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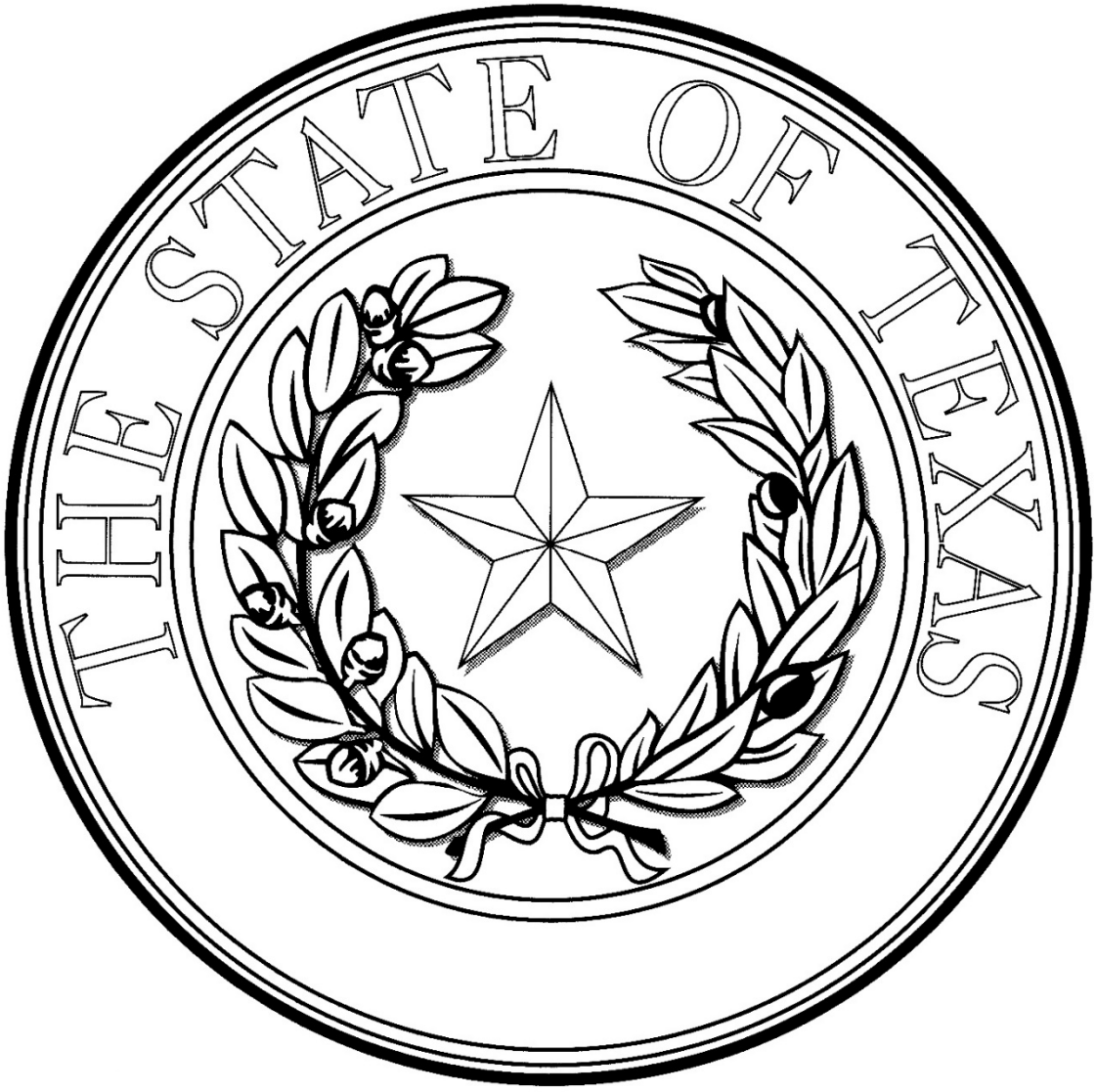

