioner of Insurance adopts amendments to 28 TAC §1.601 and §1.602, relating to notice of toll-free numbers, getting information, complaint procedures, and notice of a website. The amendments to §1.601 implement Insurance Code §§521.005(b), 521.056, and 521.103(b), concerning the appropriate wording and appearance of the notice. The amendments to §1.602 implement Insurance Code §32.104(b), concerning the form and content of the notice. The amendments are adopted with changes to the proposed text as published in the May 10, 2019, issue of the *Texas Register* (44 TexReg 2346).

The department adopts §1.601 and §1.602 with changes to the proposed text in response to public comments and other minor changes to add clarity and conform with the department's current style. These changes do not materially alter issues raised in the proposal, introduce new subject matter, or affect people other than those previously on notice.

The department revised §1.601(a)(1) to add section symbols before "521.005" and "521.056."

In response to a comment, the department revised Figure: 28 TAC §1.601(a)(2)(B), Figure: 28 TAC §1.601(a)(2)(C), §1.601(b)(2), and Figure: 28 TAC §1.602(b)(1)(C) to allow a company to include its URL address.

In response to a comment, the department revised §§1.601(e), 1.602(b)(1)(C), and 1.602(b)(2) to list May 1, 2020, as the date insurers must begin using the updated notices.

The department revised Figure: 28 TAC §1.601(a)(2)(B), Figure: 28 TAC §1.601(a)(2)(C), and Figure: 28 TAC §1.602(b)(1)(C) by adding "9091" to the ZIP code for consistency with the department's address to process consumer complaints.

The department also revised Figure: 28 TAC §1.601(a)(2)(B) to clarify that consumers may call the department with a question and file a complaint on the department's website.

The department revised Figure: 28 TAC §1.601(a)(2)(C) to change the National Council on Compensation Insurance (NCCI) email address to regulatoryoperations@ncci.com.

The department also made clarifying changes to Figure: 28 TAC §1.601(a)(2)(C). First, the department revised two headings to more clearly present information about when to contact NCCI or the department. The department also added a paragraph to clarify that an insured may call the department to file a complaint if the insured believes an insurance company has violated a law relating to a workers' compensation policy. Finally, the department revised the figure to list "Compliance and Investigations" as the specific area in the Division of Workers' Compensation (DWC) to contact about a problem with a claim.

REASONED JUSTIFICATION. The amendments to §1.601 and §1.602 improve the readability of the rules and make it easier for consumers to know where and how to get help with an insurance or health maintenance organization (HMO) question or complaint. The amendments will also provide better contact information for consumers with workers' compensation problems.

Insurance Code §521.005(a) requires each insurance policy delivered or issued for delivery in Texas to provide a brief written notice with the policy that includes:

- 1) a suggested procedure to be followed by a policyholder with a dispute concerning a claim or premium;
- 2) the department's name and address; and

3) the department's toll-free telephone number for information and complaints. Insurance Code §521.005(b) requires the Commissioner to adopt appropriate wording for these notices.

Insurance Code §521.056 requires each insurer that delivers, issues for delivery, or renews an insurance policy in this state to include an information bulletin with the policy that includes the department's toll-free telephone number and a description of the services available through the department's toll-free telephone number.

Under Insurance Code §521.103(a), each HMO or insurer that delivers, issues for delivery, or renews an evidence of coverage or insurance policy in Texas must print the HMO's or insurer's toll-free number on the evidence of coverage or policy. Insurance Code §521.103(b) provides that the Commissioner may adopt rules about how the toll-free telephone number appears on the evidence of coverage or insurance policy.

In addition, under Insurance Code §32.102(a), the department, with the Office of Public Insurance Counsel, must establish and maintain a website that provides information about the purchase of residential property insurance and personal automobile insurance so consumers can make informed decisions. Under Insurance Code §32.104(b), insurers must give notice of the website, and the Commissioner must determine the form and content of the notice.

Section §1.601(a). Amendments to §1.601(a)(2) remove references to "health care plans" and "subscriber contracts" because they are included in the meaning of "all policies." The amendments also delete text from §1.601(f) and add it to §1.601(a)(2). The text relates to the applicability of the section to insurers when they add a certificate holder, annuitant, or enrollee to a group policy or group plan; so §1.601(a)(2) is a more logical place for it.

Amendments to §1.601 add subsection (a)(2)(A) to clarify how prominent the notice form must be in a package of documents.

Amendments to §1.601 add subsection (a)(2)(B) to clarify that insurers and HMOs are not required to file the notice form with TDI. The amendments continue to specify that the notice form must follow the form and content requirements in the rule, now reflected in Figure: 28 TAC §1.601(a)(2)(B) and the amendments to §1.601(b).

Amendments to §1.601 remove the notice form under Figure: 28 TAC §1.601(a)(3) and replace it with an amended notice form under Figure: 28 TAC §1.601(a)(2)(B). The amended notice form more clearly describes where and how to get help with an insurance question or complaint. The form clarifies who a consumer should contact about a complaint on a claim or premium. Figure: 28 TAC §1.601(a)(2)(B) informs the consumer to also file a complaint through the insurer's or HMO's complaint or appeal process, even if the consumer files a complaint with TDI. This language is necessary so that consumers are aware that they should pursue appeal rights in a timely manner.

The amendments to §1.601 provide more accurate contact information to workers' compensation policyholders about where and how to get help with an insurance question or problem in proposed Figure: 28 TAC §1.601(a)(2)(C).

Section §1.601(b). Amendments to §1.601(b) change the content of the notice to make it easier for consumers to read and know who they should contact to file a complaint or request other assistance, and how to contact that person. The amendments to §1.601(b) require a title and telephone number for the

insurer and HMO. The title and telephone number can still be the name and telephone number of an agent, third-party administrator, managing general agent, or employee benefits coordinator that provides policyholder services on behalf of the insurer or HMO.

Amendments to §1.601(b)(2) require the notice to include a mailing address and email address for the insurer or HMO. Amendments to §1.601(b)(2) also allow a company to include its URL address, giving consumers another way to contact the company for information or to make a complaint.

Amendments to §1.601(b)(3) clarify that the notice must appear in a font size no smaller than 10 point.

Amendments to §1.601(b) also delete §1.601(b)(3)(D), which provides an exception allowing an insurer or HMO to not provide a toll-free telephone number for group policies it does not administer and for group policies issued to employers and labor unions. The exception is deleted to conform the rule text to Insurance Code §521.102 and §521.103, which require insurers and HMOs to include those numbers on each evidence of coverage or policy issued. Insurance Code §521.101(b) does not provide an exception for those group policies.

Amendments to §1.601(b) also delete §1.601(b)(8), removing a requirement that the notice form must contain language about attaching the notice to the policy because §1.601(a)(2)(B) clarifies that insurers and HMOs are not required to file the notice form with the department.

Section §1.601(c). Amendments to §1.601(c) simplify the process for insurers or HMOs to claim an exception to the toll-free number requirement. Under Insurance Code §521.101(b)(1), insurers or HMOs with gross initial premium receipts collected in Texas of less than \$2 million each year are not required to maintain a toll-free number for information and complaints.

The adopted amendments remove the requirement for an insurer or HMO to file a statement with the department providing the statutory basis for the exception. The adopted amendments also simplify the description of what information and documents the insurer or HMO must retain for the exception.

Section §1.601(d). Amendments to §1.601(d) clarify that insurers and HMOs will not need to refile previously approved policies, bonds, annuity contracts, certificates, or evidences of coverage, but they must provide the notice in the required manner. The adopted amendments delete language about providing the notice for renewed policies because the amendments to §1.601(a)(2) describe the way to provide notice for those renewals.

Section §1.601(e). Amendments to §1.601(e) state when insurers and HMOs must begin using the new notice form. The adopted amendments provide that insurers and HMOs may continue using the previous version of the notice form until May 1, 2020, to reduce disruption and facilitate the transition.

The amendments delete the provisions that do not require companies to refile certain policies, bonds, annuity contracts, and certificates. The substance of the deleted provisions is effectively transferred to §1.601(d).

Section §1.601(f). Amendments to §1.601 delete the text of subsection (f), which is about additions to a group policy or group plan. This provision is incorporated into §1.601(a)(2).

Section §1.602(a). Amendments to §1.602(a)(1) insert the heading for Insurance Code §32.104 where that section is cited in the text.

Section §1.602(b). Amendments to §1.602(b) will make the notice easier for consumers to read and know where they can compare prices and coverages on home and auto insurance policies. Amendments to the notice form in §1.602(b)(1) correspond with Figure: 28 TAC §1.601(a)(2)(B) and amendments to notice form requirements in §1.601(b). The amendments in §1.601(b) also reference the renumbered text under the amendments to §1.601(a)(2), providing formatting instructions on certain text in the notice, and making editorial changes to the language in the notice to make it easier for consumers to read.

The amendments add §1.602(b)(1)(C) to specify when insurers must begin using the new notice form. The amendments allow insurers to continue using the previous version of the notice form until May 1, 2020, to reduce disruption and facilitate the transition.

Amendments to §1.602 add Figure: 28 TAC §1.602(b)(1)(C) to replace the notice of internet website form under former Figure: 28 TAC §1.602(b)(1)(B). Amendments to the notice of internet website form will make it easier for consumers to read and know where they can compare prices and coverages on home and auto insurance policies.

Amendments to §1.602(b)(2) and Figure: 28 TAC §1.602(b)(2) will make the notice easier for consumers to read and know where they can compare prices and coverages on home and auto insurance policies. The amendments to §1.602(b)(2) also specify when insurers must begin using the new notice form. The amendments allow insurers to continue using the previous version of the notice form until May 1, 2020, to reduce disruption and facilitate the transition.

In addition, throughout the amendments, nonsubstantive editorial and formatting changes are made to conform to the department's current style, improve the rule's clarity, and re-letter and renumber rule text. The department also revised the notice forms in §1.601 and §1.602 to conform to the department's current style and to generally improve the forms' clarity.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: The department received four written comments on the proposed amendments. Commenters in support of the proposal with changes, were: The American Council of Life Insurers, Croy-Hall Management, Superior Health Plan, and the Texas Association of Health Plans.

Comment on §1.601(a)(2) and (d).

A commenter states that life insurance policies, long-term care policies, and annuities do not "renew." Instead, at the time of the policy anniversary, the policies continue, and a new contract is not issued at the "time of renewal," so an insurer would not send a notice on renewal. The commenter asks the department to clarify its intent on the application of the revised notice requirements for policies that do not renew. The commenter asks if the department intends for an insurer to provide a new notice to all existing policyholders and contract owners. The commenter asks if it would be acceptable to instead provide the updated notice with policies issued following the effective date of the new notice requirements.

Agency Response to Comment on §1.601(a)(2) and (d).

If a policy or contract renews, the rule requires companies to provide the new version of the notice at renewal. The rule does not require companies to provide the new version of the notice for existing policies or contracts that continue without renewal.

Comment on Figure: 28 TAC §1.601(a)(2)(B).

A commenter asks if the department is intending to change the post office box and ZIP code to which consumers can file their complaints. The commenter points out that the mailing address for the department on the proposed notice form is P.O. Box 149091 with just a five-digit ZIP code of 78714. The commenter states that for the past several years, the department has directed written complaints to P.O. Box 149104 using ZIP code 787104-9104.

Agency Response to Comment on Figure: 28 TAC §1.601(a)(2)(B).

The department's address on the form in Figure: 28 TAC §1.601(a)(2)(B) is different from the previous form. The department currently uses P.O. Box 149091 and ZIP code 78714-9091 for mailed complaints. The department has revised the ZIP code in the notice form to include "-9091" for consistency with the current address used to process consumer complaints.

Comment on Figure: 28 TAC §1.601(a)(2)(B).

A commenter asks if the department is intending to discontinue the availability of fax-transmitted complaints. The commenter points out that the proposed notice does not list a fax number, nor does it require insurers and HMOs to list a fax number for complaints. The commenter says that for the past several years, the department has listed a fax number for complaints and required companies to list a fax number.

Agency Response to Comment on Figure: 28 TAC §1.601(a)(2)(B).

The department stopped accepting complaints by fax in January 2019 to expedite and streamline the complaint handling process. Consumers may file complaints by using the complaints portal on the department's website or by mail. The website informs consumers of the process to file a complaint. The transition has been successful with no significant impact on consumers.

The department declines to add a requirement for companies to list a fax number. A company fax number has not been required under §1.601 or §1.602.

Comment on §1.601(b)(2).

A commenter recommends that the department allow HMOs to provide a URL in place of an email address on the notice form. The commenter explains that having a fillable form on a website allows the HMO to use mandatory fields to obtain all the information needed to identify a member and timely respond to complaints.

Agency Response to Comment on §1.601(b)(2).

The department agrees to revise §1.601(b)(2) and Figure: 28 TAC §1.601(a)(2)(B) to allow the optional inclusion of a company's URL address, which would give consumers another way to contact the company for information or to make a complaint. The department does not agree to remove the requirement to include a company's email address. Email is a very common method of electronic communication that should remain available for consumers to contact a company.

Comment on §§1.601(e), 1.602(b)(1)(C), and 1.602(b)(2).

A commenter appreciates and supports that the proposal allows insurers and HMOs to continue using the previous version of the notice form for up to six months after the effective date of the rule. Because the proposal does not specify an effective date, the commenter asks the department to ensure that the updated notice not be required before January 1, 2020, so that insurers and HMOs may continue to use their current policy and notice forms for the remainder of the year.

Agency Response to Comment on §1.602(b)(2).

The department appreciates the support. Six months after the anticipated effective date of the rule will not be before January 1, 2020. To provide more clarity, the department has revised §§1.601(e), 1.602(b)(1)(C), and 1.602(b)(2) to list May 1, 2020, as the specific date by which insurers and HMOs must start using the new notice forms. They may continue using their current notice forms until that date.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §1.601 and §1.602 under Insurance Code §§32.104(b), 521.005(b), 521.103(b), and 36.001.

Insurance Code §32.104(b) provides that the Commissioner determine the form and content of the notice of the internet website required by Insurance Code Chapter 32, Subchapter C.

Insurance Code §521.005(b) provides that the Commissioner adopt appropriate wording for the notice required by the section.

Insurance Code §521.103(b) provides that the Commissioner may adopt rules governing the way an insurer or health maintenance organization's toll-free telephone number appears on an evidence of coverage or insurance policy.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§1.601. Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures.

(a) Purpose and applicability.

(1) The purpose of this section is to provide the means for insurers and health maintenance organizations (HMOs) to comply with the notice requirements of Insurance Code §521.103, concerning Information Included in Evidence of Coverage or Policy; §521.005, concerning Notice to Accompany Policy; and §521.056, concerning Information Bulletin to Accompany Policy. Compliance with this section is deemed compliance with these notice requirements.

(2) The notice must be provided at the time of delivery with all policies, bonds, annuity contracts, certificates, or evidences of coverage that are delivered, issued for delivery, or renewed in Texas by insurers or HMOs. When insurers add a certificate holder, annuitant, or enrollee to a group policy or group plan, insurers must also provide the notice when the certificate, annuity contract, or evidence of coverage is delivered.

(A) The notice must appear on a full, separate page with no text other than that provided in this section. The notice must be prominently placed in any package of documents it is delivered with, and it must be the first, second, or third page of the set of documents.

(B) The form of the notice must be consistent with Figure: 28 TAC §1.601(a)(2)(B) and the requirements of subsection (b) of this section. The form of notice is not required to be filed with the department.

Figure: 28 TAC §1.601(a)(2)(B)

(C) The form of the notice for workers' compensation must be consistent with Figure: 28 TAC §1.601(a)(2)(C) and the requirements of subsection (b) of this section. The form of notice is not required to be filed with the department.

Figure: 28 TAC §1.601(a)(2)(C)

(b) Notice requirements. The text may be single spaced, but it must include at least one blank line between each paragraph. The Spanish portion of the notice is required for personal automobile, homeowners, life, accident, and health policies, certificates, and evidences of coverage. The notice may include the letterhead of the insurer or HMO and any automated form identification numbers.

(1) The notice must include a title and telephone number for the insurer or HMO. At its option, the insurer or HMO may provide the name and telephone number of an agent, third-party administrator, managing general agent, or employee benefits coordinator. The telephone number must be in bold type and be preceded and followed by one blank line. The insurer or HMO must provide a toll-free telephone number unless one of the exemptions in subparagraphs (A) - (C) of this paragraph applies. For purposes of this section, a toll-free telephone number is one that any covered person can use to get information or make a complaint without incurring long-distance calling expenses. An insurer or HMO is exempt from providing a toll-free number:

(A) when the insurer's or HMO's gross initial premium receipts collected in Texas are less than \$2 million a year;

(B) with respect to fidelity, surety, or guaranty bonds;

(C) if it is a surplus lines insurer.

(2) The notice must include a mailing address and email address for the insurer or HMO. The notice may include a company's URL address.

(3) The notice must be in a font size no smaller than 10 point.

(c) Exceptions to maintenance of toll-free number. Any exception claimed under subsection (b)(1)(A) of this section must be based on gross initial premium receipts collected in Texas during the previous calendar year. This information and any other data that the company relied on to determine if it was entitled to an exception is subject to examination by the department. Failure by any insurer or HMO to maintain the information required in this paragraph, or failure to provide information to the department on request, constitutes grounds for enforcement action that may result in the cancellation, revocation, or suspension of the insurer's or HMO's certificate of authority. Any insurer or HMO claiming an exception must retain and provide to the department on request the following information:

(1) the statutory basis for the exception; and

(2) the amount of gross initial premium receipts collected in Texas for the calendar year immediately preceding the year for which an exception is claimed. The gross initial premium receipts collected may be documented either by:

(A) the annual statement submitted by the insurer or HMO; or

(B) records maintained for each new policy written during a calendar year that include the policy number, the effective date of the policy, and the amount of initial premium received, including any membership fees, assessments, dues, and any other considerations for that insurance.

(d) Providing notice. Insurers and HMOs will not need to refile previously approved policies, bonds, annuity contracts, certificates,

or evidences of coverage, but they must provide the notice in the manner required by this section.

(e) Implementation date. Insurers and HMOs must begin using the notice form described in subsection (a)(2) of this section no later than May 1, 2020. Insurers and HMOs may continue using the previous notice form until that time.

§1.602. *Notice of Internet Website.*

(a) Purpose and applicability.

(1) The purpose of this section is to establish the form and content of the notice required under Insurance Code §32.104(b), concerning Duties of Insurer.

(2) This section applies to insurers who comprise the top 25 insurance groups in the national market and who issue residential property insurance or personal automobile insurance policies in this state, including a Lloyd's plan, a reciprocal or interinsurance exchange, a county mutual insurance company, a farm mutual insurance company, the Texas Windstorm Insurance Association, the FAIR Plan Association, and the Texas Automobile Insurance Plan Association.

(3) This section applies to all residential property insurance and personal automobile insurance policies that are delivered, issued for delivery, or renewed in this state on or after January 1, 2008.

(b) Notice requirements. Insurers must comply with either subsection (b)(1) or (b)(2) of this section, or may opt to comply with both:

(1) Notwithstanding the requirements in §1.601(a)(2) of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures), the insurer must include the following text in the notice required under §1.601(a)(2) of this title with each policy specified. The text must be in a font size no smaller than 10 point. The heading "To compare policies and prices" must be in bold type. The website address "Helpinsure.com" must be in bold type and must be preceded by one blank line.

(A) "To compare policies and prices: Visit HelpInsure.com to compare prices and coverages on home and auto insurance policies. The website is a service of the Texas Department of Insurance

and the Office of Public Insurance Counsel" in the English portion; and

(B) "Para comparar pólizas y precios: Visite HelpInsure.com para comparar precios y coberturas en pólizas de seguro para el hogar y automóvil. El sitio web es un servicio del Departamento de Seguros de Texas y de la Oficina del Asesor Público de Seguros (Office of Public Insurance Counsel, por su nombre en inglés)" in the Spanish portion.

(C) Insurers must begin using the notice form described in paragraph (b) of this section no later than May 1, 2020. Insurers may continue using the previous notice form until that time.
Figure: 28 TAC §1.602(b)(1)(C)

(2) The insurer must provide the following notice in a conspicuous manner with each policy. The notice must be printed in font size that is at least as large as the font used for the main body of the policy, and it must be preceded and followed by at least one blank line. "Insurance Website Notice" and "Aviso del Sitio Web de Seguros" must be in all capital letters and bold type and "Helpinsure.com" must be in bold type. Insurers must begin using the notice no later than May 1, 2020. Insurers may continue using the previous notice until that time.
Figure: 28 TAC §1.602(b)(2)

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 October 15, 2019.