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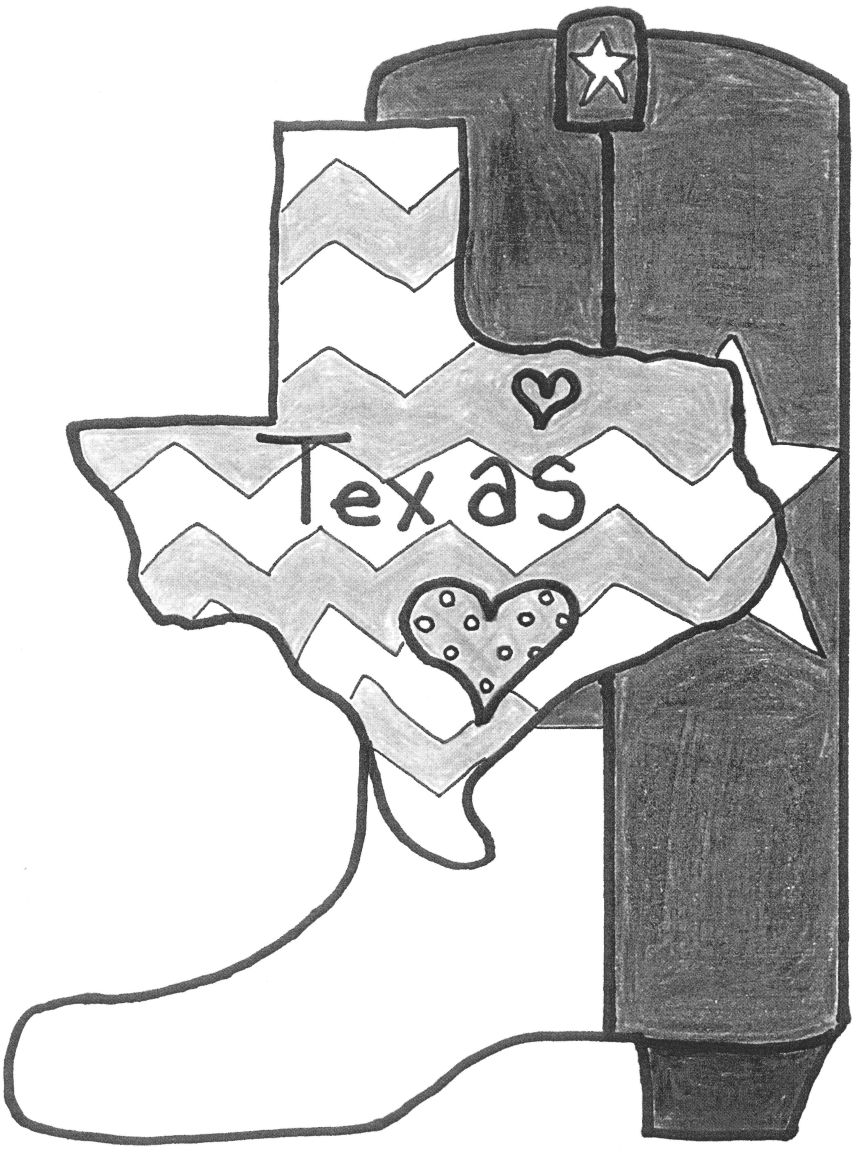

Texas

THE GOVERNOR

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

Proclamation 41-3740

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of the State of Texas, issued a disaster proclamation on August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster for Aransas, Austin, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton, and Wilson counties; and

WHEREAS, the disaster proclamation of August 23, 2017, was subsequently amended on August 26, August 27, August 28, and September 14 to add the following counties to the disaster proclamation: Angelina, Atascosa, Bastrop, Bexar, Brazos, Burleson, Caldwell, Cameron, Comal, Grimes, Guadalupe, Hardin, Jasper, Kerr, Lee, Leon, Madison, Milam, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Washington, and Willacy; and

WHEREAS, on September 20, 2017, and in each subsequent month effective through today, I issued proclamations renewing the disaster declaration for all counties listed above; and

WHEREAS, due to the catastrophic damage caused by Hurricane Harvey, a state of disaster continues to exist in those same counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for the 60 counties listed above.

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 11th day of June, 2020.

Greg Abbott, Governor

TRD-202002346

♦ ♦ ♦

Proclamation 41-3741

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of the State of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have issued proclamations renewing the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-l9, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, a state of disaster continues to exist in all counties due to COVID- 19;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all counties in Texas.

Pursuant to Section 418.017, 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, 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 cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

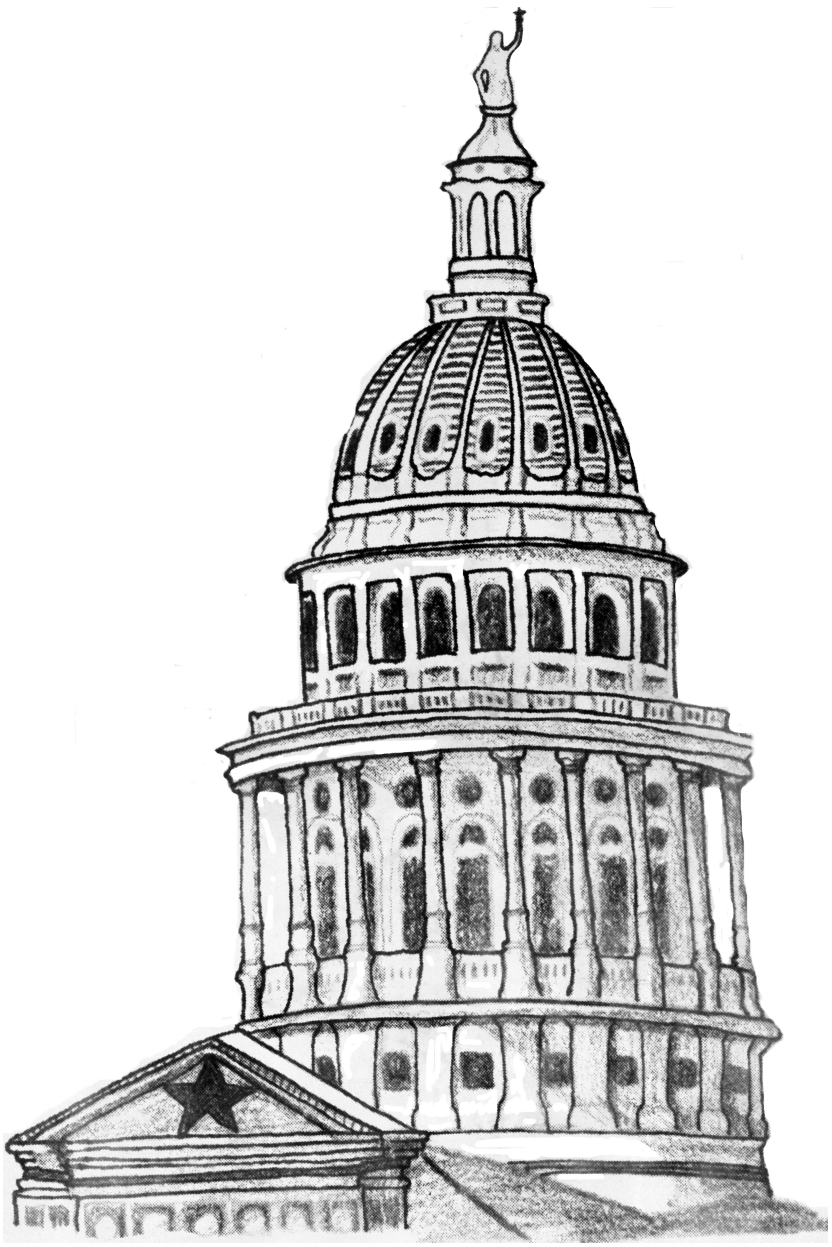
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

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 11th day of June, 2020.

Greg Abbott, Governor

TRD-202002347

♦ ♦ ♦



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-0313

Mr. Steven C. McCraw

Director

Texas Department of Public Safety

Post Office Box 4087

Austin, Texas 78773-0001

Re: Whether over-the-road buses traveling on interstate highways in Texas are subject to the tandem axle weight limitations established in Transportation Code subsection 621.101(a)(2) (RQ-0320-KP)

S U M M A R Y

Transportation Code subsection 621.101(a)(2) prohibits operation of a vehicle over or on a public highway if the vehicle has a tandem axle weight heavier than 34,000 pounds, consistent with the provision in 23 U.S.C. § 127(a)(2) also limiting the tandem axle weight of vehicles allowed to use interstate highways to 34,000 pounds. The exemption from the federal law for over-the-road buses does not preempt a state law imposing a 34,000-pound restriction otherwise applicable to those buses. Thus, over-the-road buses traveling on interstate highways in Texas are subject to the tandem axle weight limitations in Texas Transportation Code subsection 621.101(a)(2).

Opinion No. KP-0314

Mr. Mike Novak

Executive Director

Texas Facilities Commission

Post Office Box 13047

Austin, Texas 78711-3047

Re: Authority of the Texas Facilities Commission and the State Preservation Board in relation to a Bill of Rights monument authorized by House Concurrent Resolution No. 111, adopted by the Eightieth Legislature (RQ-0322-KP)

S U M M A R Y

House Concurrent Resolution 111, adopted in 2007 by the Eightieth Legislature, authorized the State Preservation Board and the Facilities Commission to approve and permit the construction of a monument on the Capitol grounds commemorating the Bill of Rights of the United States Constitution. The Legislature gave the Board and the Commission discretion about whether to approve and permit the construction of such a monument and where to locate the monument.

The Legislature requires the State Preservation Board to review and approve the site selection and construction of monuments within the Capitol Complex.

Opinion No. KP-0315

The Honorable Roberto Serna

District Attorney

293rd Judicial District

458 Madison Street

Eagle Pass, Texas 78852

Re: Application of article III, section 53 of the Texas Constitution to invoices submitted to a county under an amended service contract for services performed prior to the amendment (RQ-0323-KP)

S U M M A R Y

Article III, section 53 of the Texas Constitution prohibits a county or municipal authority from granting extra compensation "after service has been rendered, or a contract has been entered into, and performed in whole or in part."