TRD-201903753

James Person

General Counsel

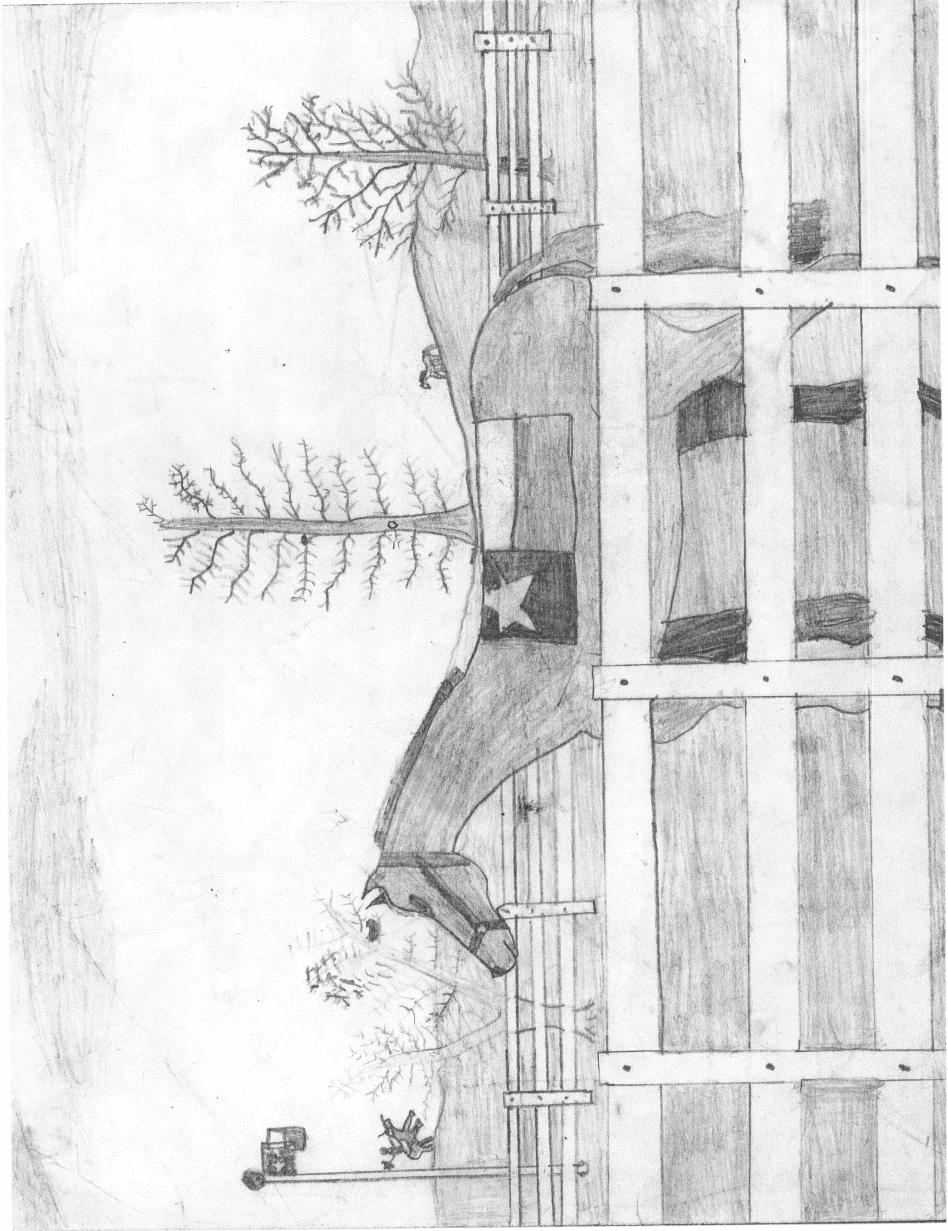
Texas Department of Insurance

Effective date: November 4, 2019

Proposal publication date: May 10, 2019

For further information, please call: (512) 676-6584





REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

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 its review of Texas Administrative Code, Title 7, Part 1, Chapter 6, §§6.1 - 6.6, in its entirety.

Notice of the review of Chapter 6 was published in the August 23, 2019, issue of the *Texas Register* (44 TexReg 4519). No comments were received in response to the notice.

The commission believes the reasons for initially adopting the rules in Chapter 6 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 6 sections, with discussion of the justification for the proposed changes, will be published in this issue of the *Texas Register*.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 6 in accordance with the requirements of the Government Code, §2001.039.

TRD-201903784
Catherine Reyer
General Counsel
Finance Commission of Texas
Filed: October 18, 2019



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 its review of Texas Administrative Code, Title 7, Part 2, Chapter 15, §§15.1 - 15.122, in its entirety.

Notice of the review of Chapter 15 was published in the August 23, 2019, issue of the *Texas Register* (44 TexReg 4519). No comments were received in response to the notice.

The commission believes the reasons for initially adopting the rules in Chapter 15 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 15 sections, with discussion of the justification for the proposed changes, will be published in this issue of the *Texas Register*.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 15 in accordance with the requirements of the Government Code, §2001.039.

TRD-201903786
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: October 18, 2019



On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Part 2, Chapter 21 (Trust Company Corporate Activities), §§21.1 - 21.92, in its entirety.

Notice of the review of Chapter 21 was published in the August 23, 2019, issue of the *Texas Register* (44 TexReg 4520). No comments were received in response to the notice.

The commission believes the reasons for initially adopting the rules in Chapter 21 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 21 sections, with discussion of the justification for the proposed changes, will be published in this issue of the *Texas Register*.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 31 in accordance with the requirements of the Government Code, §2001.039.

TRD-201903789
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: October 18, 2019



On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Part 2, Chapter 17 (Trust Company Regulation), comprised of Subchapter A (§§17.2 - 17.4) and Subchapter B (§§17.21 - 17.23).

Notice of the review of Chapter 17 was published in the August 23, 2019, issue of the *Texas Register* (44 TexReg 4520). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 17 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed

amended Chapter 17 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-201903787
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: October 18, 2019



On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Part 2, Chapter 19 (Trust Company Loans and Investments), comprised of Subchapter B (§19.22); and Subchapter C (§19.51).

Notice of the review of Chapter 12 was published in the August 23, 2019, issue of the *Texas Register* (44 TexReg 4520). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 19 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 19 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-201903788
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: October 18, 2019

◆ ◆ ◆
State Securities Board

Title 7, Part 7

Pursuant to the notice of proposed rule review published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4879), the State Securities Board (Board) has reviewed and considered for re adoption, revision, or repeal all sections of the following chapters of Title 7, Part 7, of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039, Agency Review of Existing Rules: Chapter 109, Transactions Exempt from Registration; Chapter 111, Securities Exempt from Registration; and Chapter 139, Exemptions by Rule or Order. The text of these rules may be found in the Texas Administrative Code, Title 7, Part 7 or through the Board's website at www.ssb.texas.gov/texas-securities-act-board-rules.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these chapters, without changes, pursuant to the requirements of the Texas Government Code.

No comments were received regarding the re adoption of Chapters 109, 111, or 139.

This concludes the review of 7 TAC Chapters 109, 111, and 139.

Issued in Austin, Texas on October 22, 2019.

TRD-201903849
Travis J. Iles
Securities Commissioner
State Securities Board
Filed: October 22, 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.

Form A

Conditional Pre-Qualification Letter

This is not a loan approval or commitment to lend

Date:

Prospective Applicant(s)/ Applicant(s):

Mortgage Company:

NMLS ID #:

Loan Details

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Mortgage company ___ has ___ has not reviewed the prospective applicant's/ applicant's credit report and credit score

The prospective applicant(s) /applicant(s) have provided the mortgage company with the following information:

Income ___ Yes ___ No ___ Not applicable

Available cash to close ___ Yes ___ No ___ Not applicable

Debts ___ Yes ___ No ___ Not applicable

Assets ___ Yes ___ No ___ Not applicable

Based on the information that the prospective applicant(s) / applicant(s) have provided, the mortgage company has determined that the prospective applicant(s) / applicant(s) is eligible and qualified to meet the financial requirements of the loan.

This is not a loan approval or a commitment to lend on the terms described in the Loan Details section.

Approval of the loan requires:

1. Receipt of a complete loan application and all supporting documents requested;

2. Lender verification of the information that the prospective applicant(s) / applicant(s) has provided;
3. The prospective applicant's / applicant's financial status and credit report to remain substantially the same until the loan closes;
4. The collateral for the loan to satisfy the lender's requirements;
5. The loan, as described, to remain available in the market;
6. The prospective applicant(s) / applicant(s) to execute all documents the lender requires;
7. The following additional items (list):

This conditional pre-qualification expires on: _____

Residential Mortgage Loan Originator Name

Mailing address

Phone number

e-mail address

NMLS ID #

Form B

Conditional Approval Letter

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Company:

NMLS ID #:

Loan Details:

Loan Amount:

Interest Rate*:

Term:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

*Interest rate is subject to change unless it has been locked

Has a subject property been identified? ____ Yes ____ No

Mortgage Company has:

Reviewed prospective applicant's /applicant's credit report and credit score ____ Yes ____ Not applicable

Verified prospective applicant's / applicant's income ____ Yes ____ Not applicable

Verified prospective applicant's /applicant's available cash to close ____ Yes ____ Not applicable

Verified prospective applicant's /applicant's debts and other assets ____ Yes ____ Not applicable

Prospective applicant(s) / applicant(s) is approved for the loan provided that creditworthiness and financial position do not materially change prior to closing and provided that:

1. The subject property is appraised for an amount not less than \$ _____
2. The lender receives an acceptable title commitment
3. The lender receives an acceptable survey
4. The subject property's condition meets lender's requirements

5. The subject property is insured in accordance with lender's requirements
6. The prospective applicant(s) / applicant(s) executes all the documents lender requires and
7. The following additional conditions are complied with (list):

This conditional approval expires on _____.

Residential Mortgage Loan Originator Name

Mailing address

Phone number

e-mail address

NMLS ID #

Form A

Conditional Pre-Qualification Letter

This is not a loan approval or commitment to lend

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID #

Loan Details:

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Mortgage banker ___ has ___ has not reviewed the prospective applicant's / applicant's credit report and credit score

The prospective applicant(s) / applicant(s) has provided the mortgage banker with the following information:

Income ___ Yes ___ No ___ Not applicable

Available cash to close ___ Yes ___ No ___ Not applicable

Debts ___ Yes ___ No ___ Not applicable

Assets ___ Yes ___ No ___ Not applicable

Based on the information that the prospective applicant(s) / applicant(s) has provided, the mortgage banker has determined that the prospective applicant(s) / applicant(s) is eligible and qualified to meet the financial requirements of the loan.

This is not a loan approval or a commitment to lend on the terms described in the Loan Details section.

Approval of the loan requires:

1. Receipt of a complete loan application and all supporting documents requested

2. Lender verification of the information that the prospective applicant(s) / applicant(s) has provided
3. The prospective applicant's / applicant's financial status and credit report to remain substantially the same until the loan closes
4. The collateral for the loan to satisfy the lender's requirements
5. The loan, as described, to remain available in the market
6. The prospective applicant(s) / applicant(s) to execute all documents the lender requires
7. The following additional items (list):

This conditional pre-qualification expires on _____

Residential Mortgage Loan Originator Name

Mailing address

Phone number

e-mail address

NMLS ID #

Form B

Conditional Approval Letter

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID #

Loan Details:

Loan Amount:

Interest Rate*:

Term:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

*Interest rate is subject to change unless it has been locked

Has a subject property been identified? Yes No

Mortgage banker has:

Reviewed prospective applicant's / applicant's credit report and credit score: Yes Not applicable

Verified prospective applicant's / applicant's income: Yes Not applicable

Verified prospective applicant's / applicant's available cash to close: Yes Not applicable

Verified prospective applicant's / applicant's debts and other assets: Yes Not applicable

Prospective applicant(s) / applicant(s) is approved for the loan provided that creditworthiness and financial position do not materially change prior to closing and provided that

1. The subject property is appraised for an amount not less than \$ _____

2. The lender receives an acceptable
3. The lender receives an acceptable property survey
4. The subject property's condition meets lender's requirements
5. The subject property is insured in accordance with lender's requirements
6. The prospective applicant(s) / applicant(s) executes all the documents the lender requires and
7. The following additional conditions are complied with (list):

This conditional approval expires on _____.

Residential Mortgage Loan Originator Name

Mailing address

Phone number

e-mail address

NMLS ID #

DISCLOSURE AND CONSENT - ANESTHESIA and/or PERIOPERATIVE PAIN MANAGEMENT (ANALGESIA)

TO THE PATIENT: *You have the right, as a patient, to be informed about your condition and the recommended anesthesia/analgesia to be used so that you may make the decision whether or not to receive the anesthesia/analgesia after knowing the risks and hazards involved. This disclosure is not meant to scare or alarm you; it is simply an effort to make you better informed so you may give or withhold your consent to the anesthesia/analgesia.*

I voluntarily request that anesthesia and/or perioperative pain management care (analgesia) as indicated below be administered to me (the patient). I understand it will be delegated/supervised and/or personally performed by Dr. _____ and/or physician associates and such other health care providers as necessary. Perioperative means the period shortly before, during and shortly after the procedure.

I understand that anesthesia/analgesia involves additional risks and hazards but I request the use of anesthetics/analgesia for the relief and protection from pain or anxiety during the planned and additional procedures. I realize the type of anesthesia/analgesia may have to be changed possibly without explanation to me.

I understand that serious, but rare, complications can occur with all anesthetic/analgesic methods. Some of these risks are breathing and heart problems, drug reactions, nerve damage, cardiac arrest, brain damage, paralysis, or death.

I also understand that other complications may occur. Those complications include but are not limited to:

Check planned anesthesia/analgesia method(s) and have the patient/other legally responsible person initial.

_____GENERAL ANESTHESIA - injury to vocal cords, teeth, lips, eyes; awareness during the procedure; memory dysfunction/memory loss; permanent organ damage; brain damage.

_____REGIONAL BLOCK ANESTHESIA/ANALGESIA - nerve damage; persistent pain; bleeding/hematoma; infection; medical necessity to convert to general anesthesia; brain damage.

_____SPINAL ANESTHESIA/ANALGESIA - nerve damage; persistent back pain; headache; infection; bleeding/epidural hematoma; chronic pain; medical necessity to convert to general anesthesia; brain damage.

_____EPIDURAL ANESTHESIA/ANALGESIA - nerve damage; persistent back pain; headache; infection; bleeding/epidural hematoma; chronic pain; medical necessity to convert to general anesthesia; brain damage.

Figure: 25 TAC §601.9(1)

_____DEEP SEDATION – memory dysfunction/memory loss; medical necessity to convert to general anesthesia; permanent organ damage; brain damage.

_____MODERATE SEDATION – memory dysfunction/memory loss; medical necessity to convert to general anesthesia; permanent organ damage; brain damage.

Additional comments/risks:

_____PRENATAL/EARLY CHILDHOOD ANESTHESIA - potential long-term negative effects on memory, behavior, and learning with prolonged or repeated exposure to general anesthesia/moderate sedation/deep sedation during pregnancy and in early childhood.

I understand that no promises have been made to me as to the result of anesthesia/analgesia methods.

I have been given an opportunity to ask questions about my anesthesia/analgesia methods, the procedures to be used, the risks and hazards involved, and alternative forms of anesthesia/analgesia. I believe that I have sufficient information to give this informed consent.

This form has been fully explained to me, I have read it or have had it read to me, the blank spaces have been filled in, and I understand its contents.

PATIENT/OTHER LEGALLY RESPONSIBLE PERSON (signature required)

DATE: _____ **TIME:** _____ **A.M. /P.M.**

WITNESS:

Signature

Name (Print)

Address (Street or P.O. Box)

City, State, Zip

REVELACIÓN Y CONSENTIMIENTO -ANESTESIA y CONTROL DE DOLOR (ANALGESIA) PERIOPERATORIO

AL PACIENTE: tiene derecho, como paciente, a ser informado sobre su enfermedad y la anestesia/analgesia recomendada que se usará, de modo que usted pueda tomar la decisión de si recibir la anestesia/analgesia o no después de conocer los riesgos y los peligros relacionados. Esta revelación no tiene como fin asustarlo o alarmarlo; es simplemente un esfuerzo por tenerlo mejor informado para que usted pueda dar o negar su consentimiento para la anestesia/analgesia.

Solicito voluntariamente que me administren a mí (el paciente) la anestesia y la atención de control de dolor (analgesia) perioperatoria, según lo indicado a continuación. Entiendo que será delegado / supervisado y / o realizado personalmente por el Dr. _____ y / o los médicos asociados y otros proveedores de atención médica, según sea necesario. Perioperatorio significa el periodo poco antes de, durante y poco después del procedimiento.

Entiendo que la anestesia / analgesia implica riesgos y peligros adicionales, pero pido el uso de anestésicos / analgesia para el alivio y protección contra el dolor o la ansiedad durante los procedimientos planeados y adicionales. Me doy cuenta de que el tipo de anestesia / analgesia puede tener que ser cambiado posiblemente sin explicación para mí.

Entiendo que pueden ocurrir complicaciones graves, pero raras, con todos los métodos anestésicos/analgésicos. Algunos de estos riesgos son problemas de respiración y del corazón, reacciones a la medicina, daño nervioso, paro cardíaco, daño cerebral, parálisis o la muerte.

También entiendo que podrían ocurrir otras complicaciones. Entre esas complicaciones se incluyen:

Marque los métodos de anestesia/analgesia planeados y haga que el paciente/otra persona legalmente responsable ponga sus iniciales.

_____ ANESTESIA GENERAL -lesión a las cuerdas vocales, los dientes, los labios, los ojos; estar consciente durante el procedimiento; disfunción de la memoria/pérdida de la memoria; daño a órganos permanente; daño cerebral.

_____ ANESTESIA/ANALGESIA DE BLOQUEO REGIONAL -daño nervioso; dolor persistente; sangrado/hematoma; infección; necesidad médica de usar anestesia general en vez; daño cerebral.

_____ ANESTESIA/ANALGESIA ESPINAL -daño nervioso; dolor de espalda persistente; dolor de cabeza; infección; sangrado/hematoma epidural; dolor crónico; necesidad médica de usar anestesia general en vez; daño cerebral.

_____ ANESTESIA/ANALGESIA EPIDURAL -daño nervioso; dolor de espalda persistente; dolor de cabeza; infección; sangrado/hematoma epidural; dolor crónico; necesidad médica de usar anestesia general en vez; daño cerebral.

Figure: 25 TAC §601.9(2)

_____ SEDACIÓN PROFUNDA - disfunción de la memoria/pérdida de la memoria; necesidad médica de usar anestesia general en vez; daño a órganos permanente; daño cerebral.

_____ MODERADA SEDACIÓN - disfunción de la memoria/pérdida de la memoria; necesidad médica de usar anestesia general en vez; daño a órganos permanente; daño cerebral.

Comentarios/riesgos adicionales:

_____ ANESTESIA PRENATAL / INFANTIL TEMPRANA - posibles efectos negativos a largo plazo sobre la memoria, el comportamiento y el aprendizaje con exposición prolongada o repetida a anestesia general / sedación moderada / sedación profunda durante el embarazo y en la primera infancia.

Entiendo que no me han prometido nada con respecto al resultado de los métodos de anestesia/analgesia.

Me han dado la oportunidad de hacer preguntas sobre los métodos de anestesia/analgesia, los procedimientos que se usarán, los riesgos y los peligros relacionados, y las formas de anestesia/analgesia alternativas. Creo tener suficiente información para dar este consentimiento informado.

Me han explicado completamente este formulario, lo he leído o me lo han leído, se han rellenado los espacios en blanco, y entiendo el contenido de éste.

PACIENTE/OTRA PERSONA LEGALMENTE RESPONSABLE (se requiere una firma)

FECHA: _____ **HORA:** _____ **a.m. /p.m.**

TESTIGO:

Firma

Nombre (en letra de molde)

Domicilio (calle y número o apartado postal)

Ciudad, estado y código postal

Have a complaint or need help?

If you have a problem with a claim or your premium, call your insurance company or HMO first. If you can't work out the issue, the Texas Department of Insurance may be able to help.

Even if you file a complaint with the Texas Department of Insurance, you should also file a complaint or appeal through your insurance company or HMO. If you don't, you may lose your right to appeal.

[Insert insurance company or HMO name]

To get information or file a complaint with your insurance company or HMO:

Call: [insert title] at [insert phone number]

Toll-free: [insert phone number]

[optional] Online: [insert company URL]

Email: [insert email address]

Mail: [insert mailing address]

The Texas Department of Insurance

To get help with an insurance question or file a complaint with the state:

Call with a question: 1-800-252-3439

File a complaint: www.tdi.texas.gov

Email: ConsumerProtection@tdi.texas.gov

Mail: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

¿Tiene una queja o necesita ayuda?

Si tiene un problema con una reclamación o con su prima de seguro, llame primero a su compañía de seguros o HMO. Si no puede resolver el problema, es posible que el Departamento de Seguros de Texas (Texas Department of Insurance, por su nombre en inglés) pueda ayudar.

Aun si usted presenta una queja ante el Departamento de Seguros de Texas, también debe presentar una queja a través del proceso de quejas o de apelaciones de su compañía de seguros o HMO. Si no lo hace, podría perder su derecho para apelar.

[Insert insurance company or HMO name]

Para obtener información o para presentar una queja ante su compañía de seguros o HMO:

Llame a: [insert title] al [insert phone number]

Teléfono gratuito: [insert phone number]

[optional] En línea: [insert company URL]

Correo electrónico: [insert email address]

Dirección postal: [insert mailing address]

El Departamento de Seguros de Texas

Para obtener ayuda con una pregunta relacionada con los seguros o para presentar una queja ante el estado:

Llame con sus preguntas al: 1-800-252-3439

Presente una queja en: www.tdi.texas.gov

Correo electrónico: ConsumerProtection@tdi.texas.gov

Dirección postal: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

Have a workers' compensation complaint or need help?

Contact your insurance company if you have a question or problem about your premium or a claim:

[Insert insurance company name]

Call: [insert title] at [insert phone number]

Toll-free: [insert phone number]

[optional] Online: [insert company URL]

Email: [insert email address]

Mail: [insert mailing address]

For problems with your policy

If your problem with the premium is not resolved, contact the National Council on Compensation Insurance, Dispute Resolution Services:

Mail: 901 Peninsula Corporate Circle, Boca Raton, FL 33487-1362

Fax: 561-893-5043

Email: regulatoryoperations@ncci.com

Phone: 1-800-622-4123

If you believe there has been a violation of law related to your workers' compensation policy, file a complaint with the Texas Department of Insurance:

Call: 1-800-252-3439

Online: www.tdi.texas.gov

Email: ConsumerProtection@tdi.texas.gov

Mail: MC 111-1A, P.O. Box 149091, Austin, Texas 78714-9091

For employees with claim issues

If one of your employees has a problem with a claim, contact the Texas Department of Insurance, Division of Workers' Compensation, Compliance and Investigations:

Mail: MS-8, 7551 Metro Center Drive, Suite 100, Austin, TX 78744

Fax: 512-490-1030

Email: DWC-ComplianceReview@tdi.texas.gov

Phone: 1-800-252-7031

¿Tiene una queja de compensación para trabajadores o necesita ayuda?

Comuníquese con su compañía de seguros si tiene una pregunta o problema relacionado con su prima de seguro o con una reclamación:

[Insert insurance company name]

Llame a: [insert title] al [insert phone number]

Teléfono gratuito: [insert phone number]

[optional] En línea: [insert company URL]

Correo electrónico: [insert email address]

Dirección postal: [insert mailing address]

Para problemas con su póliza

Si su problema con la prima de seguro no es resuelto, comuníquese con el Consejo Nacional de Seguros de Compensación (National Council on Compensation Insurance, por su nombre en inglés), Servicios para la Resolución de Disputas:

Correo postal: 901 Peninsula Corporate Circle, Boca Raton, FL 33487-1362

Fax: 561-893-5043

Correo electrónico: regulatoryassurance@ncci.com

Teléfono: 1-800-622-4123

Si usted piensa que ha habido una violación a la ley, la cual está relacionada con su póliza de compensación para trabajadores, presente una queja ante el Departamento de Seguros de Texas:

Llame al: 1-800-252-3439

En línea: www.tdi.texas.gov

Correo electrónico: ConsumerProtection@tdi.texas.gov

Correo postal: MC 111-1A, P.O. Box 149091, Austin, Texas 78714-9091

Para empleados que tienen problemas con sus reclamaciones

Si uno de sus empleados tiene un problema con una reclamación, comuníquese con la Sección de Cumplimiento e Investigaciones (Compliance and Investigations, por su nombre en inglés) del Departamento de Seguros de Texas, División de Compensación para Trabajadores (Texas Department of Insurance, Division of Workers' Compensation, por su nombre en inglés).

Correo postal: MS-8, 7551 Metro Center Drive, Suite 100, Austin, TX 78744

Fax: 512-490-1030

Correo electrónico: DWC-ComplianceReview@tdi.texas.gov

Teléfono: 1-800-252-7031

Where you can get information or make a complaint

If you have a question or a problem with a claim or your premium, contact your insurance company first. You can also get information or file a complaint with the Texas Department of Insurance.

[Insert insurance company name]

To get information or file a complaint with your insurance company:

Call: [insert title] at [insert phone number]

Toll-free: [insert phone number]

[optional] Online: [insert company URL]

Email: [insert email address]

Mail: [insert mailing address]

The Texas Department of Insurance

To get help with an insurance question, learn about your rights, or file a complaint with the state:

Call: 1-800-252-3439

Online: www.tdi.texas.gov

Email: ConsumerProtection@tdi.texas.gov

Mail: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

To compare policies and prices

Visit **HelpInsure.com** to compare prices and coverages on home and auto insurance policies. The website is a service of the Texas Department of Insurance and the Office of Public Insurance Counsel.

Donde puede obtener información o presentar una queja

Si tiene una pregunta o un problema con una reclamación o con su prima de seguro, comuníquese primero con su compañía de seguros. Usted también puede obtener información o presentar una queja ante el Departamento de Seguros de Texas (Texas Department of Insurance, por su nombre en inglés).

[Insert Insurance Company Name]

Para obtener información o para presentar una queja ante su compañía de seguros:

Llame a: [insert title] al [insert phone number]

Teléfono gratuito: [insert phone number]

[optional] En línea: [insert company URL]

Correo electrónico: [insert email address]

Dirección postal: [insert mailing address]

El Departamento de Seguros de Texas

Para obtener ayuda con una pregunta relacionada con los seguros, para conocer sus derechos o para presentar una queja ante el estado:

Llame: 1-800-252-3439

En línea: www.tdi.texas.gov

Correo electrónico: ConsumerProtection@tdi.texas.gov

Dirección postal: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

Para comparar pólizas y precios

Visite **HelpInsure.com** para comparar precios y coberturas en pólizas de seguro para el hogar y automóvil. El sitio web es un servicio del Departamento de Seguros de Texas y de la Oficina del Asesor Público de Seguros (Office of Public Insurance Counsel, por su nombre en inglés).

Figure: 28 TAC §1.602(b)(2)

INSURANCE WEBSITE NOTICE

To compare policies and prices

Visit **HelpInsure.com** to compare prices and coverages on home and auto insurance policies. The website is a service of the Texas Department of Insurance and the Office of Public Insurance Counsel.

AVISO DEL SITIO WEB DE SEGUROS

Para comparar pólizas y precios

Visite **HelpInsure.com** para comparar precios y coberturas en pólizas de seguro para el hogar y automóvil. El sitio web es un servicio del Departamento de Seguros de Texas y de la Oficina del Asesor Público de Seguros (Office of Public Insurance Counsel, por su nombre en inglés).

Figure: 28 TAC §5.4012(a)(1)

Risk Category	I	II	III	IV
V _{ult}	140 mph	150 mph	160 mph	165 mph

Figure: 28 TAC §5.4012(a)(2)

Risk Category	I	II	III	IV
V _{ult}	135 mph	145 mph	155 mph	160 mph

Figure: 28 TAC §5.4012(a)(3)

Risk Category	I	II	III	IV
V _{ult}	130 mph	140 mph	150 mph	155 mph

IN 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, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/28/19 - 11/03/19 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 10/28/19 - 11/03/19 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/19 - 11/30/19 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/19 - 11/30/19 is 5.00% for commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201903845

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: October 22, 2019

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 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 **December 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: Bell County Water Control & Improvement District 5; DOCKET NUMBER: 2019-0757-PWS-E; IDENTIFIER: RN102691466; LOCATION: Temple, Bell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: \$205; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2518; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: City of Blanco; DOCKET NUMBER: 2019-0882-PWS-E; IDENTIFIER: RN101389047; LOCATION: Blanco, Blanco County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the executive director (ED) within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for trihalomethanes (TTHM) for Stage 2 Disinfection Byproducts (DBP2) at Site 1 during the third and fourth quarters of 2018; 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for TTHM based on the locational running annual average, and failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the MCL for TTHM for DBP2 at Site 1 for the first quarter of 2019; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the January 1, 2015 - December 31, 2017, monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to submit a Surface Water Monthly Operating Report with the required turbidity and disinfectant residual data following the end of the reporting period for May 2017; PENALTY: \$514; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: City of Denton; DOCKET NUMBER: 2019-0654-MWD-E; IDENTIFIER: RN102095445; LOCATION: Denton, 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 Permit Number WQ0010027003, Permit Conditions, Number 2.g, by failing to prevent an unauthorized discharge of untreated wastewater into or adjacent to any water in the state; PENALTY: \$13,500; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Ingleside; DOCKET NUMBER: 2019-0763-PWS-E; IDENTIFIER: RN101197655; LOCATION: Ingleside, San Patricio County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code, §341.0351, by failing to submit plans and specifications to the executive director and receive approval prior to making and significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; and 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; PENALTY: \$291; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(5) COMPANY: City of Ropesville; DOCKET NUMBER: 2019-1067-PWS-E; IDENTIFIER: RN101175990; LOCATION: Ropesville, Hockley County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(O), by failing to protect all well units with an intruder-resistant fence with a lockable gate or enclose the well units in a locked and ventilated well house; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; and 30 TAC §290.44(h)(4), by failing to have backflow prevention assemblies tested upon installation and on an annual basis by a recognized backflow assembly tester and certified that they are operating within specifications; PENALTY: \$688; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(6) COMPANY: City of Troy; DOCKET NUMBER: 2019-0849-MWD-E; IDENTIFIER: RN102844321; LOCATION: Troy, Bell County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.65 and §305.125(2) and TWC, §26.121(a)(1), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-6155; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Corix Utilities (Texas) Incorporated; DOCKET NUMBER: 2019-0758-PWS-E; IDENTIFIERS: RN101183721 and RN101211126; LOCATIONS: Marble Falls, Llano County and Lometa, Lampasas County; TYPE OF FACILITIES: public water supplies; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes based on the locational running annual average and failing to comply with the MCL of 0.060 mg/L for haloacetic acids based on the locational running annual average; PENALTY: \$1,380; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(8) COMPANY: Donald Ray Moore; DOCKET NUMBER: 2019-1460-OSI-E; IDENTIFIER: RN110831310; LOCATION: Paint Rock, Concho County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR:

Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(9) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2017-1118-AIR-E; IDENTIFIER: RN102323268; LOCATION: Mont Belvieu, Chambers 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), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O1641, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 19, and New Source Review (NSR) Permit Numbers 20698 and PSDTX797M1, Special Conditions (SC) Numbers 1 and 3, by failing to comply with the concentration limits and the maximum allowable emissions rates (MAERs); 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), FOP Number O1641, GTC and STC Number 19, and NSR Permit Numbers 20698 and PSDTX797M1, SC Number 3, by failing to comply with the concentration limits and the emissions limits; 30 TAC §§116.115(b)(2)(F) and (c) and 122.143(4), THSC, §382.085(b), FOP Number O1641, GTC and STC Number 19, and NSR Permit Number 8418, SC Number 1, by failing to comply with the MAERs; 30 TAC §116.615(2) and §122.143(4), THSC, §382.085(b), FOP Number O1641, GTC and STC Number 19, and Standard Permit Registration Number 87477, by failing to comply with the MAER; and 30 TAC §122.142(b)(2)(A) and §122.143(4) and THSC, §382.085(b), by failing to represent the correct applicable requirements in the FOP; PENALTY: \$210,938; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$105,469; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Fort Gates Water Supply Corporation; DOCKET NUMBER: 2019-0812-PWS-E; IDENTIFIER: RN101216257; LOCATION: Gatesville, Coryell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2016 - December 31, 2018, monitoring period; 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2016 - December 31, 2018, monitoring period, during which the lead and copper action levels were exceeded; 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2016 - December 31, 2018, monitoring period, during which the lead and copper action levels were exceeded; and 30 TAC §290.117(i)(5) and (k) and §290.122(b)(2)(A) and (f), by failing to deliver the public education materials following the lead action level exceedance that occurred during the January 1, 2016 - December 31, 2018, monitoring period, failing to provide the ED with copies of the public education materials and certification that distribution of said materials is being conducted in a manner consistent with TCEQ requirements, and failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to deliver the public education materials following the lead action level exceedance that occurred during the January 1, 2016 - December 31, 2018, monitoring period; PENALTY: \$426; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Henson Tools, L.L.C.; DOCKET NUMBER: 2019-0689-WQ-E; IDENTIFIER: RN105698179; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: manufacturing

facility; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, 40 Code of Federal Regulations §122.26(c), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number TXRNEAJ79 Part II, Section C.1, by failing to properly obtain authorization to discharge stormwater associated with industrial activities under TPDES General Permit Number TXR050000; and TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of waste into or adjacent to any water in the state; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(12) COMPANY: Ismael Felix; DOCKET NUMBER: 2018-1197-PST-E; IDENTIFIER: RN101797710; LOCATION: Devine, Medina County; TYPE OF FACILITY: underground storage tank (UST) system with two out-of-service USTs; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (3), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.49(a) and §334.54(b)(2) and (3), and TWC, §26.3475(d), by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, and failing to provide corrosion protection for the out-of-service UST system; PENALTY: \$4,625; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: Layne Properties, LLC; DOCKET NUMBER: 2019-0941-PWS-E; IDENTIFIER: RN106492234; LOCATION: Azle, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility's well; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: \$100; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Professional General Management Services, Incorporated; DOCKET NUMBER: 2019-0704-WOC-E; IDENTIFIER: RN104002365; LOCATION: Dripping Springs, Hays County; TYPE OF FACILITY: water operations company; RULES VIOLATED: 30 TAC §30.5(a) and §30.381(b) and TWC, §37.003 and Texas Health and Safety Code, §341.034(a), by failing to hold a valid water operations company registration prior to performing process control duties in the production or distribution of public drinking water; PENALTY: \$500; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Quality Homes of Abilene, LLC; DOCKET NUMBER: 2019-1387-WQ-E; IDENTIFIER: RN110813383; LOCATION: Tuscola, Taylor County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Steven VanLandingham, (512) 239-5717; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(16) COMPANY: Roma Independent School District; DOCKET NUMBER: 2019-0320-PST-E; IDENTIFIER: RN101684595; LOCATION: Roma, Starr County; TYPE OF FACILITY: fleet refueling station; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued delivery certificate by submitting a properly completed underground storage tank (UST)

registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §334.48(f) and §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to have the corrosion protection system inspected and tested 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 TWC, §26.3475(a) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every 30 days and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$8,251; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: S & R BUSINESS, INCORPORATED dba Angels Grocery; DOCKET NUMBER: 2019-0854-PST-E; IDENTIFIER: RN102441581; LOCATION: San Leon, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(B) and (2)(A)(iii) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST), and piping associated with the UST, which were installed after January 1, 2009 for releases at a frequency of at least once every 30 days using interstitial monitoring; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Tyler Smith, (512) 239-3421; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Solid Rock Crushing, LLC; DOCKET NUMBER: 2019-0699-AIR-E; IDENTIFIER: RN109172221; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: portable rock crusher; RULES VIOLATED: 30 TAC §§101.20(1), 116.115(c), and 116.615(10), 40 Code of Federal Regulations §60.8 and §60.672(b), Air Quality Standard Permit for Temporary Rock and Concrete Crushers, General Requirements Number (1)(O), and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct the initial performance test within 60 days after achieving the maximum production rate at which the affected facility will be operated but not later than 180 days after initial startup; 30 TAC §116.115(c) and §116.615(8), Air Quality Standard Permit for Temporary Rock and Concrete Crushers, General Requirements Number (1)(M), and THSC, §382.085(b), by failing to maintain written records on site; 30 TAC §116.615(5)(A) and THSC, §382.085(b), by failing to provide a notification prior to the commencement of operations; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: Sumeer Homes, Incorporated; DOCKET NUMBER: 2019-1457-WQ-E; IDENTIFIER: RN110830486; LOCATION: Krugerville, Denton County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Surjit Singh dba Express Food Mart; DOCKET NUMBER: 2019-0628-PST-E; IDENTIFIER: RN102347879; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (3), by failing to provide an amended registration for any change or additional information regarding the underground storage tank (UST) system within 30 days from the date of the occurrence of the change or addition or within 30 days from the date

on which the owner or operator first became aware of the change or addition; and 30 TAC §334.50(b)(1)(A) and (d)(9)(A)(iii) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days by taking appropriate steps to ensure that a statistical inventory reconciliation (SIR) analysis report is received from the vendor in no more than 15 calendar days following the last day of the 30-day period for which the SIR analysis is performed; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: TAKHAR & SON, L.L.C. dba Texas Oasis; DOCKET NUMBER: 2019-0671-PST-E; IDENTIFIER: RN102036878; LOCATION: Tioga, Grayson County; TYPE OF FACILITY: retail convenience 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: \$3,375; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: TIDWELL WASTEWATER UTILITY, L.L.C.; DOCKET NUMBER: 2019-0850-PWS-E; IDENTIFIER: RN102975604; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(E)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director (ED) upon request; 30 TAC §290.39(j), by failing to receive an approval prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.39(o)(1), by failing to adopt and submit to the ED for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; and 30 TAC §291.76 and TWC, §5.702, by failing to pay Regulatory Assessment Fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 13026 for the 2018 calendar year; PENALTY: \$157; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: TPC Group LLC; DOCKET NUMBER: 2019-0342-AIR-E; IDENTIFIER: RN104964267; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(c) and §122.143(4), Federal Operating Permit (FOP) Number O1327, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to create a final record for a reportable emissions event no later than two weeks after the end of the emissions event; 30 TAC §§111.111(a)(4)(A), 116.115(c), and 122.143(4), New Source Review (NSR) Permit Number 20485, Special Conditions (SC) Number 1, FOP Number O1327, GTC and STC Number 20, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 20485, SC Number 1, FOP Number O1327, GTC and STC Number 20, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$41,191; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$16,476; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(24) COMPANY: Victoria County Water Control and Improvement District Number 2; DOCKET NUMBER: 2019-1010-PWS-E; IDEN-

TIFIER: RN101398303; LOCATION: Placedo, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), and Texas Health and Safety Code, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter free chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(2) and (3), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(m)(6), by failing to maintain all pumps, motors, valves, and other mechanical devices in good working condition; 30 TAC §290.46(s)(2)(c)(i), by failing to verify the accuracy of the manual disinfectant residual analyzers at least once every 90 days using chlorine solutions of known concentrations; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan at each water treatment plant that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: \$568; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(25) COMPANY: White Oak Bayou Joint Powers Board; DOCKET NUMBER: 2019-0981-MWD-E; IDENTIFIER: RN102177524; LOCATION: Jersey Village, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §217.36(h) and (j)(2) and §305.125(1) and (5) and Texas Pollutant Discharge Elimination System Permit Number WQ0011538001, Operational Requirements Number 4, by failing to install adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention; PENALTY: \$15,750; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201903844

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 22, 2019



Enforcement Orders

An agreed order was adopted regarding Ace-S&R Investment Company LLC and Ram Stores, Inc., Docket No. 2018-0766-PST-E on October 22, 2019, assessing \$5,100 in administrative penalties with \$1,020 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HFOTCO LLC, Docket No. 2018-0894-AIR-E on October 22, 2019, assessing \$7,140 in administrative penalties with \$1,428 deferred. Information concerning any aspect of this order may be obtained by contacting Richard 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 BASF TOTAL Petrochemicals LLC, Docket No. 2018-1231-AIR-E on October 22, 2019, assessing \$6,563 in administrative penalties with \$1,312 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 PRATT & WHITNEY SERVICES, INC., Docket No. 2018-1347-IHW-E on October 22, 2019, assessing \$4,875 in administrative penalties with \$975 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Samsung Austin Semiconductor, LLC, Docket No. 2018-1476-AIR-E on October 22, 2019, assessing \$5,437 in administrative penalties with \$1,087 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.