A county's payment of an amount owed under a contract for services required by that contract is not prohibited extra compensation. Though some services may have already been provided under an original contract, if an amended contract is supported by new consideration, payment of an invoice submitted thereunder would comply with article III, section 53 provided the new consideration is sufficient. A change in the scope of work to require additional services in exchange for an additional payment likely constitutes adequate consideration in support of the amendment, but that is a question for the commissioners court in the first instance.

Opinion No. KP-0316

Mr. Darrell T. Brownlow

Chairman

San Antonio River Authority

100 East Guenther Street

San Antonio, Texas 78204-1401

Re: Whether the San Antonio River Authority may release an inundation easement that has been declared surplus without receiving fair market value (RQ-0325-KP)

S U M M A R Y

Water Code section 49.226 provides for the sale or exchange of surplus real or personal property of certain water districts. The San Antonio River Authority may dispose of, sell, or release a surplus inundation easement without receiving fair market value pursuant to section 49.226.

A transfer of a real property interest in exchange for adequate consideration is not an unconstitutional gratuity under article III, section 52(a) of the Texas Constitution, which prohibits the gratuitous donation of public funds or a thing of value.

It is for the governing body of the San Antonio River Authority in the first instance to determine whether any particular transaction is supported by adequate consideration; and, if the transaction includes any element of donation, whether the transaction satisfies article III, section 52(a).

Opinion No. KP-0317

The Honorable Senfronia Thompson

Chair, House Committee on Public Health

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of Fort Bend Independent School District to maintain a historic cemetery discovered on a school construction site (RQ-0326-KP)

S U M M A R Y

The Legislature prohibits an owner of property on which an abandoned cemetery has been discovered from constructing improvements on the property in a manner that would disturb the cemetery. If a property owner complies with this requirement, the law generally does not prohibit the property owner from maintaining the cemetery on the land.

Pursuant to Health & Safety Code section 713.009, a municipality may, by resolution, take possession and control of a cemetery within its boundaries or extraterritorial jurisdiction if the cemetery threatens or endangers public health, safety, comfort, or welfare. Chapter 715 of the Health and Safety Code authorizes a district court to, upon making certain findings, issue an order authorizing a nonprofit corporation to restore, operate, and maintain a historic cemetery. In the absence of a municipal resolution taking possession of the cemetery or a court order authorizing a different entity to maintain the cemetery, the Fort Bend Independent School District may continue to maintain the cemetery discovered on its land in 2018.

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

TRD-202002402
Lesley French
General Counsel
Office of the Attorney General
Filed: June 16, 2020

♦ ♦ ♦

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY

SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.57

The Texas State Board of Public Accountancy extends its adoption of an emergency rule amending §511.57, concerning Qualified Accounting Courses, for an additional 60 days. The emergency amendment to §511.57 was originally published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2099).

Reasoned Justification

In March 2020, a number of higher education institutions in Texas converted from a physical class room presence to online electronic learning in order to minimize the risk of exposure, contraction and spread of the COVID-19 virus among on-campus students, faculty and educational institution employees. Doing so caused the student's online course work to not qualify for the CPA exam. This is because Board rules required an applicant to take the Certified Public Accountancy Exam to have a minimum of 15 in-person classroom hours of advanced accounting courses.

In order for the Board to recognize the online courses the universities were converting to, the Board enacted an emergency rulemaking immediately eliminating for 120 days the 15 hours of in-person classroom attendance. This occurred at the Board's March meeting.

When the emergency rulemaking occurred, the Board was already considering the elimination of the 15 hours of in-person advanced accounting course requirement. In fact the Board, at its next meeting in May, proposed an amendment to §511.57 to eliminate the requirement. The Board will consider the adoption of the proposed amendment at its July Board meeting but in order to maintain the effect of the emergency rule in the interim, the Board must extend the emergency rulemaking an additional 60 days as allowed by law.

This extension to the emergency rulemaking is enacted pursuant to the authority granted in §2001.034 Texas Government Code.

The statute affected by this extension to the emergency rulemaking is Chapter 901 of the Texas Occupations Code.

§511.57. Qualified Accounting Courses.

(a) An applicant shall meet the board's accounting course requirements in one of the following ways:

(1) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this title (relating to Recognized Institutions of Higher Education) and present valid transcript(s) from board-recognized institution(s) that show degree credit for no fewer than 30 semester credit hours of upper division accounting courses as defined in subsection (e) of this section; or

(2) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this title, and after obtaining the degree, complete the requisite 30 semester credit hours of upper division accounting courses, as defined in subsection (e) of this section, from four-year degree granting institutions, or accredited community colleges, provided that all such institutions are recognized by the board as defined by §511.52 of this title, and that the accounting programs offered at the community colleges are reviewed and accepted by the board.