An agreed order was adopted regarding Phyllis Gray Wier, Docket No. 2018-1507-PST-E on October 22, 2019, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2018-1519-PWS-E on October 22, 2019, assessing \$150 in administrative penalties with \$30 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Clifton Turner dba Joshua Park Grocery, Docket No. 2018-1542-PST-E on October 22, 2019, assessing \$3,373 in administrative penalties with \$674 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TriStar Convenience Stores, Inc. dba Handi Stop 17, Docket No. 2018-1604-PST-E on October 22, 2019, assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, 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 Alumax Mill Products, Inc., Docket No. 2018-1664-AIR-E on October 22, 2019, assessing \$3,000 in administrative penalties with \$600 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 Apache Corporation, Docket No. 2018-1721-AIR-E on October 22, 2019, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, 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 QUANTCORP CONSTRUCTION, L.L.C., Docket No. 2018-1737-WQ-E on October 22, 2019, assessing \$4,875 in administrative penalties with \$975 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pleasanton Stop, Inc., Docket No. 2019-0036-PST-E on October 22, 2019, assessing \$3,687 in administrative penalties with \$737 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DANNY FOIX' #3, LLC, Docket No. 2019-0062-PST-E on October 22, 2019, assessing \$2,662 in administrative penalties with \$532 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Tatum, Docket No. 2019-0066-PWS-E on October 22, 2019, assessing \$302 in administrative penalties with \$60 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 Aqua Utilities, Inc., Docket No. 2019-0116-PWS-E on October 22, 2019, assessing \$157 in administrative penalties with \$31 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 PANAS INC dba Jakes Convenience Store, Docket No. 2019-0124-PST-E on October 22, 2019, assessing \$5,341 in administrative penalties with \$1,068 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 BOB HARRIS OIL COMPANY dba South Main Texaco, Docket No. 2019-0143-PST-E on October 22, 2019, assessing \$3,000 in administrative penalties with \$600 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 Fort Bend County Municipal Utility District No. 134A, Docket No. 2019-0160-PWS-E on October 22, 2019, assessing \$810 in administrative penalties with \$162 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bartlett Cocke General Contractors, LLC, Docket No. 2019-0174-WQ-E on October 22, 2019, assessing \$4,688 in administrative penalties with \$937 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Jayton, Docket No. 2019-0177-PWS-E on October 22, 2019, assessing \$485 in administrative penalties with \$97 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement

Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kingsbridge Municipal Utility District, Docket No. 2019-0193-PWS-E on October 22, 2019, assessing \$1,098 in administrative penalties with \$219 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kendrick Oil Co. dba Fast Stop 27, Docket No. 2019-0239-PST-E on October 22, 2019, assessing \$4,601 in administrative penalties with \$920 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, 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 San Saba Aggregates, LLC in San Saba, Docket No. 2019-0263-AIR-E on October 22, 2019, assessing \$1,250 in administrative penalties with \$250 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 A & R Pallets, LLC, Docket No. 2019-0290-AIR-E on October 22, 2019, assessing \$1,942 in administrative penalties with \$388 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 Scott W. Gray dba Iwanda Mobile Home Park, Docket No. 2019-0312-PWS-E on October 22, 2019, assessing \$1,529 in administrative penalties with \$305 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Danbury, Docket No. 2019-0328-PWS-E on October 22, 2019, assessing \$120 in administrative penalties with \$24 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 City of Rio Hondo, Docket No. 2019-0389-PWS-E on October 22, 2019, assessing \$1,280 in administrative penalties with \$256 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 David McNeese dba McNeese Pumping, Docket No. 2019-0467-SLG-E on October 22, 2019, assessing \$1,250 in administrative penalties with \$250 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 MUNNA RUBEL ENTERPRISES INC. dba Stop by Mart, Docket No. 2019-0468-PST-E on October 22, 2019, assessing \$1,626 in administrative penalties with \$325 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 Milagro Interests, Inc., Docket No. 2019-0511-PWS-E on October 22, 2019, assessing \$500 in administrative penalties with \$100 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding M & H CRATES, INC., Docket No. 2019-0533-WQ-E on October 22, 2019, assessing \$1,312 in administrative penalties with \$262 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 Gallagher Acquisitions, LLC, Docket No. 2019-0585-PWS-E on October 22, 2019, assessing \$153 in administrative penalties with \$30 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Terrell Trading Company Inc., Docket No. 2019-0745-PST-E on October 22, 2019, assessing \$2,447 in administrative penalties with \$489 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201903859

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 23, 2019



Enforcement Orders

An order was adopted regarding Skypak Corp. dba Country Food Store, Docket No. 2017-0550-PST-E on October 23, 2019 assessing \$4,832 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Deyma Davila dba Dey's RV and Mobile Park, LLC, Docket No. 2017-1160-PWS-E on October 23, 2019 assessing \$720 in administrative penalties with \$225 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 ConocoPhillips Company, Docket No. 2018-0175-AIR-E on October 23, 2019 assessing \$120,014 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 MO-VAC SERVICE COMPANY, Docket No. 2018-0389-WQ-E on October 23, 2019 assessing \$20,000 in administrative penalties with \$4,000 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 the City of Carthage, Docket No. 2018-0474-MSW-E on October 23, 2019 assessing \$13,876 in administrative penalties with \$2,775 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Linda Mosbacker, Docket No. 2018-0478-MLM-E on October 23, 2019 assessing \$11,414 in administrative penalties with \$7,814 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Olton, Docket No. 2018-0508-MWD-E on October 23, 2019 assessing \$26,189 in administrative penalties with \$5,237 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pioneer Natural Resources USA, Inc., Docket No. 2018-0751-AIR-E on October 23, 2019 assessing \$235,500 in administrative penalties with \$47,100 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 Industrial Models Group, Inc., Docket No. 2018-0770-AIR-E on October 23, 2019 assessing \$33,847 in administrative penalties with \$6,769 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 Enterprise Products Operating LLC, Docket No. 2018-0795-AIR-E on October 23, 2019 assessing \$49,087 in administrative penalties. 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 Robert Thomas Azzarello, Trustee of Robert Thomas Azzarello Trust, dba Pearland Acres Mobile Home Park, Docket No. 2018-0877-PWS-E on October 23, 2019 assessing \$1,094 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 the City of Pearsall, Docket No. 2018-0888-MWD-E on October 23, 2019 assessing \$11,625 in administrative penalties with \$2,325 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Lingham, 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 the City of Shamrock, Docket No. 2018-1037-MSW-E on October 23, 2019 assessing \$13,126 in administrative penalties with \$2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Palmer, Docket No. 2018-1059-MWD-E on October 23, 2019 assessing \$14,625 in administrative penalties with \$2,925 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.

A default order was adopted regarding JP80 RV, LLC, Docket No. 2018-1066-PWS-E on October 23, 2019 assessing \$350 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 Kuraray America, Inc., Docket No. 2018-1098-AIR-E on October 23, 2019 assessing \$12,942 in administrative penalties with \$2,588 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 the City of Ladonia, Docket No. 2018-1207-PWS-E on October 23, 2019 assessing \$12,443 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cimarron Produce Corporation dba Chikita Express Store, Docket No. 2018-1213-PST-E on October 23, 2019 assessing \$7,624 in administrative penalties with \$1,524 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 the City of Waxahachie, Docket No. 2018-1225-WQ-E on October 23, 2019 assessing \$5,025 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Liberty Utilities (Woodmark Sewer) Corp., Docket No. 2018-1276-MWD-E on October 23, 2019 assessing \$12,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WTG Gas Processing, L.P., Docket No. 2018-1320-AIR-E on October 23, 2019 assessing \$21,562 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DRIVER LEASING, INC., Docket No. 2018-1343-PST-E on October 23, 2019 assessing \$17,929 in administrative penalties with \$3,585 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Bernardo Espinoza dba J.B. Stone Quarry 2, Docket No. 2018-1394-EAQ-E on October 23, 2019 assessing \$9,750 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 Total Petrochemicals & Refining USA, Inc., Docket No. 2018-1445-AIR-E on October 23, 2019 assessing \$26,250 in administrative penalties with \$5,250 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 Trinity River Authority of Texas, Docket No. 2018-1494-MWD-E on October 23, 2019 assessing \$6,563 in administrative penalties. 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 Exxon Mobil Corporation, Docket No. 2018-1514-AIR-E on October 23, 2019 assessing \$26,175 in administrative penalties with \$5,235 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 Exxon Mobil Corporation, Docket No. 2018-1573-AIR-E on October 23, 2019 assessing \$25,000 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 Lazbuddie Independent School District, Docket No. 2019-0047-PWS-E on October 23, 2019 assessing \$862 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 INEOS NITRILES USA LLC, Docket No. 2018-0979-IWD-E on October 23, 2019 assessing \$42,400 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Baybrook Municipal Utility District 1, Docket No. 2019-0171-PWS-E on October 23, 2019 assessing \$405 in administrative penalties. 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.

TRD-201903868

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 23, 2019



Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40305

Application. Texas Decon LLC, 122 Dennis Drive, Seguin, Texas, 78155, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40305, to construct

and operate a Type V municipal solid waste medical waste processing facility. The proposed facility, Texas Decon will be located 0.2 miles south of the intersection of State Highway 123 and FM 758 on the west side of State Highway 123; 78155, in Guadalupe County. The Applicant is requesting authorization to process, store, and transfer medical waste, trace chemotherapy waste, non-hazardous pharmaceuticals within an enclosed building. The registration application is available for viewing and copying at the Seguin Public Library, 313 West Nolte Street, Seguin, Texas 78155 and may be viewed online at <https://cook-joyce.com/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://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-10905447.6418%2C3464976.1163%2C102100%2C122%20Dennis%20Drive%2C%2C122%20Dennis%20Drive&level=19>. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the Executive Director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The Executive Director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The Executive Director is not required to file a response to comments.

Executive Director Action. The Executive Director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the Executive Director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the Executive Director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

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 registration number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests 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 registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website www.tceq.texas.gov/goto/pep. General information regarding the

TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Texas Decon LLC at the address stated above or by calling David Kirk Flippin at (830) 660-3149.

TRD-201903861

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 23, 2019



Notice of Application and Opportunity to Request a
Public Meeting for a New Municipal Solid Waste Facility:
Registration Application No. 40306

Application. Waste Management of Texas, Inc. 9900 Giles Road Austin, Texas 78754, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40306, to construct and operate a Type V municipal solid waste Transfer Station. The proposed facility, Austin Community Transfer Station, will be located 500-ft north of intersection of Giles Road and US Hwy 290 Austin, Texas 78757, in Travis County. The Applicant is requesting authorization to store, process, and transfer municipal solid waste which includes household, yard, commercial, construction, and demolition waste as well as brush, rubbish, Class 2 non-hazardous industrial solid waste, class 3 non-hazardous industrial solid waste, shredded or quartered tires, and certain special wastes. The registration application is available for viewing and copying at the University Hills Branch Library 4721 Loyola Lane Austin, Texas 78723, and may be viewed online at <https://www.wm.com/wm/permits-texas/permits.jsp>. 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://arcg.is/1yrXqi>. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment

in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

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 registration number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests 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 registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website www.tceq.texas.gov/goto/pep. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Waste Management of Texas, Inc. at the address stated above or by calling Charles Rivette at (512) 272-6245.

TRD-201903858

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 23, 2019



Notice of Opportunity to Comment on Agreed Orders of
Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 5, 2019**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however,

TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: BUCHANAN LAKE VILLAGE, INC.; DOCKET NUMBER: 2018-1655-PWS-E; TCEQ ID NUMBER: RN101224988; LOCATION: 512 Frazier Street, Tow, Llano County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; PENALTY: \$90; STAFF ATTORNEY: John S. Mercurief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: Howard Bruce Freeman; DOCKET NUMBER: 2019-0771-MSW-E;

TCEQ ID NUMBER: RN10502705; LOCATION: 3320 Highway 69 South, Kountze, Hardin County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULE VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW. Specifically, approximately 214 cubic yards of MSW consisting of six 55-gallon barrels and drums, general household waste and appliances, plastics, clothing, miscellaneous metals, toys, wooden fencing, discarded vehicles and vehicle parts, and approximately 12 tires were disposed of at the site; PENALTY: \$1,312; STAFF ATTORNEY: Jaime Garcia, Litigation Division, MC 175, (512) 239-5807; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Michael Espitia; DOCKET NUMBER: 2018-0590-MSW-E; TCEQ ID NUMBER: RN109641498; LOCATION: 1920 Union Wine Road, New Braunfels, Guadalupe County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULES VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$30,000; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: THE DAYA ENTERPRISE, INC. dba Regal Food Mart; DOCKET NUMBER: 2018-1160-PST-E; TCEQ ID NUMBER: RN101755783; LOCATION: 2010 1st Street, Palacios, Matagorda County; TYPE OF FACILITY: underground storage tank (UST) system and a 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 UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), 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; and TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; PENALTY: \$6,792; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201903842

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 22, 2019

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is 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 **December 5, 2019**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO 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 DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 5, 2019**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Bandera Shell LLC dba Bandera Stop; DOCKET NUMBER: 2018-0246-PST-E; TCEQ ID NUMBER: RN101433076; LOCATION: 5902 Bandera Road, San Antonio, Bexar County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by 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 individual for each class of operator-Class A, B, and C, for the facility; PENALTY: \$11,374; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Edward M. Moss and Lourdes Moss; DOCKET NUMBER: 2018-1592-PWS-E; TCEQ ID NUMBER: RN109321638; LOCATION: 699 County Road 1180 near Alvard, Wise County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.41(c)(3)(K), by failing to ensure that wellheads and pump bases are sealed by a gasket or sealing compound and properly vented to prevent the possibility of contaminating the well water; 30

TAC §290.43(c), by failing to ensure that all potable water storage facilities are covered and designed, fabricated, erected, tested, and disinfected in strict accordance with current American Water Works Association standards; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends a minimum of three feet from the well casing in all directions with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inch per foot; 30 TAC §290.43(e), by failing to install all potable water storage tanks and pressure maintenance facilities in a lockable building or enclosed by an intruder-resistant fence with lockable gates; 30 TAC §290.45(c)(1)(B)(iii), by failing to provide two or more service pumps which have a total capacity of 1.0 gallons per minute (gpm); 30 TAC §290.45(c)(1)(B)(iv), by failing to provide a pressure tank capacity of 10 gallons per unit; and 30 TAC §290.45(c)(1)(B)(i), by failing to provide a well capacity of 0.6 gpm per unit; PENALTY: \$837; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Linda W. Ball; DOCKET NUMBER: 2019-0070-PWS-E; TCEQ ID NUMBER: RN102708153; LOCATION: 618 West Archer Road near Baytown, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.108(e), by failing to report the results of radionuclide sampling to the executive director (ED) for the January 1, 2009 through December 31, 2017 monitoring period; 30 TAC §§290.46(f)(4); 290.107(e), and 290.122(c)(2)(A) and (f), by failing to report the results of volatile organic chemical (VOC) contaminants sampling to the ED, and failing to provide public notification and submit a copy of the notification to the ED, accompanied with a signed Certificate of Delivery, regarding the failure to report the results of VOC contaminants sampling; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the ED each quarter by the tenth day of the month following the end of the quarter; 30 TAC §§290.46(f)(4), 290.115(e), and 290.122(c)(2)(A) and (f), by failing to report the results of the Stage 2 Disinfection Byproducts (DBP2) sampling to the ED and failing to provide public notification and submit a copy of the notification to the ED regarding the failure to report the results of DBP2 sampling; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver or post in an appropriate location one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR was distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of each public notification to the ED regarding the failure to report the results of cyanide sampling, regarding the failure to report the results of metals sampling, regarding the failure to report the results of synthetic organic chemical contaminants Group 5 sampling, regarding the failure to report the results of the nitrate sampling; 30 TAC §§290.46(f)(4), 290.106(e), 290.107(e), and 290.122(c)(2)(A) and (f), by failing to report the results of minerals sampling and SOC contaminants (Method 504, 515, and 531) sampling to the ED, and failing to provide public notification and submit a copy of the notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to report the results of the minerals sampling and SOC contaminants (Method 504, 515, and 531) sampling; PENALTY: \$3,250; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: SSIA GROUP INC dba Gateway Foodmart 3; DOCKET NUMBER: 2018-0848-PST-E; TCEQ ID NUMBER:

RN101664456; LOCATION: 100 East Hallmark Avenue, Killeen, Bell County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; TWC, §26.3475(c)(2) and 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; and 30 TAC §334.10(b)(2), by failing to assure that all recordkeeping requirements are met; PENALTY: \$5,743; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201903843

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 22, 2019

◆ ◆ ◆
Notice of Opportunity to Comment on Shutdown/Default
Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is 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 **December 5, 2019**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO 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 S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas

78711-3087 and must be **received by 5:00 p.m. on December 5, 2019**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: 1203 Chestnut, Inc. dba All Stop Food Mart; DOCKET NUMBER: 2018-1756-PST-E; TCEQ ID NUMBER: RN101492999; LOCATION: 1203 Chestnut Street, Bastrop, Bastrop County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST Registration and Self-Certification form at least 30 days before the expiration date; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.605(a) and (b), by failing to ensure that a certified Class A, B, and C Operator was re-trained within three years of their last training date; PENALTY: \$10,686; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: BVE ENTERPRISES INC. dba Easy Stop; DOCKET NUMBER: 2018-1583-PST-E; TCEQ ID NUMBER: RN102353729; LOCATION: 2156 State Highway 361, Ingleside, San Patricio County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), 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 TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$4,626; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: NIROJ CORPORATION dba Cigarette Mart; DOCKET NUMBER: 2019-0515-PST-E; TCEQ ID NUMBER: RN105680375; LOCATION: 1430 South Clark Road, Duncanville, Dallas County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1), 30 TAC §334.50(b)(1)(A), and TCEQ AO, Docket Number 2017-0231-PST-E, Ordering Provisions Numbers 2.a and 2.b., by failing to monitor the UST for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$31,500; STAFF ATTORNEY: Jaime Garcia, Litigation Division, MC 175, (512) 239-5807; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: SHERA CORPORATION dba Dairy way Food Mart; DOCKET NUMBER: 2018-0932-PST-E; TCEQ ID NUMBER: RN102049632; LOCATION: 5235 West Davis Street, Dallas,

Dallas County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; TWC, §26.3475(d) and 30 TAC §334.9(c)(2)(C), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure the rectifier and other components are operating properly; 30 TAC §334.10(b)(2), by failing to assure all UST recordkeeping requirements are met; and 30 TAC §334.606, by failing to maintain required operator training certification records and make them available for inspection upon request by agency personnel; PENALTY: \$9,804; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201903841

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 22, 2019

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Notice of Receipt of Application and Intent to Obtain
Municipal Solid Waste Permit: Proposed Permit No. 2404

Application. Diamond Back Recycling and Sanitary Landfill, LP, P.O. Box 2283, Odessa, Ector County, Texas 79760, a waste management company, has submitted an application to the Texas Commission on Environmental Quality (TCEQ) for a new Municipal Solid Waste Landfill (Type I) permit to authorize the acceptance of residential and commercial municipal solid waste from Ector and surrounding counties. The Diamond Back Solid Waste Facility and Recycling Center will be located at 2301 South FM 866, Odessa, Ector County, Texas 79763. The TCEQ received this application on August 5, 2019. The application is available for viewing and copying at Ector County Library, 321 West 5th Street, Odessa, Ector County, Texas 79761, and may be viewed online at <http://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://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-102.547492%2C31.790906&level=12>. 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 requests 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 Diamond Back Recycling and Sanitary Landfill, LP at the address stated above or by calling Mr. Todd E. Stiggins, Team Leader/Associate, Parkhill, Smith, and Cooper, Inc. at (806) 473-3683.

TRD-201903860

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 23, 2019

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Texas Health and Human Services Commission

Public Notice - Amendment to the Medically Dependent Children Program Effective March 9, 2020

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request to amend the Medically Dependent Children Program (MDCP) waiver administered under section 1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2023. The proposed effective date for the amendment is March 9, 2020.

The amendment request proposes to make the following changes:

Appendix B

Changing interest list procedures for individuals who lose eligibility for the Medically Dependent Children Program, to comply with Senate Bill 1207 of the 86th Texas Legislature.

Appendix E

Clarifying the budget authority for participants in the consumer-directed services option around requests to change the budget by the participant.

Appendix F

Clarifying that the state offers an external medical review prior to a Fair Hearing.

Appendix G

Correcting the data source for performance measure G.b.1, number and percent of individuals free of critical incidents not related to abuse, neglect, or exploitation.

These changes will not have an impact on cost neutrality of the MDCP waiver program.

The MDCP waiver provides home and community-based services to persons under age 21 who are medically fragile through the STAR Kids and STAR Health programs and meet the requirements for nursing facility care. Services include respite, adaptive aids, minor home modifications, employment assistance, supported employment, financial management services, transition assistance services, and flexible

family support services. Texas uses the MDCP waiver to provide services to Texans in the least restrictive environment possible. These environments include the individual's or a family member's home, or a Child Protective Services foster care home which can meet the individual's complex medical needs.

You may obtain a free copy of the proposed waiver amendment, including the MDCP settings transition plan, or ask questions, obtain additional information, or submit comments regarding this amendment or the MDCP settings transition plan, by contacting Camille Weizenbaum by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission
Attention: Camille Weizenbaum, Waiver Coordinator, Policy Development Support
P.O. Box 13247
Mail Code H-600
Austin, Texas 78711-3247

Telephone

(512) 487-3446

Fax

Attention: Camille Weizenbaum, Waiver Coordinator, at (512) 487-3403

Email

TX_Medicaid_Waivers@hhsc.state.tx.us

The HHSC local offices will post this notice for 30 days. The proposed waiver amendment can be found online on the Health and Human Services website at <https://hhs.texas.gov/laws-regulations/policies-rules/waivers/mdcp-waiver>.

TRD-201903856

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 22, 2019



Public Notice - Community Living Assistance and Support Services Waiver Amendment Effective March 9, 2020

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request to amend the Community Living Assistance and Support Services (CLASS) waiver administered under section 1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2024. The proposed effective date for the amendment is March 9, 2020.

The request proposes to amend the waiver as follows:

Appendix B

Changing interest list procedures for individuals who lose eligibility for the Medically Dependent Children Program, to comply with Senate Bill 1207 of the 86th Texas Legislature.

Appendix C

Correcting the licensing chapter for Behavioral Support service providers.

Correcting the licensing chapter for dentists as Dental service providers and adding dental hygienists as Dental service providers.

Adding certification from the Certified Horsemanship Association as a qualification to be a service provider of specialized therapies.

The CLASS waiver, first authorized September 1, 1991, provides community-based services and supports to eligible individuals as an alternative to an intermediate care facility for individuals with intellectual disabilities. CLASS waiver services are intended to enhance an individual's integration into the community, maintain or improve the individual's independent functioning and quality of life, and prevent the individual's admission to an institution. Services and supports should supplement, rather than replace, those available from other sources. These changes will not have an impact on cost neutrality of the CLASS waiver program.