(b) Credit for hours taken at board-recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester credit hour for each hour of credit received under the quarter system.

(c) The board will accept no fewer than 30 semester credit hours of accounting courses from the courses listed in subsection (e)(1) - (14) of this section. The hours from a course that has been repeated will be counted only once toward the required 30 semester hours. The courses must meet the board's standards by containing sufficient business knowledge and application to be useful to candidates taking the UCPAE. A board-recognized institution of higher education must have accepted the courses for purposes of obtaining a baccalaureate degree or its equivalent, and they must be shown on an official transcript. [~~At least 15 of these hours must result from physical attendance at classes meeting regularly on the campus of the transcript-issuing institution.~~]

(d) A non-traditionally-delivered course meeting the requirements of this section must have been reviewed and approved through a formal, institutional faculty review process that evaluates the course and its learning outcomes and determines that the course does, in fact, have equivalent learning outcomes to an equivalent, traditionally delivered course.

(e) The subject-matter content should be derived from the UCPAE Content Specifications Outline and cover some or all of the following:

(1) financial accounting and reporting for business organizations that may include:

(A) up to nine semester credit hours of intermediate accounting;

(B) advanced accounting;

(C) accounting theory;

(2) managerial or cost accounting (excluding introductory level courses);

(3) auditing and attestation services;

(4) internal accounting control and risk assessment;

(5) financial statement analysis;

(6) accounting research and analysis;

(7) up to 12 semester credit hours of taxation (including tax research and analysis);

(8) financial accounting and reporting for governmental and/or other nonprofit entities;

(9) up to 12 semester credit hours of accounting information systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;

(10) up to 12 semester credit hours of accounting data analytics, provided the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting (while data analytics tools may be taught in the courses, application of the tools should be the primary objective of the courses);

(11) fraud examination;

(12) international accounting and financial reporting;

(13) an accounting internship program (not to exceed 3 semester credit hours) which meets the following requirements:

(A) the accounting knowledge gained is equal to or greater than the knowledge gained in a traditional accounting classroom setting;

(B) the employing firm provides the faculty coordinator and the student with the objectives to be met during the internship;

(C) the internship plan is approved in advance by the faculty coordinator;

(D) the employing firm provides significant accounting work experience with adequate training and supervision of the work performed by the student;

(E) the employing firm provides an evaluation of the student at the conclusion of the internship, provides a letter describing the duties performed and the supervision to the student, and provides a copy of the documentation to the faculty coordinator and the student;

(F) the student keeps a diary comprising a chronological list of all work experience gained in the internship;

(G) the student writes a paper demonstrating the knowledge gained in the internship;

(H) the student and/or faculty coordinator provides evidence of all items upon request by the board;

(I) the internship course shall not be taken until a minimum of 12 semester credit hours of upper division accounting course work has been completed; and

(J) the internship course shall be the equivalent of a traditional course; and

(14) at its discretion, the board may accept up to three semester hours of credit of accounting course work with substantial merit in the context of a career in public accounting, provided the course work is predominantly accounting or auditing in nature but not included in paragraphs (1) - (12) of this subsection. For any course submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing the course's merit and content.

(f) The board requires that a minimum of two semester credit hours in research and analysis relevant to the course content described in subsection (e)(6) or (7) of this section be completed. The semester credit hours may be obtained through a discrete course or offered through an integrated approach. If the course content is offered through integration, the institution of higher education must advise the board of the course(s) that contain the research and analysis content.

(g) The following types of introductory courses do not meet the accounting course definition in subsection (e) of this section:

(1) elementary accounting;

(2) principles of accounting;

(3) financial and managerial accounting;

(4) introductory accounting courses; and

(5) accounting software courses.

(h) Any CPA review course offered by an institution of higher education or a proprietary organization shall not be used to meet the accounting course definition.

(i) CPE courses shall not be used to meet the accounting course definition.

(j) An ethics course required in §511.58(c) of this chapter (relating to Definitions of Related Business Subjects and Ethics Courses) shall not be used to meet the accounting course definition in subsection (e) of this section.

(k) Accounting courses completed through an extension school of a board recognized educational institution may be accepted by the board provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

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

Filed with the Office of the Secretary of State on June 15, 2020.

TRD-202002386
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: July 9, 2020
Expiration date: September 7, 2020
For further information, please call: (512) 305-7842

♦ ♦ ♦

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 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 6. STATE RECORDS

SUBCHAPTER A. RECORDS RETENTION SCHEDULING

13 TAC §§6.1, 6.5, 6.8

The Texas State Library and Archives Commission (Commission) proposes amendments to 13 TAC §6.1, Definitions; §6.5, Certification of Records Retention Schedules and Amendments; and §6.8, Implementation of Certified Records Retention Schedules.