If you want to obtain a free copy of the proposed request to amend the waiver, including the CLASS settings transition plan, or if you have questions, need additional information, or want to submit comments regarding this amendment or the CLASS settings transition plan, you may contact Camille Weizenbaum by U.S. mail, telephone, fax, or email as follows:

U.S. Mail

Texas Health and Human Services Commission
Attention: Camille Weizenbaum, Waiver Coordinator, Policy Development Support
P.O. Box 13247
Mail Code H-600
Austin, Texas 78711-3247

Telephone

(512) 487-3446

Fax

(512) 487-3403

Attention: Camille Weizenbaum, Waiver Coordinator

Email

TX_Medicaid_Waivers@hhsc.state.tx.us

The HHSC local offices will post this notice for 30 days.

The complete request to amend the waiver can be found online on the HHSC website at <https://hhs.texas.gov/laws-regulations/policies-rules/waivers/class-waiver-applications>.

TRD-201903852

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 22, 2019



Public Notice - Deaf Blind with Multiple Disabilities Waiver Amendment Effective March 9, 2020

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request to amend the Deaf Blind with Multiple Disabilities (DBMD) waiver administered under section 1915(c) of the Social Security Act. CMS has approved this waiver through February 28, 2023. The proposed effective date for the amendment is March 9, 2020.

The request proposes to amend the waiver as follows:

Appendix B

Changing interest list procedures for individuals who lose eligibility for the Medically Dependent Children Program, to comply with Senate Bill 1207 of the 86th Texas Legislature.

Appendix C

Correcting the licensing chapter for Behavioral Support service providers.

Correcting the licensing chapter for dentists as Dental service providers and adding dental hygienists as Dental service providers.

Appendix D

Removing performance measure D.e.1, relating to the number and percent of individuals who were afforded choice among waiver providers during enrollment, which is no longer required by CMS.

Appendix E

Clarifying the budget authority for participants in the consumer-directed services option around requests to change the budget by the participant.

The DBMD waiver program serves individuals with legal blindness, deafness, or a condition that leads to deaf-blindness, and at least one additional disability that limits functional abilities. The program serves individuals in the community who would otherwise require care in an intermediate care facility for individuals with intellectual disability or a related condition. These changes will not have an impact on cost neutrality of the DBMD waiver program.

If you want to obtain a free copy of the proposed request to amend the waiver, including the DBMD settings transition plan, or if you have questions, need additional information, or want to submit comments regarding this amendment or the DBMD settings transition plan, you may contact Camille Weizenbaum by U.S. mail, telephone, fax, or email as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Camille Weizenbaum, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 487-3446

Fax

(512) 487-3403

Attention: Camille Weizenbaum, Waiver Coordinator

Email

TX_Medicaid_Waivers@hhsc.state.tx.us

The HHSC local offices will post this notice for 30 days.

The complete request to amend the waiver can be found online on the HHSC website at <https://hhs.texas.gov/laws-regulations/policies-rules/waivers/dbmd-waiver-applications>.

TRD-201903854

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 22, 2019



Public Notice - Home and Community-based Services Waiver Effective March 9, 2020

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request to amend the Home and Community-based Services (HCS) waiver administered under section 1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2023. The proposed effective date for the amendment is March 9, 2019.

The request proposes to amend the waiver as follows:

Appendix B

Changing interest list procedures for individuals who lose eligibility for the Medically Dependent Children Program, to comply with Senate Bill 1207 of the 86th Texas Legislature.

Revising the terminology for the Medicaid eligibility groups for consistency with payment codes.

Replacing references to Consumer Rights and Services/Consumer Rights Intellectual Disabilities (CRS/CRID) with Intellectual and Developmental Disability Ombudsman (IDD Ombudsman) to reflect organizational changes at HHSC.

Appendix C

Correcting the licensing chapter for dentists as Dental service providers and adding dental hygienists as Dental service providers.

Correcting the licensing chapter for Behavioral Support service providers.

Appendix D

Removing performance measure D.e.1, relating to the number and percent of individuals who were afforded choice between waiver services and institutional care during enrollment or service plan renewal, which CMS no longer requires states to report.

Replacing references to Consumer Rights and Services/Consumer Rights Intellectual Disabilities (CRS/CRID) with Intellectual and Developmental Disability Ombudsman (IDD Ombudsman) to reflect organizational changes at HHSC.

Appendix E

Clarifying the budget authority for participants in the consumer-directed services option around requests to change the budget by the participant.

Appendix F

Replacing references to Consumer Rights and Services/Consumer Rights Intellectual Disabilities (CRS/CRID) with Intellectual and Developmental Disability Ombudsman (IDD Ombudsman) to reflect organizational changes at HHSC.

Appendix G

Replacing the term "adult daycare" with "day activity health services" to reflect a change in state law.

Replacing references to Consumer Rights and Services/Consumer Rights Intellectual Disabilities (CRS/CRID) with Intellectual and

Developmental Disability Ombudsman (IDD Ombudsman) to reflect organizational changes at HHSC.

These changes will not have an impact on cost neutrality of the HCS waiver program.

The complete proposed waiver amendment can be found online on the Health and Human Services website at <https://hhs.texas.gov/laws-regulations/policies-rules/waivers/hcs-waiver-applications>.

The HCS waiver program provides services and supports to individuals with intellectual disabilities who live in their own homes or in the home of a family member, or in another community setting, such as a small three or four-person home. To be eligible for the program, an individual must meet financial eligibility criteria and meet the level of care required for admission into an intermediate care facility for individuals with an intellectual disability or related condition.

If you want a free copy of the proposed waiver amendment, including the HCS settings transition plan, or if you have questions, need additional information, or want to submit comments regarding this amendment or the HCS settings transition plan, you may contact Camille Weizenbaum by U.S. mail, telephone, fax, or email follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Camille Weizenbaum, Waiver Coordinator, Policy Development Support

PO Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 487-3446

Fax

(512) 487-3403

Attention: Camille Weizenbaum, Waiver Coordinator

Email

TX_Medicaid_Waivers@hhs.state.tx.us.

The HHSC local offices will post this notice for 30 days.

TRD-201903855

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 22, 2019



**Public Notice - Texas Home Living Waiver Program
Amendment Effective March 9, 2020**

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment to the Texas Home Living (TxHmL) waiver program, a waiver implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through February 28, 2022. The proposed effective date for this amendment is March 9, 2019.

This request proposes to amend the waiver as follows:

Appendix B

Changing interest list procedures for individuals who lose eligibility for the Medically Dependent Children Program, to comply with Senate Bill 1207 of the 86th Texas Legislature.

Revising the terminology for the Medicaid eligibility groups for consistency with payment codes.

Appendix C

Correcting the licensing chapter for Behavioral Support service providers.

Correcting the licensing chapter for dentists as Dental service providers and add dental hygienist as Dental service providers.

Appendix D

Removing measure D.b.1, relating to number and percent of face-to-face utilization reviews conducted according to HHSC policies and procedures, which CMS no longer requires states to report.

Removing measure D.e.1, relating to the number and percent of individuals who were afforded choice between waiver services and institutional care during enrollment or service plan renewal, which CMS no longer requires states to report.

Replacing references to Consumer Rights and Services/Consumer Rights Intellectual Disabilities (CRS/CRID) with Intellectual and Developmental Disability Ombudsman (IDD Ombudsman) to reflect organizational changes at HHSC.

Appendix E

Clarifying the budget authority for participants in the consumer-directed services option around requests to change the budget by the participant.

Appendix F

Replacing references to Consumer Rights and Services/Consumer Rights Intellectual Disabilities (CRS/CRID) with Intellectual and Developmental Disability Ombudsman (IDD Ombudsman) to reflect organizational changes at HHSC.

Appendix G

Replacing the term "adult daycare" with "day activity health services" to reflect a change in state law.

Replacing references to Consumer Rights and Services/Consumer Rights Intellectual Disabilities with references to Intellectual and Developmental Disability Ombudsman to reflect organizational changes at HHSC.

Appendix H

Specifying the type of survey tool the state uses to measure an individual's experience of care and quality of life

These changes will not have an impact on cost neutrality of the TxHmL waiver program.

The complete waiver amendment request can be found online on the Health and Human Services website at: <https://hhs.texas.gov/laws-regulations/policies-rules/waivers/txhtml-waiver-applications>.

TxHmL provides essential community-based services and supports to individuals with Intellectual and Developmental Disabilities (IDD) living in their own homes or with their families. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to enhance, rather than replace, existing informal or formal supports and resources. Services include day habilitation, respite, supported employment, financial management services, support consultation, adaptive aids, au-

diology services, behavioral support, community support, dental treatment, dietary service, employment assistance, minor home modifications, occupational therapy services, physical therapy services, nursing, and speech-language pathology.

An individual may obtain a free copy of the proposed waiver amendment, including the TxHmL settings transition plan, or ask questions, obtain additional information, or submit comments regarding this amendment or the TxHmL settings transition plan, by contacting Camille Weizenbaum by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Camille Weizenbaum, Waiver Coordinator, Policy Development Support

PO Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 487-3446

Fax

Attention: Camille Weizenbaum, Waiver Coordinator, at (512) 487-3403

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

The HHSC local offices will post this notice for 30 days.

TRD-201903853

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 22, 2019

◆ ◆ ◆ Department of State Health Services

Withdrawal of a Practice Serving a Medically Underserved Population

The Texas Department of State Health Services (department) is required under Texas Occupations Code §157.051 to designate practices serving a medically underserved population. Under Texas Administrative Code, Title 25, Part 1, Chapter 13, Subchapter C, §13.35, the department is required to verify a practice's continued eligibility for designation as a practice serving a medically underserved population no more than two years after its initial designation and within each two-year period thereafter.

Accordingly, the department has identified Spangler Medical Enterprises d/b/a Bay Area House Calls, located at 646 FM 517 Road West, Dickinson, Texas 77539, as no longer meeting the eligibility criteria for designation, and the designation has been withdrawn. This practice was previously designated on December 8, 2015, due to its disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this withdrawal of designation may be directed to Anne Nordhaus, MA, Research Specialist, Health Professions Resource Center - Mail Code 1898, Center for Health Statistics, Texas Department of State Health Services, P.O. Box 149347, Austin,

Texas 78714-9347; (512) 776-3862 (phone); (512) 776-7344 (fax); or hprc@dshs.texas.gov (email). Comments will be accepted for 30 days from the publication date of this notice.

TRD-201903875

Barbara L. Klein

General Counsel

Department of State Health Services

Filed: October 23, 2019

◆ ◆ ◆ Texas State Affordable Housing Corporation

Draft Bond Program Policies and Request for Proposals Available for Public Comment

The Texas State Affordable Housing Corporation ("Corporation") has posted the draft of its 2020 Tax-Exempt Bond Program Policies and Request for Proposals. The Corporation will include written public comments received before December 1, 2019, in its final recommendations to the Board. Comments may be submitted by email to: ddannenfelzer@tsahc.org. Comments will also be accepted by USPS at the offices of the Corporation sent to:

Texas State Affordable Housing Corporation

Attn: Development Finance Programs

2200 East Martin Luther King Jr. Blvd.

Austin, Texas 78702

A copy of the draft policies and request for proposals is available on the Corporation's website at:

<https://www.tsahc.org/developers/tax-exempt-bonds>

TRD-201903783

David Long

President

Texas State Affordable Housing Corporation

Filed: October 18, 2019

◆ ◆ ◆ Texas Department of Licensing and Regulation

Public Notice - Criminal Conviction Guidelines

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at its regularly scheduled meeting held October 1, 2019, the Commission adopted amendments to the Texas Department of Licensing and Regulation's (Department) Criminal Conviction Guidelines pursuant to Texas Occupations Code §53.025(a). The Criminal Conviction Guidelines are updated from the original guidelines published on December 5, 2003, issue (28 TexReg 11018) to include the Offender Education program.

The Criminal Conviction Guidelines (guidelines) describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

In 2015, the 84th Texas Legislature enacted Senate Bill 202 which provided for the transfer of thirteen health-related programs from the Department of State Health Services to TDLR. Seven of the thirteen programs transferred to TDLR, effective October 3, 2016, and the remain-

ing six programs transferred November 1, 2017. The Offender Education program was transferred in the second phase.

The statutes for this program lack the authority for an advisory board, therefore, a Criminal Conviction Guidelines Forum was held in order to obtain the industry's input on convictions that could render an applicant unsuitable for licensure. Department staff met with members of the industry at the forum on July 18, 2019, to develop the criminal conviction guidelines for the Offender Education program.

The Criminal Conviction Guidelines for the Offender Education program will become a part of the overall guidelines that are already in place for other Department programs.

The Criminal Conviction Guidelines for Offender Education Program
Crimes against the person such as homicide, kidnapping, and assault.

Reasons:

1. Licensees interact with adults and/or minors in an instructor/student role. Licensees who have committed crimes against the person may pose a potential danger to the students.

2. A person who has committed such crimes may have the opportunity to engage in further similar conduct.

Crimes involving gambling.

Reasons:

1. Illegal gambling often occurs around and in coordination with alcohol and/or drug use. Illegal gambling participants may be more likely to use alcohol and/or drugs or may be more comfortable with the people casually using alcohol and/or drugs around them.

2. Licensees act as instructors for adult and/or minor students in classes focused on the appropriate use or non-use of alcohol and/or drugs. Individuals who have committed crimes involving gambling may be more likely to negatively influence their students regarding the appropriate use or non-use of alcohol and/or drugs.

3. Persons with a history of these types of offenses may not be appropriate persons to teach proper, safe and legal conduct, especially in the context of participants/students who are required or have chosen to take courses designed to help them refrain from unlawful conduct.

4. These types of criminal offenses may adversely reflect on the tendency or ability of an Offender Education Program or Instructor to act capably and with integrity and professionalism under the certificate, to uphold the public trust, and/or to protect the health and safety of participants/students.

5. A person who has committed such crimes may have the opportunity to engage in further similar conduct.

Crimes involving illegal weapons.

Reasons:

1. Criminal activity of this type may reveal a lack of regard for the safety and welfare of others.

2. Licensees act as class instructors for adult and/or minor students ordered to attend because of criminal history. These classroom settings carry a potential for confrontation or violence, which a licensee may have to contain or defuse. Individuals who have committed crimes involving illegal weapons may be more likely to bring illegal weapons to their classrooms, which could increase the potential danger to the students when dealing with confrontation or violence.

3. Persons with a history of these types of offenses may not be appropriate persons to teach proper, safe and legal conduct, especially in

the context of participants/students who are required or have chosen to take courses designed to help them refrain from unlawful conduct.

Crimes involving intentional cruelty to animals.

Reasons:

1. Licensees interact with adults and/or minors in an instructor/student role. In this classroom setting, licensees hold a high degree of control over their students' success in the class and, potentially, over their student's successful completion of probation conditions.

2. Committing crimes involving cruel or intentional mistreatment of animals may indicate that person lacks empathy or appropriate concern for students under that person's control. Committing crimes involving cruel or intentional mistreatment of animals may indicate that person will perform similar cruel intentional mistreatment of students.

3. A person who has committed crimes involving cruel or intentional mistreatment of animals may have the opportunity to engage in further cruel or intentional mistreatment of students.

Crimes involving prohibited sexual conduct.

Reasons:

1. Licensees interact with adults and/or minors in an instructor/student role. In this classroom setting, licensees hold a high degree of control over their students' success in the class and, potentially, over their student's successful completion of probation conditions.

2. Individuals who have committed crimes involving prohibited sexual conduct may pose a potential danger to the students.

3. A person who has committed such crimes may have the opportunity to engage in further similar conduct.

Crimes involving minors as victims.

Reasons:

1. Licensees interact with minors in an instructor/student role. Individuals who have committed crimes involving minors as victims may pose a potential danger.

2. A person who has committed such crimes may have the opportunity to engage in further similar conduct.

Crimes against property such as theft or burglary with intent to commit theft.

Reasons:

1. Licensees may have access to the protected private information of their students, such as dates of birth, social security numbers, etc. Licensees may have access to the personal property of employers, such as classroom equipment. Licensees may have access to class completion certificates.

2. A person who has committed crimes involving theft may have the opportunity and motivation to engage in further similar conduct.

Crimes involving fraud, forgery, or deceptive trade practices.

Reasons:

1. Licensees interact with adults and/or minors in an instructor/student role. Licensees assess the performance of participants/students. Licensees may have the opportunity to prepare and submit false documents pertaining to the coursework or program completion by participants/students.

2. A person who has committed such crimes may have the opportunity to engage in further similar conduct.

Crimes involving the possession, use, possession with intent to deliver, possession with intent to distribute, delivery, distribution or manufacture of drugs or other dangerous or illegal substances.

Reasons:

- 1. Licensees interact with adults and/or minors in an instructor/student role for classes focused on the appropriate use or non-use of alcohol and/or drugs. Licensees are in a position to pressure and/or influence students to purchase, use, possess, deliver or distribute drugs or other dangerous or illegal substances.*
- 2. Persons with a history of these types of offenses may not be appropriate persons to teach proper, safe and legal conduct, especially in the context of participants/students who are required or have chosen to take courses designed to help them refrain from this type of conduct.*
- 3. These types of criminal offenses may adversely reflect on the tendency or ability of an Offender Education Program Administrator or Instructor to act capably and with integrity and professionalism under the certificate, to uphold the public trust, and/or to protect the health and safety of participants/students.*
- 4. Criminal activity of this type may reveal a lack of regard for the safety and welfare of others.*
- 5. A person with a predisposition for criminal activity of this type may pose a risk to the public.*
- 6. A person who has committed such crimes may have the opportunity to engage in further similar conduct.*

Crimes involving the possession or use of alcohol, drugs, or other dangerous or illegal substances in a motor vehicle, or the operation of a motor vehicle, including driving while intoxicated, intoxication assault, intoxication manslaughter, reckless driving, and fleeing or evading a police officer.

Reasons:

- 1. Licensees interact with adults and children in an instructor/student role to teach proper, safe and legal conduct with respect to alcohol and/or drugs and other substances, often in the context of operating a motor vehicle.*
- 2. Persons with a history of operating a motor vehicle in a dangerous or illegal manner may not be appropriate persons to teach proper, safe and legal conduct, especially in the context of operating a motor vehicle.*
- 3. Criminal activity of this type reveals a lack of regard for the safety of others.*
- 4. Criminal activity of this type adversely reflects on the tendency or ability of an Offender Education Program or Instructor to act capably and with integrity and professionalism under the certificate, to uphold the public trust, and/or to protect the health and safety of participants/students.*
- 5. A person with a predisposition for criminal activity of this type may pose a risk to the public.*
- 6. A person who has committed such crimes may have the opportunity to engage in further similar conduct.*

A copy of the complete Criminal Conviction Guidelines is posted on the Department's website and may be obtained at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by email at enforcement@tdlr.texas.gov to obtain a copy of the complete guidelines.

TRD-201903775

Brian E. Francis
Executive Director

Texas Department of Licensing and Regulation
Filed: October 16, 2019



Public Notice - Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held October 1, 2019, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to include the updated penalty matrix for the Towing and Vehicle Storage Facility program.

The penalty matrix for the Towing and Vehicle Storage Facility was last updated on September 26, 2012. Revisions to the matrix include (1) consolidating the number of classes from eight to four, (2) updating rule and statutory cites that have been changed or repealed, (3) moving violations that do not relate to consumer harm or public safety to a lower class, and (4) use of a single penalty range for each class of violation, rather than having separate penalty ranges for first, second and third violations of each class.

Joanne Messina, Jeanette Rash, Tasha Mora, and Jimmy Zuehlke, members of the Towing and Storage Advisory Board, were appointed to serve on an enforcement workgroup. Agency staff met with the enforcement workgroup on November 14, 2018, to develop the revised penalty matrix.

The full Towing and Storage Advisory Board recommended approval of the matrix at their meeting on July 30, 2019. The penalty matrix was presented to the Commission on October 1, 2019 and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.