The proposed amendments include changes to improve accuracy and clarity as well as the addition of references to the Texas State University Retention Schedule (URRS), added as §6.10(b) in December 2019.

SUMMARY. The proposed amendments to §6.1 add the definition of Texas State University Records Retention Schedule, update the definition of Texas State Records Retention Schedule for consistency, and renumber the definitions accordingly.

The proposed amendment to §6.5 adds a reference to the Texas State University Records Retention Schedule.

The proposed amendment to §6.8 updates the title of a referenced standard and adds the ability to transfer archival records in electronic format.

FISCAL NOTE. Craig Kelso, Director, State & Local Records Management Division, has determined that for each of the first five years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Kelso has also determined that for the first five-year period the amended rules are in effect, the public benefit will be consistency and clarity in the schedule, which will help to provide better management of records. Better management of records will improve retention of public records and increase access to those records by the public.

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 local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT. The Commission has determined that the proposed amendments do not require an environmental impact analysis because these amendments are not major environmental rules under the Texas Government Code §2001.0225.

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Kelso has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Commission staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specific in Texas Government Code §2006.0221. 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. The Commission 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. Written comments on the proposed amendments may be directed to Megan Carey, Manager, Records Management Assistance, via email at rules@tsl.texas.gov, or by mail to P.O. Box 12927, Austin, Texas, 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY. The amended section is proposed under Government Code, §441.158, which requires the Commission to adopt records retention schedules by rule and requires the Commission to provide records retention schedules to local governments, and Government Code, §441.160, which allows the commission to revise the schedules.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§6.1. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these sections shall have the meanings defined in Government Code, §441.180.

(1) Agency head--The appointed or elected official who serves by the state constitution, state statute, or action of the governing body of a state agency as the chief executive and administrative officer of a state agency.

(2) Archival state record--Any state record of enduring value that will be preserved on a continuing basis by the commission or another state agency until the state archivist indicates that based on a reappraisal of the record it no longer merits further retention.

(3) Certification--The process, inclusive of recertification, by which a records retention schedule or amendments to a schedule are approved for use by a state agency during a certification period.

(4) Certification period--The period of time during which a records retention schedule, including certified amendments to the schedule, may be used by a state agency in the final disposition of state records without additional authorization from the director and librarian.

(5) Commission--The Texas State Library and Archives Commission.

(6) Component--A division, department, program, or other subdivision of a state agency.

(7) Confidential state record--Any state record to which public access is denied under Government Code, Chapter 552, or other state or federal law.

(8) Decertification--The process by which an approved records retention schedule of a state agency is disapproved because of failure of the state agency to adhere to the requirements of Government Code, Chapter 441, Subchapter L, and these rules adopted under that subchapter.

(9) Director and librarian--The chief executive and administrative officer of the Texas State Library and Archives Commission.

(10) Final disposition--Final processing of state records by either destruction or archival preservation by the commission, by a state agency, or by an alternate archival institution as permitted by Government Code, Chapter 441, Subchapter L.

(11) Records management officer--The agency head or the person appointed by the agency head to act as the state agency's representative in all issues of records management policy, responsibility, and statutory compliance pursuant to Government Code, §441.184.

(12) Records retention schedule--A document prepared in accordance with §6.2 of this title (relating to Submission of Records Retention Schedules for Certification).

(13) Records series--A group of identical or related records that are normally used and/or filed together, and that permit evaluation as a group for retention scheduling purposes.

(14) Retention period--The period of time during which state records must be maintained before final disposition.

(15) State agency--Any department, commission, board, office, or other agency in the executive, legislative, or judicial branch of state government created by the constitution or a statute of this state, including an eleemosynary institution; any university system and its components; any institution of higher education as defined by §61.003, Education Code, except a public junior college, not governed by a university system board; the Texas Municipal Retirement System and the Texas County and District Retirement System; and any public nonprofit corporation created by the legislature whose responsibilities and authority are not limited to a geographical area less than that of the state.

(16) State archivist--The person designated by the director and librarian to administer the state archives program under Government Code, §441.181.

(17) State record--Any written, photographic, machine-readable, or other recorded information created or received by or on behalf of a state agency or an elected state official that documents activities in the conduct of state business or use of public resources. The term does not include library or museum material made or acquired and preserved solely for reference or exhibition purposes; an extra copy of recorded information preserved only for reference; a stock of publications or blank forms; or any records, correspondence, notes, memoranda, or other documents, other than a final written agreement described by §2009.054(c), associated with a matter conducted under an alternative dispute resolution procedure in which personnel of a state department or institution, local government, special district, or other political subdivision of the state participated as a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

(18) State records administrator--The person designated by the director and librarian to administer the state records management program under Government Code, §441.182.

(19) Texas State Records Retention Schedule--Figure 13 TAC §6.10(a) [~~1 of §6.10~~] of this title (relating to Texas State Records Retention Schedule).

(20) Texas State University Records Retention Schedule--Figure 13 TAC §6.10(b) of this title (relating to Texas State University Records Retention Schedule).

(21) [~~(20)~~] Vital state record--Any state record necessary to the resumption or continuation of state agency operations in an emergency or disaster; the re-creation of the legal and financial status of the agency; or the protection and fulfillment of obligations to the people of the state.

§6.5. Certification of Records Retention Schedules and Amendments.

(a) To be a candidate for certification, a records retention schedule must:

(1) list all records series maintained by the state agency, regardless of medium;

(2) indicate whether the records are archival state records or state records that must be reviewed by the state archivist for potential archival value prior to their destruction;

(3) ensure that state records maintained by the state agency listed in the Texas State Records Retention Schedule or Texas State University Records Retention Schedule are retained for the minimum periods prescribed in the schedules;

(4) ensure that state records not listed in the Texas State Records Retention Schedule are kept for a length of time sufficient to meet administrative, legal, fiscal, and archival requirements; and

(5) be submitted in a manner and form prescribed by the state records administrator.

(b) To be a candidate for certification, an amendment to a records retention schedule must meet the criteria in paragraphs (2) - (5) of subsection (a) of this section.

(c) To be certified, a records retention schedule or an amendment to the schedule must be approved by the director and librarian and may also require the approval of the state auditor.

§6.8. Implementation of Certified Records Retention Schedules.

(a) A state agency must establish policies and procedures to ensure state records are maintained until the expiration of the retention periods on its records retention schedule.

(b) Final disposition of state records must ensure that:

(1) archival state records scheduled to be preserved by the commission are transferred to the commission on paper, on microform that meets the specifications in [~~the then most current version of~~] American National Standard for Imaging Materials - Processed Silver-Gelatin Type Black-and-White Film - Specifications for Stability (ANSI/NAPM IT9.1-1996), in electronic format that meets the requirements of the state archives, [~~(ANSI/NAPM IT9.1,)~~] or in another medium with prior approval of the state archivist;

(2) records scheduled for destruction are destroyed in a manner that ensures protection for any sensitive or confidential information; and

(3) the final disposition of records is documented by the state agency.

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

Filed with the Office of the Secretary of State on June 11, 2020.

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Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: July 26, 2020
For further information, please call: (512) 463-5591

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CHAPTER 7. LOCAL RECORDS
SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.125

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §7.125(a)(10) is not included in the print version of the Texas Register. The figure is available in the on-line version of the June 26, 2020, issue of the Texas Register.)

The Texas State Library and Archives Commission (Commission) proposes amendments to 13 TAC §7.125(a)(10), Local Government Retention Schedule EL (Records of Elections and Voter Registration).

The proposed amendments include formatting revisions necessary to ensure accuracy of information in the header and footer of the document.

SUMMARY. The proposed amendments to §7.125(a)(10) correct the reference to the current edition of the schedule (4th). Proposed amendments to the figure correct inaccurate information in the document header and footer and improve style consistency with other local government retention schedules.

The following proposed amendments appear in the Attached Graphic of §7.125(a)(10).

The proposed amendment to the text in the document header will add the effective date of the revised 4th edition to every page, which replaces the incorrect effective date of the last edition.

The proposed amendment to the text on pg. 4, Table of Contents, reflects the corrected pagination.

The proposed amendment to the text in the document footer corrects the pagination on pages 5-24.

The proposed amendment revises the line-spacing and font style to be consistent with the formatting of other recent editions of local government retention schedules.

FISCAL NOTE. Craig Kelso, Director, State & Local Records Management Division, has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Kelso has also determined that for the first five-year period the amended rules are in effect, the public benefit will be consistency and clarity in the schedule, which will help to provide better management of records. Better management of records will improve retention of public records and increase access to those records by the public.

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 local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT. The Commission has determined that the proposed amendments do not require an environmental impact analysis because these amendments are not major environmental rules under the Texas Government Code §2001.0225.

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Kelso has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Commission staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specific in Texas Government Code §2006.0221. 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. The Commission 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. Written comments on the proposed amendments may be directed to Megan Carey, Manager, Records Management Assistance, via email rules@tsl.texas.gov, or mail, P.O. Box 12927, Austin, Texas, 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY. The amended section is proposed under Government Code, §441.158, which requires the Commission to adopt records retention schedules by rule and requires the Commission to provide records retention schedules to local governments, and Government Code, §441.160, which allows the commission to revise the schedules.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§7.125. Records Retention Schedules.