Vehicle Towing (TOW)

Texas Occupations Code, Chapter 2308
Texas Occupations Code, Chapter 51

16 Texas Administrative Code, Chapter 86
16 Texas Administrative Code, Chapter 60

Class A:

\$200 up to \$800

POSTING AND PUBLIC INFORMATION VIOLATIONS

- Permit holder failed to keep a cab card in the cab of each permitted tow truck 2308.108(c); 86.206(c)
- Permit holder failed to have required information displayed on each permitted tow truck 2308.109(a); 86.701(a)
- Permit holder failed to display required information in the proper size and color contrast, and have it permanently and conspicuously affixed to both sides of the truck 2308.109(b); 86.701(b)
- Towing company operated on a tow truck on the public roadways of Texas when its license plates did not include the words "Tow Truck" 86.708
- Towing company failed to have company name, phone number, license number and tow driver TDLR license number on a tow ticket 86.709(e); 86.715(n)
- Towing operator failed to carry and openly display the appropriate Department-issued original towing operator license 86.715(p); 86.1001(c)

ADMINISTRATIVE VIOLATIONS

- Failed to contact a property owner or owner's agent before entering private property to tow a vehicle that has damaged a fence on private property in a rural area 2308.2555(c)
- Towing company failed to complete all corrective actions following an inspection and provide written verification to the Department 86.453(a)(2)
- Failed to submit, or notify the Department of a change of in, a licensee's or permit holder's mailing, physical, or email address no later than the effective date of change 86.702(a)(2)
- Failed to notify the Department of a change in the licensee's drug testing policy within 30 days of the date of change 86.702(a)(3)
- Towing company failed to file an original application when there was a change of ownership in the company 86.703
- Failed to reimburse the Department for necessary travel expenses and per diem for inspections or investigations conducted at an out-of-state facility 86.1002(a)(2)

TOWING VIOLATIONS

- Towed a vehicle to a storage facility that did not display a TDLR license number 86.715(f)
- Towing company collected a nonconsent towing fee for a vehicle stored in a vehicle storage facility which did not have a sign stating "Nonconsent tow fees schedules available on request" in one-inch lettering 86.706(c)

INSURANCE VIOLATIONS

- Permit holder failed to file evidence of insurance with the Department 2308.110(c)

- Permit holder failed to keep evidence of insurance in a form approved by the Department in the cab of each permitted tow truck 2308.110(d)
- Permit holder failed to ensure the electronic submission of a certificate of insurance when changing a business name or affiliation, or upon request of the Department. 86.400(a)
- Permit holder failed to ensure that the insurance information on the certificate of insurance and on file with the Department reflects the correct name and address of the permit holder 86.400(c)
- Certificate of insurance failed to contain a provision obligating the insurer to give the Department thirty days' notice before the effective date of a policy cancellation date 86.400(d)(3)
- Failed to file a replacement insurance policy, once insurance had been canceled, prior to the cancellation date 86.400(e)(2)
- Permit holder failed to file evidence of insurance and the required affidavit with the Department within ten days of a lapse in insurance coverage due to the insolvency of an insurance carrier 86.400(f)

PARKING FACILITY VIOLATIONS

- Towing company gave something of value to a parking facility owner in connection with the removal of a vehicle from the parking facility 2308.402(a)(1), 86.705(a)
- Towing company had a direct or indirect monetary interest in a parking facility from which the towing company removes unauthorized vehicles for compensation 2308.402(b)(1); 86.705(b)
- Towing company contracted for the removal from a parking facility of a vehicle that did not display an unexpired license plate or registration insignia without noting the required tow-authorization information on the tow ticket 86.705(g)

NOTICE VIOLATION

- Towing company failed to include all required information on a vehicle owner's written notice of rights under Chapter 2308, Subchapter J 2308.455

TOW FEE SCHEDULE VIOLATIONS

- Towing company failed to update the fee schedules provided to a VSF within 30 days of a political subdivision commencing regulation of towing fees 86.500(a)
- Towing company failed to provide to a VSF any change in nonconsent towing fees regulated by a political subdivision within 30 days of the change 86.500(b)
- Towing company provided a nonconsent towing fee to a VSF that was not a complete list of all nonconsent towing fees charged by the towing company 86.500(c)
- Failed to separately identify on the fee schedule municipalities which established tow fees less than the state maximum and list each fee 86.500(d)
- Listed a municipality rate on the fee schedule that exceeded the maximum statewide rate 86.500(e)

- Towing company failed to provide a nonconsent towing fees schedule to a vehicle storage facility to which the towing company delivers vehicles for storage 86.706(a)
- Towing company failed to make a nonconsent towing fees schedule available to a requestor during normal business hours of the vehicle storage facility 86.706(d)

TOW SAFETY VIOLATIONS

- Tow truck did not have required boom, winch, or carry mechanism capacity information 86.1000(a)

TOW TICKET VIOLATIONS

- Tow ticket did not itemize each charge and/or characterize the fees using the identical fee structure stated in the on-file fee schedule 86.709(d), 86.715(m)

Class B:

\$500 up to \$1,500 and/or 6-month probated suspension up to 6-month full suspension

PRACTICING WITHOUT PROPER LICENSE OR PERMIT

- Tow truck was used for consent towing or nonconsent towing on a public roadway without the appropriate permit 2308.101; 2308.103(a); 2308.104(a); 2308.104(c); 2308.105(a); 2308.105(c); 86.200(a); 86.201(a); 86.202(a); 86.202(c)
- Used a tow truck for towing on the public roadways of Texas with an expired permit 86.205(c)
- Performed towing operations with an expired license 86.214(c)

TOW TICKET VIOLATIONS

- Failed to prepare and issue a tow ticket for each nonconsent tow 86.709(a); 86.715(j)
- Failed to give a copy of the tow ticket to the vehicle owner and/or deliver a copy to the vehicle storage facility or agreed-upon place 86.709(b); 86.715(k)
- Tow ticket authorized charges unrelated to towing the vehicle to a designated location 86.709(c); 86.715(l)

IMPROPER TOW VIOLATIONS

- Relocated a vehicle from one area of a parking facility to another area other area of the same parking facility other than allowed by law 2308.205(a-1); 2308.259(c); 86.705(n-q)
- Towed an unattended vehicle other than permitted by law 2308.251(a)(1)-(5); 2308.253(b)(1-6)
- Towed a vehicle due to an expired license plate or registration without required notice 2308.253(e)
- Removed and stored an unauthorized vehicle other than when allowed by law 2308.255(a); 2308.255(b);

	2308.255(d); 86.705(d); 86.715(g); 86.715(h); 86.715(i)
• Towed a vehicle from a parking facility that did not have the required signage prohibiting unauthorized vehicles	2308.301(a); 2308.301(b); 86.705(e)
• Performed a nonconsent tow from a leased right-of-way, an area between a parking facility and a public right-of-way, a public right-of-way, or a public roadway when not authorized	2308.351; 2308.352; 2308.353(c); 2308.354; 86.705(f)
ALCOHOL AND DRUG TESTING	
• Towing company failed to adopt and implement an alcohol and drug testing policy for its towing operators	2308.158(a); 86.710(c)
• Failed or refused to fully cooperate and comply with any term of the towing company's drug and alcohol testing policy	86.710
• Towing operator or applicant took or was under the influence of a drug not prescribed by a physician	86.710(a)(5)(A)
• Towing operator or applicant engaged in the manufacture, sale, distribution, use, or unauthorized possession of illegal drugs	86.710(a)(5)(B)
• Towing company failed to notify the Department of an employee's drug or alcohol conviction within five days	86.710(a)(5)(D)
• Towing company participated in a consortium to ensure the consortium performs random drug testing on at least 25% of the total number of its tow operators	86.710(a)(6)(C)(iii)
• Towing company failed to notify the Department within three days of an employee's confirmed positive test result	86.710(a)(8)(E)
• Towing company failed to stand down from towing operation duties following a positive drug and alcohol test result confirmation	86.710(a)(11)(B)
PROTECTIVE CLOTHING VIOLATION	
• Towing operator failed to comply with all requirements of the protective clothing policy	86.1001(a); 86.1001(b)
FEE VIOLATIONS	
• Charged a nonconsent tow fee that is greater than the fee established by law	2308.2065(a)(1); 86.455(b); 86.458(a); 86.705(j); 86.715(a)
• Charged a nonconsent tow fee that is greater than the fee established by a political subdivision	2308.2065(a)(2); 86.458(a); 86.705(k); 86.715(b)
• Charged a fee for a service related to a nonconsent tow that is not included in the list of fees established by law	2308.2065(b)(1); 86.458(b)
• Charged a fee for a service related to a nonconsent tow that is not included in the list of fees established by a political subdivision	2308.2065(b)(2); 86.458(b)
• Charged a drop charge that exceeded the maximum allowed amount	86.455(c)

- Failed to accept payment by cash, debit card, or credit card for a drop charge 86.455(e)

OWNER NOTICE VIOLATIONS

- Towing company failed to give a vehicle owner who paid the cost of the vehicle’s removal written notice of the person’s rights under Chapter 2308, Subchapter J 2308.454(a)
- Failed to notify vehicle owner or operator that a drop charge may be paid 86.455(d)

Class C:

\$1,000 up to \$4,000 and/or 1-year probated suspension up to 1-year full suspension

ADMINISTRATIVE AND RECORDS VIOLATIONS

- Towing company owner, manager, or their representative failed to cooperate with an inspector or investigator in the performance of an inspection or investigation 2308.059(d); 86.450(d); 86.451(b); 86.452(e); 60.23(a)(3)
- Permit holder failed to surrender a cab card when ordered by the Department 2308.108(d); 86.206(e)
- Filed an application to permit a tow truck previously permitted by a license or permit holder when facts support finding that re-permitting is sought to evade legal obligations or not a bona fide market transaction 86.204(a)(5); 86.208(5); 86.216(d)(5)
- Failed to notify the Department of a licensee’s or permit holder’s name change no later than the effective date of change 86.702(a)(1)
- Towing company failed to keep a record of every nonconsent tow and the required information for each 86.705(l)
- Towing operator failed to allow Department personnel or law enforcement to inspect a permitted tow truck 86.715(c)
- Failed to maintain a current valid driver’s license 86.715(e)
- Towing company failed to keep all records, documents, and information required by the Department at a principle office in Texas without prior approval from the Department 86.1002(a)
- Towing company maintained required records, documents, and information at a location other than its principal office without approval from the Department 86.1002(a)(1)
- Towing company failed to maintain all books and records for a minimum of two years at the towing company’s principal business address 86.1002(b)

UNLICENSED ACTIVITY

- Performed towing operations without the appropriate license 2308.151(1); 86.207(a)
- Operated as a towing company without the appropriate license 2308.151(2); 2308.151(4); 2308.1556(a); 86.215(a)

- Operated an incident management permitted tow truck, or performed an incident management tow, without an incident management towing operator's license 2308.153(a); 86.209(a)
- Operated a private property permitted tow truck, or performed a private property tow, without a private property towing operator's license 2308.154(a); 86.210(a)
- Operated a consent permitted tow truck without a consent towing operator's license 2308.155(a); 86.211(a)
- Employed or contracted with unlicensed persons required to hold a license 86.705(m)

FEE VIOLATIONS

- Charged a drop fee when the vehicle owner or operator attempts to retrieve the vehicle before the vehicle is fully hooked up and ready to be removed from the property 86.455(c)

TOW SAFETY VIOLATIONS

- Failed to perform a tow in a safe and competent manner 86.715(d)
- Tow truck hydraulic lines were not free of leaks or were not in good working condition free of defects 86.1000(b)
- Tow truck winch exceeded the capacity of the boom or leaked oil 86.1000(c)
- Tow truck cables not as specified by manufacturer or were not in good condition within manufacturer's guidelines 86.1000(d)

Class D:

\$2,000 up to \$5,000 and/or 1-year full suspension up to revocation

IMPROPER TOW VIOLATIONS

- Performed a nonconsent tow and took the vehicle to a location other than a licensed vehicle storage facility or a location designated by the vehicle owner 2308.205(a); 86.700(a); 86.715(f)

INSURANCE VIOLATIONS

- Permit holder failed to keep liability and cargo insurance in the required amount for each tow truck in force at all times 2308.110(a); 86.400(d)(1); 86.400(d)(2)
- Permit holder obtained insurance from an insurer not authorized to do business in Texas 2308.110(b); 86.400(b)
- Removed and stored a vehicle without possessing the required liability insurance for property damage incurred towing a vehicle 2308.255(c); 86.705(d)

INTEGRITY VIOLATIONS

- Failed to reimburse the owner or operator for the removal and storage costs when a court finds a tow was not authorized 2308.451(b)
- Failed to reimburse the owner or operator the overcharge when a court finds a towing charge exceeded allowed fees 2308.451(c)
- Included authorization of services not necessary to perform the nonconsent tow on the document signed by the vehicle owner to authorize taking the vehicle to a location other than a licensed VSF 86.700(b)

- Conducted or performed towing operations without honesty, trustworthiness, and integrity 86.711;
86.715(o)
- Failed to comply with previous order of the Commission/Executive Director 2308.501(2);
86.204(a)(2);
86.208(2);
86.216(d)(2);
51.302;
60.23(a)(6)
- Failed to refund an amount charged to an owner or operator when ordered 2308.2065(c)(1);
2308.2065(c)(2);
86.458(c)
- Obtained, or attempted to obtain, a license by knowingly submitting false, misleading, deceptive, or incomplete information during the application or renewal process 86.204(a)(4);
86.208(4);
86.216(d)(4);
86.216(d)(8);
60.23(a)(1)
- Failed to pay the Department for a dishonored payment device 60.82
- Fraudulent or deceptive conduct displaying such a lack of honesty, integrity, and trustworthiness as to render the license holder ineligible to continue holding a license. 60.41(b)

Vehicle Storage Facilities

(VSF)

Texas Occupations Code, Chapter 2303

Texas Occupations Code, Chapter 2308

Texas Occupations Code, Chapter 51

16 Texas Administrative Code, Chapter 85

16 Texas Administrative Code, Chapter 60

Class A:

\$200 up to \$800

POSTING AND PUBLIC INFORMATION VIOLATIONS

- Failed to provide a copy of a nonconsent tow fees schedule on request 2303.1551(b);
85.1003(c)(1)
- Nonconsent tow ticket did not contain all required tow company information 85.706(c)
- Failed to notify the vehicle owner of the Department's website and email address, mailing address, and telephone number where required 85.707

ADMINISTRATIVE VIOLATIONS

- Failed to complete all corrective actions following an inspection and provide written verification to the Department 85.453(a)(2)
- Engaged in false, misleading, or deceptive advertising 85.701
- Failed to notify the Department of a change of an operator's mailing or physical address no later than the effective date of change 85.702(a)(2)
- Failed to notify the Department of a change in the facility's storage capacity no later than the effective date of change 85.702(a)(3)
- Failed to notify the Department of a change in the company's drug testing policy 85.702(a)(4)
- Accepted a vehicle for storage but did not make or maintain a valid and current copy of the tow operator's license and the cab card for the driver and truck delivering the vehicle 85.706(d)
- Allowed an unpermitted tow truck to enter onto the vehicle storage facility grounds 85.709
- Failed to give the Department notice containing all required information prior to the storage facility beginning use of a telephone number different from the one on file with the Department 85.715
- Failed to note a correct license plate or vehicle identification number in the facility's records 85.716
- Failed to reimburse the Department for necessary travel expenses and per diem for inspections or investigations conducted at an out-of-state facility 85.1004(a)(2)

ACCESS VIOLATIONS

- Failure to require a receipt from the person removing personal belongings from a stored vehicle 85.708(b)(2)

FACILITY VIOLATIONS

- Failed to have the storage facility completely enclosed by a fence six feet high with a gate 85.1000(1)
- Operated two vehicle storage facilities within the same fenced area 85.1000(1)
- Failed to have an all-weather surface or surface was overgrown with vegetation 85.1001

- Failed to maintain illumination levels adequate for nighttime release of vehicles 85.1002

STORAGE VIOLATIONS

- Failed to make reasonable efforts necessary for storage of the vehicle 85.719(a)
- Failed to use plastic or canvas tarpaulins to ensure the impoundment of the vehicle 85.719(b)
- Failed to lock the storage facility fence gate at all times when the licensee or an agent or employee is not at the storage lot 85.1000(1)
- Stored or kept a vehicle at a storage facility which was not kept inside the fenced area or an enclosed area 85.1000(2)(A)
- Failed to secure a vehicle accepted for storage to prevent theft of the vehicle or its contents 85.1000(2)(B)

INSURANCE FILING VIOLATIONS

- Licensee failed to ensure the electronic submission of a certificate of insurance when changing a business name or affiliation, or upon request of the Department 85.400(a)
- Name and address on the certificate of insurance was different than those on the permit 85.400(c)
- Certificate of insurance failed to contain a provision obligating the insurer to give the Department thirty days' notice before the effective date of a policy cancellation date 85.400(d)(3)
- Failed to file a replacement insurance policy, once insurance had been canceled, prior to the cancellation date 85.400(e)

SIGN AND NOTICE VIOLATIONS

- Failure to have a notice by publication contain all required information 2303.153(b); 85.703(i)(2)
- Failed to include all required information in a second notice 2303.154(b); 2303.154(c); 85.704(d); 85.704(e)
- Failed to send the second notice no earlier than the 15th day, and no later than the 21st day, after the date the first notice is mailed or published under §87.705 2308.154(d); 85.704(b)
- Failed to send required notice to a law enforcement agency regarding an abandoned vehicle 2303.154(a-1); 85.704(b)
- Failed to notify the Department of Motor Vehicles or a law enforcement agency that the required notices regarding an abandoned vehicle have been provided and pay the \$10 fee 2303.1545(b); 85.724(b)
- Failed to have a clearly visible sign in the proper lettering size and color contrast which sets out the charge for storage and all other fees, and all forms of payment accepted 2303.1551(a); 85.1003(b)
- Failed to post a sign with one-inch letters stating "Nonconsent tow fees schedules available on request." 2303.1551(b); 85.1003(c)(1)
- Failed to have a conspicuously posted sign stating "This vehicle storage facility must accept payment by cash, credit card, and debit card for any fee or charge associated with delivery or storage of a vehicle" 2303.159(a-1); 85.1003(e)
- Failed to include all required information in a vehicle owner's written notice of rights under Chapter 2308, Subchapter J 2308.455; 85.710(a)(1)

- Failed to have notification to vehicle owner meet all mailing requirements 85.703(i)
- Failed to have mailed notification state all required information 85.703(i)(1)
- Failed to have published notification state all required information 85.703(i)(2)
- Failed to have a clearly visible and readable sign which displays the required facility information in the proper lettering size and color contrast 85.1003(a)
- Failed to have a clearly visible sign in the proper lettering size and color contrast which lists all documents that may be presented to obtain possession of the vehicle, or did not state “Affidavit of Right of Possession Furnished Upon Request” 85.1003(d)

FEE SCHEDULE VIOLATIONS

- Charged an impoundment fee but the written bill for services did not specify the exact services performed for that fee and the dates those services were performed 85.722(e)
- Failed to give a vehicle owner, upon request, access to the current nonconsent towing fees schedule for the towing company that towed the vehicle 24 hours a day 85.708(b)(4)
- Nonconsent tow fee schedule provided for viewing did not match the fees authorized by law 85.1003(c)(2)

TOW TICKET VIOLATIONS

- Failed to inspect an accepted vehicle and note on the tow ticket any differences from the information already on the ticket 85.716
- Defaced or wrote over any previous writing on a tow ticket when adding information during the vehicle inspection 85.716
- Failed to notify every previously notified person within 48 hours of a vehicle’s correct license plate or vehicle identification number 85.716

PRACTICING WITHOUT PROPER LICENSE OR PERMIT

- Performed a function that requires a facility license while license was expired 85.203(b)
- Performed a duty that requires an employee license while license was expired 85.206(b)

Class B:

\$500 up to \$1,500 and/or 6-month probated suspension up to 6-month full suspension

ADMINISTRATIVE VIOLATIONS

- Failed to notify the Department of a change in business name no later than the effective date of change 85.702(a)(1)

RECORDS VIOLATIONS

- Required records and documents failed to contain all required information 85.706(b)

ACCESS VIOLATIONS

- Failed to allow vehicle owner access to vehicle to obtain documents to establish ownership 2303.158, 85.708(a)

- Failed to give the vehicle owner or an authorized representative access to the vehicle or to remove personal belongings from the vehicle 85.708(b)(2)
- Failed to allow the vehicle owner or an authorized representative access to the vehicle for the purposes of insurance and/or repair estimates 85.708(b)(3)

TOW TICKET VIOLATIONS

- Failed to allow the vehicle owner or an authorized representative to inspect the tow ticket before being required to pay fees 85.708(b)(1)
- Failed to provide a legible copy of the tow ticket to an insurer within three days of being presented with a proof of loss claim form 85.708(c)(2)(A)
- Failed to provide a legible copy of the tow ticket to a tow truck operator upon being presented with a proof of loss claim form 85.708(c)(2)(B)
- Failed to provide a tow ticket to the vehicle owner or owner’s representative 85.710(a)(2)

LAW ENFORCEMENT REPORTING VIOLATIONS

- Accepted a vehicle nonconsent towed from private property and failed to report the tow to local law enforcement within two hours of receipt of vehicle 2303.1511(a); 2308.2565(a); 85.705(a)
- Report to local law enforcement of the acceptance of a nonconsent-towed vehicle failed to include a description of vehicle, license plate and ascertainable VIN information, location from where the vehicle was towed, and the name and location of the destination vehicle storage facility 2303.1511(a); 2308.2565(a); 85.705(a)
- Failed to make the required nonconsent tow report by telephone, electronically, personally or by facsimile 2303.1511(b); 85.705(b)
- Failed to provide a report to law enforcement of incident management tows within 48 hours of receiving the request 2308.2565(b)
- Failed to keep a record of to whom and in what manner the required nonconsent tow report was reported, the date and time, or the tracking or control number assigned by the law enforcement agency 85.705(c)

ALCOHOL AND DRUG TESTING

- Vehicle storage facility failed to establish, maintain, and implement, an effective drug testing policy for its employees as required by law 2303.161; 85.725
- Employee or applicant failed or refused to fully cooperate and comply with any term of the vehicle storage facility’s drug testing policy 85.725(a)(4)
- Vehicle storage facility employee took or was under the influence of a drug not prescribed by a physician 85.725(a)(5)(A)
- Vehicle storage facility employee engaged in the manufacture, sale, distribution, use, or unauthorized possession of illegal drugs 85.725(a)(5)(B)
- Vehicle storage facility to notify the Department of an employee’s drug conviction 85.725(a)(5)(D)
- Vehicle storage facility participating in a consortium failed to ensure the consortium performs random drug testing on at least 25% of the VSF’s employees 85.725(a)(6)(C)(iii)
- Vehicle storage facility failed to notify the Department within three days of an employee’s confirmed positive drug test result 85.725(a)(8)(E)
- Vehicle storage facility employee failed to stand down from vehicle storage facility duties following a positive drug test result confirmation 85.725(a)(11)(B)

UNLICENSED ACTIVITY

- Worked in a vehicle storage facility without a required license 2303.1015(a);
85.204(b)
- Employed a person who did not hold a required license 2303.1015(a);
85.204(c)

FEE VIOLATIONS

- Charged a notification fee exceeding \$50 or charged a publication fee greater than allowed by law 2303.155(b)(1);
2303.155(c);
85.722(c)(1)
- Charged an impoundment fee greater than \$20 2303.155(b)(2);
85.722(e)
- Charged an impoundment fee when the impoundment was not performed in accordance with 16 T.A.C. Ch. 85 2303.155(b)(2);
85.719(c); 85.722(e)
- Charged a daily storage fee of more than \$20 for each day for a vehicle not longer than 25 feet 2303.155(b)(3)(A);
85.722(d)
- Charged a daily storage fee of more than \$35 for each day for a vehicle longer than 25 feet 2303.155(b)(3)(B);
85.722(d)
- Charged a storage fee for more than one day when the vehicle remained at the facility for less than 12 hours 2303.155(d);
85.722(d)(1)
- Charged for more than five days of storage before mailing notice or requesting owner information from the proper governmental entity 2303.155(e);
85.722(d)(2);
85.722(d)(3)
- Charged a daily storage fee during the period beginning on the 21st day after the first notice is sent and ending 24 hours after the second notice is sent when second notice is sent after the 21st day on which the first notice was mailed or published 2303.154(e)(2);
85.704(c)
- Charged an additional fee for storage which is not authorized by law 2303.155(f);
85.722(h)
- Failed to accept payment by cash, debit card, or credit card for the delivery or storage of a vehicle 2303.159(a);
85.711
- Charged a notification fee when the vehicle was removed within 24 hours or before the notification was sent 85.722(c)(3)

NOTICE VIOLATIONS

- Failed to send proper notice of the vehicle's location to the vehicle owner and lienholder by the fifth day after receipt of the vehicle which is registered in Texas 2303.151(a);
2303.151(d);
2303.151(e);
2303.153(a);
85.703(b)(1)
- Failed to send proper notice of the vehicle's location to the vehicle owner and lienholder by the 14th day after receipt of the vehicle which is registered outside Texas 2303.151(b);
2303.151(d);
2303.151(e);
2303.153(a);
85.703(b)(2)
- Failed to provide notice to the owner and lienholder by publication when required 2303.152(a);
2303.152(e);
85.703(e)
- Provided notice by publication when all requirements allowing notice by publication had not been met 2303.152(a);
2303.152(b);
2303.152(e);
85.703(e)

- Failed to send a second notice of the vehicle's location to the vehicle owner and lienholder when required 2303.154(a); 85.704(a)
- Failed to timely send the second notification letter to the vehicle owner and lienholder when required 2303.154(d); 85.704(b)
- Failed to give a vehicle owner written notice of the person's rights under Chapter 2308, Subchapter J at the time of payment 2308.454(a)
- Failed to include a notice of the vehicle owner's rights under Chapter 2308, Subchapter J with the required notice which states the facility has the vehicle 2308.454(b)

RELEASE OF VEHICLES VIOLATIONS

- Refused to release a vehicle because of the inability to accept payment by cash, debit card or credit card 2303.159(a)
- Failed to release a vehicle or required an affidavit for release because the valid identification presented had a different address than the address on the title or registration for the vehicle 2303.160(a); 85.710(a)(4)
- Failed to accept evidence of financial responsibility as a form of identification that establishes right of possession of the vehicle 2303.160(b); 85.710(a)(5)
- Failed to allow an owner or owner's representative to obtain possession of a vehicle when all fees were paid and valid identification and acceptable documentation proving right of possession were presented 85.710(a)(3)
- Failed to have a vehicle available for release 24 hours a day when the facility accepted vehicles 24 hours a day 85.710(a)(7)
- Failed to have a vehicle available for release during the required hours within one hour of notice 85.710(a)(8)
- Refused to release of a vehicle to an owner or insurance company due to nonpayment by the law enforcement agency that directed the towing and storage 85.713(a)
- Released a commercial vehicle stored at the direction of Texas DPS when the amount of delinquent administrative penalty assessed against the vehicle had not been paid pursuant to 37 T.A.C. § 4.16 85.713(b)
- Failed to have a publicly listed telephone number at which the vehicle storage facility could be contacted 85.715

Class C:

\$1,000 up to \$4,000 and/or 1-year probated suspension up to 1-year full suspension

ADMINISTRATIVE AND RECORDS VIOLATIONS

- Vehicle storage facility owner, manager, or their representative failed to cooperate with an inspector or investigator in the performance of the inspection or investigation 85.450(d); 60.23(a)(3)
- Failed to make all records and documents available to a Department inspector, investigator, or law enforcement officer for inspection or copying 85.451(b); 85.706(e); 60.23(a)(3)
- Failed to maintain a copy of all required written records and documents at the principal business address for a minimum of two years from release or disposal of a vehicle 85.706(a); 85.1004(b)

- Failed to keep all required records under the storage facility's care and custody for at least two years from the date of vehicle release or disposal 85.706(f)
- Failed to maintain a record of ultimate vehicle disposition which includes all required information 85.721(3)
- Failed to keep complete and accurate records for a disposed vehicle which include all required information 85.723(b)
- Vehicle storage facility failed to maintain all required records and documents at a principal office in Texas 85.1004(a)
- Vehicle storage facility maintained required records at an alternate location other than the principal office without approval from the Department 85.1004(a)(1)

FEE VIOLATIONS

- Charged unpermitted fees after a vehicle was towed to another location without the owner's permission 85.721(1)

Class D:

\$2,000 up to \$5,000 and/or 1-year full suspension up to revocation

UNLICENSED ACTIVITY

- Operated a vehicle storage facility without holding a license for that facility 2303.101(a); 85.200; 85.203(b)
- Operated or managed a vehicle storage facility as a sole proprietor or unincorporated partnership without holding an employee license 85.204(d)

INSURANCE VIOLATIONS

- Obtained insurance from an insurer not authorized to do business in Texas 85.400(b)
- Failed to obtain and maintain liability insurance for each vehicle storage facility in the required amount 85.400(d)(1); 85.400(d)(2)
- Provided liability insurance information to vehicle owner which was not the same as that on file with the Department 85.714
- Failed to provide to vehicle owner or owner's representative upon request all required liability insurance information 85.714

DISPOSAL OF VEHICLE VIOLATIONS

- Disposed of an abandoned nuisance vehicle before the 30th day after the first and only notice was sent 2303.1545(a)
- Disposed of an abandoned vehicle before the 30th day after notice was sent 2303.157(a)
- Failed to apply the proceeds from the sale of a vehicle to the charges incurred for the vehicle or pay excess proceeds to the person entitled to the proceeds 2303.157(b); 85.704(f)
- Sold a vehicle before the 30th day after notice was sent that was not an abandoned nuisance vehicle and did not submit an application for disposal to the Department of Transportation 2303.157(c)
- Removed parts or dismantled or demolished a vehicle within the storage area when not allowed 85.717

- Allowed a stored vehicle to be repaired, altered, or to have parts removed or replaced without the consent of the owner or owner's representative 85.720
- Moved a vehicle from the storage facility within 31 days of delivery without the owner's authorization 85.721
- Moved a vehicle from the storage facility within 31 days of delivery and assessed an additional charge 85.721
- Moved a vehicle from the storage facility within 31 days of delivery and failed to send notice no less than 72 hours prior to the move 85.721
- Failed to maintain records and inform a vehicle owner upon request of the location of the vehicle at all times from vehicle relocation to ultimate vehicle disposition 85.721(2)
- Disposed of a vehicle without complying with all provisions of the law concerning notification and disposal of abandoned vehicles and maintenance of records 85.723(a)
- Failed to maintain complete and accurate records of any vehicle disposed, as required 85.723(b)

INTEGRITY VIOLATIONS

- Failed to comply with previous order of the Commission/Executive Director 2308.501(2);
86.204(a)(2);
86.208(2);
86.216(d)(2);
51.301(2)
- Requested a vehicle owner or operator to sign an authorization form for a tow, repair, or any other service, for a tow initiated by law enforcement 85.708(d)
- Required an owner or owner's representative to sign a form which changed the status of a law enforcement-initiated tow from a nonconsent tow to a consent tow status 85.710(b)(1)
- Required an owner or owner's representative to sign a form which changed the status of the vehicle storage resulting from a nonconsent tow to a consent storage status 85.710(b)(2)
- Required an owner or owner's representative to sign a form which imposed additional charges not regulated by the Department 85.710(b)(3)
- Used a stored vehicle for personal or business use without the written consent of the owner 85.718
- Obtained a license by fraud or false representation 60.23(a)(1)
- Submitted falsified required documents as part of the initial or renewal application packet 60.23(a)(2)
- Failed to pay the Department for a dishonored payment 60.82
- Refused to permit, or interfered with, an inspection or investigation by an authorized TDLR representative 60.23(a)(3)
- Fraudulent or deceptive conduct displaying such a lack of honesty, integrity, and trustworthiness as to render the license holder ineligible to continue holding a license. 60.41(b)
- Failed to conduct vehicle storage facility operations with honesty, trustworthiness, and integrity 85.726

TRD-201903776
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: October 16, 2019

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Texas Lottery Commission

Scratch Ticket Game Number 2188 "ICY HOT 7s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2188 is "ICY HOT 7s". The play style is "find symbol".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2188 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2188.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 7 SYMBOL, FLAME SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$30.00, \$100 and \$1,000.

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. 2188 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
7 SYMBOL	WIN\$
FLAME SYMBOL	WINX2
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$30.00	TRTY\$
\$100	ONHN
\$1,000	ONTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2188), a seven (7) digit Pack

number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2188-0000001-001.

H. Pack - A Pack of the "ICY HOT 7s" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

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 "ICY HOT 7s" Scratch Ticket Game No. 2188.

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 "ICY HOT 7s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twelve (12) Play Symbols. If a player reveals a "7" Play Symbol, the player wins the prize for that symbol. If the player reveals a "FLAME" 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 twelve (12) 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 twelve (12) 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 twelve (12) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twelve (12) 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. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure. C. A Ticket may have up to two (2) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure. D. The "FLAME" (WINX2) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure. E. No matching non-winning Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure. F. A non-winning Prize Symbol will never match a winning Prize Symbol, unless restricted by other parameters, play action or prize structure. G. The "7" (WIN\$) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

H. No prize amount in a non-winning spot will correspond with the Play Symbol (i.e., 01 and \$1).

2.3 Procedure for Claiming Prizes.

A. To claim a "ICY HOT 7s" Scratch Ticket Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$30.00 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 \$30.00 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 "ICY HOT 7s" Scratch Ticket Game prize of \$1,000, 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 "ICY HOT 7s" 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 "ICY HOT 7s" 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 "ICY HOT 7s" 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 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2188. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2188 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1.00	912,000	10.00
\$2.00	486,400	18.75
\$4.00	182,400	50.00
\$5.00	152,000	60.00
\$10.00	91,200	100.00
\$15.00	45,600	200.00
\$30.00	7,600	1,200.00
\$100	2,394	3,809.52
\$1,000	38	240,000.00

*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 4.85. 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. 2188 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. 2188, 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-201903838
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: October 22, 2019



Scratch Ticket Game Number 2192 "TRIPLE DOUBLE 777 RED HOT™"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2192 is "TRIPLE DOUBLE 777 RED HOT™". The play style is "slots - straight line".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2192 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2192.

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: SPADE SYMBOL, 7 SYMBOL, MONEY BAG SYMBOL, BANK SYMBOL, BAR SYMBOL, COINS SYMBOL, BELL SYMBOL, BILL SYMBOL, CHEST SYMBOL, CHIP SYMBOL, CLUB SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, CHERRY SYMBOL, HEART SYMBOL, HORSESHOE SYMBOL, STAR SYMBOL, VAULT SYMBOL, KEY SYMBOL, LEMON SYMBOL, MELON SYMBOL, NECKLACE SYMBOL, RAINBOW SYMBOL, RING SYMBOL, WISHBONE SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$1,000 and \$100,000. The possible red Play Symbols are: SPADE SYMBOL, 7 SYMBOL, MONEY BAG SYMBOL, BANK SYMBOL, BAR SYMBOL, COINS SYMBOL, BELL SYMBOL, BILL SYMBOL, CHEST SYMBOL, CHIP SYMBOL, CLUB SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, CHERRY SYMBOL, HEART SYMBOL, HORSESHOE SYMBOL, STAR SYMBOL, VAULT SYMBOL, KEY SYMBOL, LEMON SYMBOL, MELON SYMBOL, NECKLACE SYMBOL, RAINBOW SYMBOL, RING SYMBOL and WISHBONE SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink

in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2192 - 1.2D

PLAY SYMBOL	CAPTION
SPADE SYMBOL (BLACK)	SPADE (BLACK)
7 SYMBOL (BLACK)	SEVEN (BLACK)
MONEY BAG SYMBOL (BLACK)	BAG (BLACK)
BANK SYMBOL (BLACK)	BANK (BLACK)
BAR SYMBOL (BLACK)	BAR (BLACK)
COINS SYMBOL (BLACK)	COINS (BLACK)
BELL SYMBOL (BLACK)	BELL (BLACK)
BILL SYMBOL (BLACK)	BILL (BLACK)
CHEST SYMBOL (BLACK)	CHEST (BLACK)
CHIP SYMBOL (BLACK)	CHIP (BLACK)
CLUB SYMBOL (BLACK)	CLUB (BLACK)
CROWN SYMBOL (BLACK)	CROWN (BLACK)
DIAMOND SYMBOL (BLACK)	DIAMOND (BLACK)
CHERRY SYMBOL (BLACK)	CHERRY (BLACK)
HEART SYMBOL (BLACK)	HEART (BLACK)
HORSESHOE SYMBOL (BLACK)	HORSESHOE (BLACK)
STAR SYMBOL (BLACK)	STAR (BLACK)
VAULT SYMBOL (BLACK)	VAULT (BLACK)
KEY SYMBOL (BLACK)	KEY (BLACK)
LEMON SYMBOL (BLACK)	LEMON (BLACK)
MELON SYMBOL (BLACK)	MELON (BLACK)
NECKLACE SYMBOL (BLACK)	NECKLACE (BLACK)
RAINBOW SYMBOL (BLACK)	RAINBOW (BLACK)
RING SYMBOL (BLACK)	RING (BLACK)
WISHBONE SYMBOL (BLACK)	WISHBONE (BLACK)
\$5.00 (BLACK)	FIV\$ (BLACK)
\$10.00 (BLACK)	TEN\$ (BLACK)
\$20.00 (BLACK)	TWY\$ (BLACK)
\$50.00 (BLACK)	FFTY\$ (BLACK)
\$100 (BLACK)	ONHN (BLACK)
\$500 (BLACK)	FVHN (BLACK)
\$1,000 (BLACK)	ONTH (BLACK)
\$100,000 (BLACK)	100TH (BLACK)
SPADE SYMBOL (RED)	SPADE (RED)
7 SYMBOL (RED)	SEVEN (RED)
MONEY BAG SYMBOL (RED)	BAG (RED)
BANK SYMBOL (RED)	BANK (RED)

BAR SYMBOL (RED)	BAR (RED)
COINS SYMBOL (RED)	COINS (RED)
BELL SYMBOL (RED)	BELL (RED)
BILL SYMBOL (RED)	BILL (RED)
CHEST SYMBOL (RED)	CHEST (RED)
CHIP SYMBOL (RED)	CHIP (RED)
CLUB SYMBOL (RED)	CLUB (RED)
CROWN SYMBOL (RED)	CROWN (RED)
DIAMOND SYMBOL (RED)	DIAMOND (RED)
CHERRY SYMBOL (RED)	CHERRY (RED)
HEART SYMBOL (RED)	HEART (RED)
HORSESHOE SYMBOL (RED)	HORSESHOE (RED)
STAR SYMBOL (RED)	STAR (RED)
VAULT SYMBOL (RED)	VAULT (RED)
KEY SYMBOL (RED)	KEY (RED)
LEMON SYMBOL (RED)	LEMON (RED)
MELON SYMBOL (RED)	MELON (RED)
NECKLACE SYMBOL (RED)	NECKLACE (RED)
RAINBOW SYMBOL (RED)	RAINBOW (RED)
RING SYMBOL (RED)	RING (RED)
WISHBONE SYMBOL (RED)	WISHBONE (RED)

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 (2192), 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: 2192-0000001-001.

H. Pack - A Pack of "TRIPLE DOUBLE 777 RED HOT™" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State

Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "TRIPLE DOUBLE 777 RED HOT™" Scratch Ticket Game No. 2192.

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 "TRIPLE DOUBLE 777 RED HOT™" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-four (64) Play Symbols. The player scratches the entire play area. If the player reveals 3 matching symbols, regardless of color, in the same SPIN, the player wins the PRIZE for that SPIN. If the player reveals 3 matching RED symbols in the same SPIN, the player wins DOUBLE the PRIZE for that SPIN. If the player reveals 3 RED "7" Play Symbols in the same SPIN, the player wins TRIPLE the PRIZE for that SPIN. 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 sixty-four (64) 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 sixty-four (64) 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 sixty-four (64) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the sixty-four (64) 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 de-

fective 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 sixteen (16) 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. There will be no matching non-winning SPINS on a Ticket. SPINS are considered matching if they have the same Play Symbols in any order.
- E. No three (3) or more matching non-winning Play Symbols will appear in adjacent positions diagonally or in a column (regardless of color).
- F. Winning Tickets using three (3) matching RED Play Symbols or three (3) RED "7" (SEVEN) Play Symbols will appear as dictated by the prize structure.
- G. Non-winning Prize Symbols will never appear more than three (3) times.
- H. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).
- I. All Tickets will contain at least fourteen (14) but no more than twenty-two (22) RED Play Symbols, unless restricted by other parameters, play action or prize structure.
- J. All Tickets will contain at least three (3) SPINS that contain all RED Play Symbols to avoid pickout of doubled and tripled prizes, unless restricted by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

- A. To claim a "TRIPLE DOUBLE 777 RED HOT™" 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 "TRIPLE DOUBLE 777 RED HOT™" 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 "TRIPLE DOUBLE 777 RED HOT™" 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 "TRIPLE

DOUBLE 777 RED HOT™" 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 "TRIPLE DOUBLE 777 RED HOT™" 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 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2192. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2192 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	660,800	10.71
\$10	1,038,400	6.82
\$20	188,800	37.50
\$50	88,500	80.00
\$100	11,800	600.00
\$500	708	10,000.00
\$1,000	150	47,200.00
\$100,000	5	1,416,000.00

*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 3.56. 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. 2192 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. 2192, 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-201903839

Bob Biard

General Counsel

Texas Lottery Commission

Filed: October 22, 2019



Scratch Ticket Game Number 2200 "QUICK 7s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2200 is "QUICK 7". The play style is "other".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2200 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2200.

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:

1, 2, 3, 4, 5, 6, 8, 9, 7 SYMBOL, \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$40.00, \$50.00, \$100, \$500 and \$1,000.

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. 2200 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
8	EGT
9	NIN
7 SYMBOL	WIN\$
\$1.00	ONE\$
\$2.00	TWO\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$40.00	FRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
\$1,000	ONTH

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 (2200), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2200-0000001-001.

H. Pack - A Pack of the "QUICK 7s" Scratch Ticket Game contains 150 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the op page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

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 "QUICK 7s" Scratch Ticket Game No. 2200.

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 "QUICK 7s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twelve (12) Play Symbols. The player will scratch the entire play area. If the player reveals a "7" Play Symbol, the player wins 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 twelve (12) 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 twelve (12) 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 twelve (12) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the twelve (12) 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 six (6) 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. The "7" (WIN\$) Play Symbol may appear multiple times on intended winning Tickets, unless restricted by other parameters, play action or prize structure.

E. Non-winning Prize Symbols will never appear more than one (1) time.

F. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

G. No Prize Symbol in a non-winning spot will correspond with the Play Symbol (i.e., 2 and \$2).

2.3 Procedure for Claiming Prizes.

A. To claim a "QUICK 7s" Scratch Ticket Game prize of \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$40.00, \$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 \$40.00, \$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 "QUICK 7s" Scratch Ticket Game prize of \$1,000, 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 "QUICK 7s" 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 "QUICK 7s" 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 "QUICK 7s" 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 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2200. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2200 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1	851,200	10.71
\$2	790,400	11.54
\$5	121,600	75.00
\$10	60,800	150.00
\$20	30,400	300.00
\$40	22,800	400.00
\$100	1,900	4,800.00
\$500	120	76,000.00
\$1,000	54	168,888.89

*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 4.85. 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. 2200 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. 2200, 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-201903850
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: October 22, 2019



Scratch Ticket Game Number 2223 "BREAK THE BANK SUPER TICKET®"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2223 is "BREAK THE BANK SUPER TICKET®". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2223 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2223.

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, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, \$\$ SYMBOL, \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200, \$500, \$1,000, \$20,000 and \$250,000. The possible green 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, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65. The possible blue 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, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65.

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. 2223 - 1.2D

PLAY SYMBOL	CAPTION
01 (BLACK)	ONE (BLACK)
02 (BLACK)	TWO (BLACK)
03 (BLACK)	THR (BLACK)
04 (BLACK)	FOR (BLACK)
05 (BLACK)	FIV (BLACK)
06 (BLACK)	SIX (BLACK)
07 (BLACK)	SVN (BLACK)
08 (BLACK)	EGT (BLACK)
09 (BLACK)	NIN (BLACK)
10 (BLACK)	TEN (BLACK)
11 (BLACK)	ELV (BLACK)
12 (BLACK)	TLV (BLACK)
13 (BLACK)	TRN (BLACK)
14 (BLACK)	FTN (BLACK)
15 (BLACK)	FFN (BLACK)
16 (BLACK)	SXN (BLACK)
17 (BLACK)	SVT (BLACK)
18 (BLACK)	ETN (BLACK)
19 (BLACK)	NTN (BLACK)
20 (BLACK)	TWY (BLACK)
21 (BLACK)	TWON (BLACK)
22 (BLACK)	TWTO (BLACK)
23 (BLACK)	TWTH (BLACK)
24 (BLACK)	TWFR (BLACK)
25 (BLACK)	TWV (BLACK)
26 (BLACK)	TWSX (BLACK)
27 (BLACK)	TWSV (BLACK)
28 (BLACK)	TWET (BLACK)
29 (BLACK)	TWNI (BLACK)
30 (BLACK)	TRTY (BLACK)
31 (BLACK)	TRON (BLACK)
32 (BLACK)	TRTO (BLACK)
33 (BLACK)	TRTH (BLACK)
34 (BLACK)	TRFR (BLACK)
35 (BLACK)	TRV (BLACK)
36 (BLACK)	TRSX (BLACK)
37 (BLACK)	TRSV (BLACK)

38 (BLACK)	TRET (BLACK)
39 (BLACK)	TRNI (BLACK)
40 (BLACK)	FRTY (BLACK)
41 (BLACK)	FRON (BLACK)
42 (BLACK)	FRTO (BLACK)
43 (BLACK)	FRTH (BLACK)
44 (BLACK)	FRFR (BLACK)
45 (BLACK)	FRFV (BLACK)
46 (BLACK)	FRSX (BLACK)
47 (BLACK)	FRSV (BLACK)
48 (BLACK)	FRET (BLACK)
49 (BLACK)	FRNI (BLACK)
50 (BLACK)	FFTY (BLACK)
51 (BLACK)	FFON (BLACK)
52 (BLACK)	FFTO (BLACK)
53 (BLACK)	FFTH (BLACK)
54 (BLACK)	FFFR (BLACK)
55 (BLACK)	FFFV (BLACK)
56 (BLACK)	FFSX (BLACK)
57 (BLACK)	FFSV (BLACK)
58 (BLACK)	FFET (BLACK)
59 (BLACK)	FFNI (BLACK)
60 (BLACK)	SXTY (BLACK)
61 (BLACK)	SXON (BLACK)
62 (BLACK)	SXTO (BLACK)
63 (BLACK)	SXTH (BLACK)
64 (BLACK)	SXFR (BLACK)
65 (BLACK)	SXFV (BLACK)
\$\$ SYMBOL (BLACK)	DBL (BLACK)
\$5.00 (BLACK)	FIV\$ (BLACK)
\$10.00 (BLACK)	TEN\$ (BLACK)
\$20.00 (BLACK)	TWY\$ (BLACK)
\$30.00 (BLACK)	TRTY\$ (BLACK)
\$50.00 (BLACK)	FFTY\$ (BLACK)
\$100 (BLACK)	ONHN (BLACK)
\$200 (BLACK)	TOHN (BLACK)
\$500 (BLACK)	FVHN (BLACK)
\$1,000 (BLACK)	ONTH (BLACK)
\$20,000 (BLACK)	20TH (BLACK)
\$250,000 (BLACK)	250TH (BLACK)

01 (GREEN)	ONE (GREEN)
02 (GREEN)	TWO (GREEN)
03 (GREEN)	THR (GREEN)
04 (GREEN)	FOR (GREEN)
05 (GREEN)	FIV (GREEN)
06 (GREEN)	SIX (GREEN)
07 (GREEN)	SVN (GREEN)
08 (GREEN)	EGT (GREEN)
09 (GREEN)	NIN (GREEN)
10 (GREEN)	TEN (GREEN)
11 (GREEN)	ELV (GREEN)
12 (GREEN)	TLV (GREEN)
13 (GREEN)	TRN (GREEN)
14 (GREEN)	FTN (GREEN)
15 (GREEN)	FFN (GREEN)
16 (GREEN)	SXN (GREEN)
17 (GREEN)	SVT (GREEN)
18 (GREEN)	ETN (GREEN)
19 (GREEN)	NTN (GREEN)
20 (GREEN)	TWY (GREEN)
21 (GREEN)	TWON (GREEN)
22 (GREEN)	TWTO (GREEN)
23 (GREEN)	TWTH (GREEN)
24 (GREEN)	TWFR (GREEN)
25 (GREEN)	TWV (GREEN)
26 (GREEN)	TWSX (GREEN)
27 (GREEN)	TWSV (GREEN)
28 (GREEN)	TWET (GREEN)
29 (GREEN)	TWNI (GREEN)
30 (GREEN)	TRTY (GREEN)
31 (GREEN)	TRON (GREEN)
32 (GREEN)	TRTO (GREEN)
33 (GREEN)	TRTH (GREEN)
34 (GREEN)	TRFR (GREEN)
35 (GREEN)	TRFV (GREEN)
36 (GREEN)	TRSX (GREEN)
37 (GREEN)	TRSV (GREEN)
38 (GREEN)	TRET (GREEN)
39 (GREEN)	TRNI (GREEN)
40 (GREEN)	FRTY (GREEN)

41 (GREEN)	FRON (GREEN)
42 (GREEN)	FRTO (GREEN)
43 (GREEN)	FRTH (GREEN)
44 (GREEN)	FRFR (GREEN)
45 (GREEN)	FRFV (GREEN)
46 (GREEN)	FRSX (GREEN)
47 (GREEN)	FRSV (GREEN)
48 (GREEN)	FRET (GREEN)
49 (GREEN)	FRNI (GREEN)
50 (GREEN)	FFTY (GREEN)
51 (GREEN)	FFON (GREEN)
52 (GREEN)	FFTO (GREEN)
53 (GREEN)	FFTH (GREEN)
54 (GREEN)	FFFR (GREEN)
55 (GREEN)	FFFV (GREEN)
56 (GREEN)	FFSX (GREEN)
57 (GREEN)	FFSV (GREEN)
58 (GREEN)	FFET (GREEN)
59 (GREEN)	FFNI (GREEN)
60 (GREEN)	SXTY (GREEN)
61 (GREEN)	SXON (GREEN)
62 (GREEN)	SXTO (GREEN)
63 (GREEN)	SXTH (GREEN)
64 (GREEN)	SXFR (GREEN)
65 (GREEN)	SXFV (GREEN)
01 (BLUE)	ONE (BLUE)
02 (BLUE)	TWO (BLUE)
03 (BLUE)	THR (BLUE)
04 (BLUE)	FOR (BLUE)
05 (BLUE)	FIV (BLUE)
06 (BLUE)	SIX (BLUE)
07 (BLUE)	SVN (BLUE)
08 (BLUE)	EGT (BLUE)
09 (BLUE)	NIN (BLUE)
10 (BLUE)	TEN (BLUE)
11 (BLUE)	ELV (BLUE)
12 (BLUE)	TLV (BLUE)
13 (BLUE)	TRN (BLUE)
14 (BLUE)	FTN (BLUE)
15 (BLUE)	FFN (BLUE)

16 (BLUE)	SXN (BLUE)
17 (BLUE)	SVT (BLUE)
18 (BLUE)	ETN (BLUE)
19 (BLUE)	NTN (BLUE)
20 (BLUE)	TWY (BLUE)
21 (BLUE)	TWON (BLUE)
22 (BLUE)	TWTO (BLUE)
23 (BLUE)	TWTH (BLUE)
24 (BLUE)	TWFR (BLUE)
25 (BLUE)	TWV (BLUE)
26 (BLUE)	TWSX (BLUE)
27 (BLUE)	TWSV (BLUE)
28 (BLUE)	TWET (BLUE)
29 (BLUE)	TWNI (BLUE)
30 (BLUE)	TRTY (BLUE)
31 (BLUE)	TRON (BLUE)
32 (BLUE)	TRTO (BLUE)
33 (BLUE)	TRTH (BLUE)
34 (BLUE)	TRFR (BLUE)
35 (BLUE)	TRFV (BLUE)
36 (BLUE)	TRSX (BLUE)
37 (BLUE)	TRSV (BLUE)
38 (BLUE)	TRET (BLUE)
39 (BLUE)	TRNI (BLUE)
40 (BLUE)	FRTY (BLUE)
41 (BLUE)	FRON (BLUE)
42 (BLUE)	FRTO (BLUE)
43 (BLUE)	FRTH (BLUE)
44 (BLUE)	FRFR (BLUE)
45 (BLUE)	FRFV (BLUE)
46 (BLUE)	FRSX (BLUE)
47 (BLUE)	FRSV (BLUE)
48 (BLUE)	FRET (BLUE)
49 (BLUE)	FRNI (BLUE)
50 (BLUE)	FFTY (BLUE)
51 (BLUE)	FFON (BLUE)
52 (BLUE)	FFTO (BLUE)
53 (BLUE)	FFTH (BLUE)
54 (BLUE)	FFFR (BLUE)
55 (BLUE)	FFFV (BLUE)

56 (BLUE)	FFSX (BLUE)
57 (BLUE)	FFSV (BLUE)
58 (BLUE)	FFET (BLUE)
59 (BLUE)	FFNI (BLUE)
60 (BLUE)	SXTY (BLUE)
61 (BLUE)	SXON (BLUE)
62 (BLUE)	SXTO (BLUE)
63 (BLUE)	SXTH (BLUE)
64 (BLUE)	SXFR (BLUE)
65 (BLUE)	SXFV (BLUE)

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 (2223), 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: 2223-0000001-001.

H. Pack - A Pack of the "BREAK THE BANK SUPER TICKET®" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 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. 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 050 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 "BREAK THE BANK SUPER TICKET®" Scratch Ticket Game No. 2223.

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 "BREAK THE BANK SUPER TICKET®" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose one hundred twenty (120) Play Symbols. GAMES 1 & 2: If the player matches any of the YOUR NUMBERS Play Symbols to the WINNING NUMBER Play Symbol, the player wins the prize for that number. If the player reveals a "\$\$" Play Symbol, the player wins DOUBLE the prize for that

symbol. BONUS GAMES 1 - 4: If the player reveals 2 matching prize amounts in the same BONUS, the player wins that amount. GAME 3: If the 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 any of the player's YOUR NUMBERS Play Symbols that match a WINNING NUMBER Play Symbol are GREEN, the player wins DOUBLE the prize for that number. GAME 4: If the 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 any of the player's YOUR NUMBERS Play Symbols that match a WINNING NUMBER Play Symbol are BLUE, the player wins DOUBLE the prize for that number. 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 one hundred twenty (120) 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 one hundred twenty (120) 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 one hundred twenty (120) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the one hundred twenty (120) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to fifty-four (54) times in accordance with the approved prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. GENERAL: The \$5 Prize Symbol will only appear on winning Tickets in which the \$5 prize is part of a winning pattern.

E. GENERAL: The twelve (12) WINNING NUMBER/WINNING NUMBERS Play Symbols in GAMES 1 - 4 will be different on the same Ticket.

F. GENERAL: The WINNING NUMBER/WINNING NUMBERS Play Symbol from one (1) GAME will never match the YOUR NUMBERS Play Symbols from another GAME on the same Ticket.

G. GAMES 1 & 2: Non-winning YOUR NUMBERS Play Symbols will all be different.

H. GAMES 1 & 2: Non-winning Prize Symbols will never appear more than two (2) times.

I. GAMES 1 & 2: The "\$\$" (DBL) Play Symbol will never appear in the WINNING NUMBER Play Symbol spot.

J. GAMES 1 & 2: The "\$\$" (DBL) Play Symbol will only appear as dictated by the prize structure.

K. GAMES 1 & 2: Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

L. GAMES 1 & 2: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol(s) (i.e., 5 and \$5).

M. GAMES 1 & 2: GAME 1 and GAME 2 will not have matching Play Symbol and Prize Symbol patterns on a Ticket, unless restricted by other parameters, play action or prize structure. GAME 1 and GAME 2 have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and/or Prize Symbols in the same respective spots.

N. GAMES 3 & 4: Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

O. GAMES 3 & 4: Each GAME will contain five (5) different WINNING NUMBERS Play Symbols.

P. GAMES 3 & 4: The GREEN/BLUE Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

Q. GAMES 3 & 4: The GREEN/BLUE winning Play Symbols will only appear as dictated by the prize structure and will win DOUBLE the prize amount.

R. GAMES 3 & 4: Non-winning GAMES will contain twenty (20) different YOUR NUMBERS Play Symbols.

S. GAMES 3 & 4: On winning GAMES, non-winning YOUR NUMBERS Play Symbols will all be different.

T. GAMES 3 & 4: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and \$5).

U. GAMES 3 & 4: When comparing Play Symbols, only consider their numerical value, as they will have the same value regardless of the color.

V. GAMES 3 & 4: Non-winning GREEN/BLUE YOUR NUMBERS Play Symbols will never match any WINNING NUMBERS Play Symbols.

W. GAMES 3 & 4: GAME 3 will contain at least nine (9) but no more than eleven (11) GREEN YOUR NUMBERS Play Symbols numbers, unless restricted by the prize structure or other parameters.

X. GAMES 3 & 4: GAME 4 will contain at least nine (9) but no more than eleven (11) BLUE YOUR NUMBERS Play Symbols numbers, unless restricted by the prize structure or other parameters.

Y. GAMES 3 & 4: GAME 3 and GAME 4 will not have matching Play Symbol and Prize Symbol patterns on a Ticket, unless restricted by other parameters, play action or prize structure. GAME 3 and GAME 4 have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and/or Prize Symbols in the same respective spots.

2.3 Procedure for Claiming Prizes.

A. To claim a "BREAK THE BANK SUPER TICKET®" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BREAK THE BANK SUPER TICKET®" Scratch Ticket Game prize of \$1,000, \$20,000 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 "BREAK THE BANK SUPER TICKET®" 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 "BREAK THE BANK SUPER TICKET®" 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 "BREAK THE BANK SUPER TICKET®" 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. 2223. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2223 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10	864,000	8.33
\$20	540,000	13.33
\$30	108,000	66.67
\$50	288,000	25.00
\$100	72,000	100.00
\$200	22,200	324.32
\$500	840	8,571.43
\$1,000	144	50,000.00
\$20,000	8	900,000.00
\$250,000	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 3.80. 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. 2223 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. 2223, 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-201903840
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: October 22, 2019

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North Central Texas Council of Governments

Request for Proposals for Commercial Vehicle Enforcement Equipment and Training Program

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from firm(s) to implement a Commercial Vehicle Enforcement (CVE) Equipment and Training Program, which will provide North Texas CVE agencies with needed portable weight-

ing scales and training on how to use them. The purpose of this program is to reduce the number of commercial vehicle related crashes caused by overloaded and unsafe commercial vehicles and to protect regional roadways from damage by enforcing compliance with state laws regulating commercial vehicle weight.

Proposals must be received no later than 5:00 p.m., Central Standard Time, on Friday, December 6, 2019, to Kevin Kroll, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on Friday, November 1, 2019.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201903857
 R. Michael Eastland
 Executive Director
 North Central Texas Council of Governments
 Filed: October 23, 2019

◆ ◆ ◆
Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, November 19, 2019, at 10:00 a.m. at 118 East Riverside Drive, First Floor, Room 1B.A in Austin, Texas to receive public comments on the November 2019 Quarterly Revisions

to the Statewide Transportation Improvement Program (STIP) for FY 2019-2022.

The STIP reflects the federally funded transportation projects in the FY 2019-2022 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Dallas-Fort Worth, El Paso, Houston and San Antonio. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed November 2019 Quarterly Revisions to the FY 2019-2022 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5003, and on the department's website at: <http://www.txdot.gov/government/programs/stips.html>.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 no later than Monday, November 18, 2019, or

they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to attend the hearing are encouraged to contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5003. Requests should be made at least three working days prior to the public hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed November 2019 Quarterly Revisions to the FY 2019-2022 STIP to Peter Smith, P.E., Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, December 2, 2019.

TRD-201903846

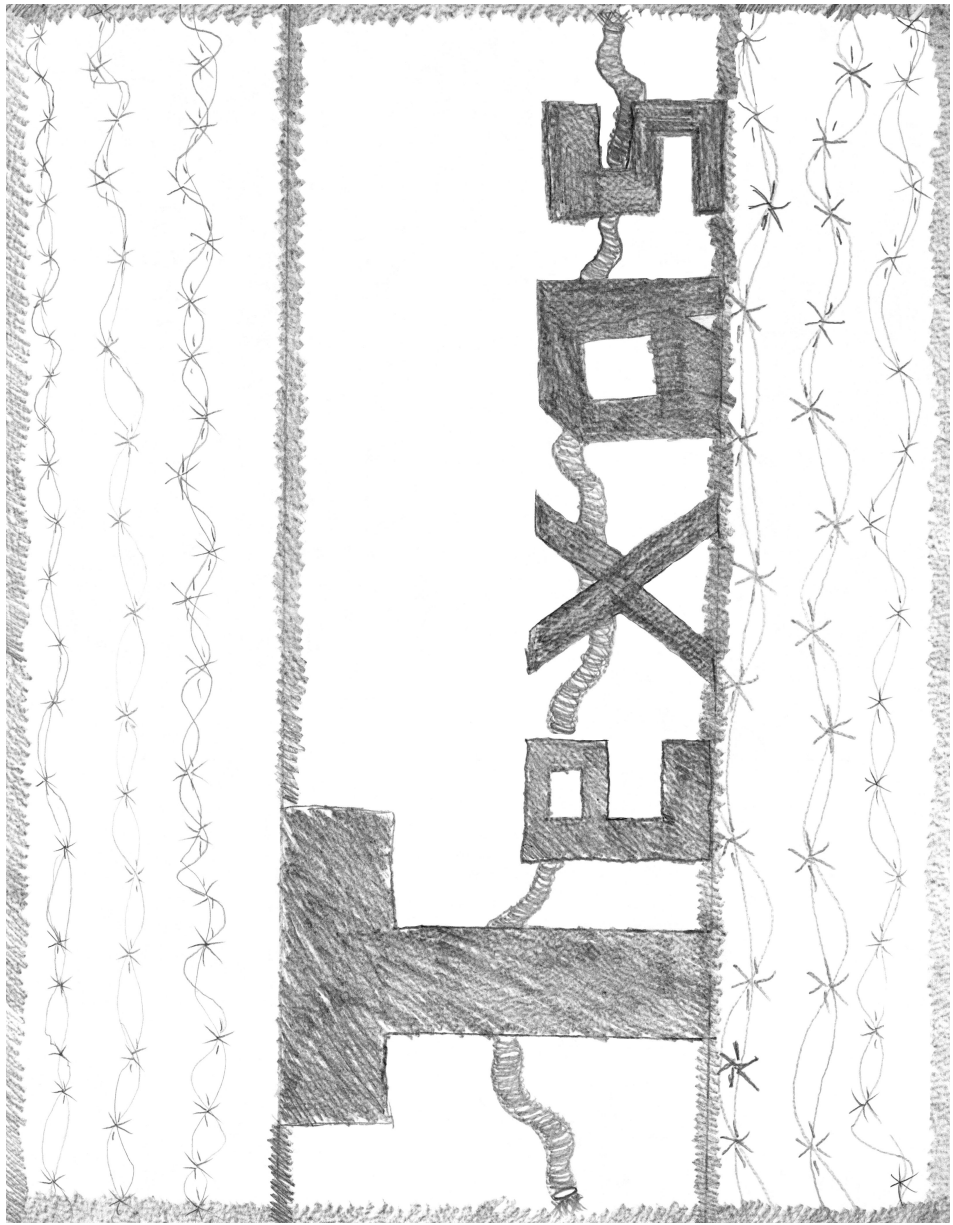
Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Filed: October 22, 2019





How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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