(a) The following records retention schedules, required to be adopted by rule under Government Code §441.158(a) are adopted.

(1) Local Schedule GR: Records Common to All Local Governments, Revised 5th Edition.
Figure: 13 TAC §7.125(a)(1) (No change.)

(2) Local Schedule PW: Records of Public Works and Other Government Services, 2nd Edition.
Figure: 13 TAC §7.125(a)(2) (No change.)

(3) Local Schedule CC: Records of County Clerks, Revised 3rd Edition.
Figure: 13 TAC §7.1259(a)(3) (No change.)

(4) Local Schedule DC: Records of District Clerks, Revised 3rd Edition.
Figure: 13 TAC §7.125(a)(4) (No change.)

(5) Local Schedule PS: Records of Public Safety Agencies, Revised 4th Edition.
Figure: 13 TAC §7.125(a)(5) (No change.)

(6) Local Schedule SD: Records of Public School Districts, 3rd Edition.
Figure: 13 TAC §7.125(a)(6) (No change.)

(7) Local Schedule JC: Records of Public Junior Colleges, 2nd Edition.
Figure: 13 TAC §7.125(a)(7) (No change.)

(8) Local Schedule LC: Records of Justice and Municipal Courts, Revised 2nd Edition.
Figure: 13 TAC §7.125(a)(8) (No change.)

(9) Local Schedule TX: Records of Property Taxation, 3rd Edition.
Figure: 13 TAC §7.125(a)(9) (No change.)

(10) Local Schedule EL: Records of Elections and Voter Registration, 4th [~~3rd~~] Edition.
Figure: 13 TAC §7.125(a)(10)
[~~Figure: 13 TAC §7.125(a)(10)~~]

(11) Local Schedule HR: Records of Public Health Agencies, 2nd Edition.
Figure: 13 TAC §7.125(a)(11) (No change.)

(12) Local Schedule UT: Records of Utility Services, 2nd Edition.
Figure: 13 TAC §7.125(a)(12) (No change.)

(b) The retention periods in the records retention schedules adopted under subsection (a) of this section serve to amend and replace the retention periods in all editions of the county records manual published by the commission between 1978 and 1988. The retention periods in the manual, which were validated and continued in effect by Government Code §441.159, until amended, are now without effect.

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

Filed with the Office of the Secretary of State on June 11, 2020.

TRD-202002338
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: July 26, 2020
For further information, please call: (512) 463-5591

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.158 (Suspension or Revocation of License), §401.160 (Standard Penalty Chart), §401.301 (General Definitions), §401.302 (Scratch Ticket Game Rules), §401.304 (Draw Game Rules (General)), §401.305 ("Lotto Texas®" Draw Game Rule), §401.307 ("Pick 3" Draw Game Rule), §401.308 ("Cash Five" Draw Game Rule), §401.312 ("Texas Two Step" Draw Game Rule), §401.315 ("Mega Millions" Draw Game Rule), §401.316 ("Daily 4" Draw Game Rule), §401.317 ("Powerball®" Draw Game Rule), §401.320 ("All or Nothing" Draw Game Rule), §401.321 (Instant Game Tickets Containing Non-English Words), §401.322 ("Texas Triple Chance" Draw Game Rule), §401.351 (Proceeds from Ticket Sales), §401.353 (Retailer Settlements, Financial Obligations, and Commissions), §401.355 (Restricted Sales), §401.363 (Retailer Record) §401.366 (Compliance with All Applicable Laws), and §401.368 (Lottery Ticket Vending Machines).

The proposed rule amendments are a result of the Commission's recent rule review conducted in accordance with Texas Government Code §2001.039. The proposed amendments will simplify and update the rules to conform to industry best practices. The proposed amendments also include updates and clarifications of certain terms to conform usage of those terms throughout the

rules (e.g., replacing the terms "instant ticket" and "instant game" with "scratch ticket" and "scratch ticket game").

Among the more significant changes, the proposed amendments move the draw game "playslip" and "entry of play" provisions from various specific draw game rules to the definitions and general draw game rule with language that will apply consistently to all draw games. Likewise, the proposed amendments move the general provisions regarding authorized promotions and retail bonus/incentives from individual draw game rules to the general draw game rule. The proposed amendments also update the various game trademarks and definitions of "playboard" for consistency purposes.

The proposed amendments to Rule 401.158 (Suspension or Revocation of License) and the penalty chart in Rule 401.160 (Standard Penalty Chart) update and clarify lottery enforcement policy and practice. The proposed amendments also remove certain outdated requirements from the licensing rules and retailer rules.

Additionally, the proposed amendments include the repeal of §401.322 ("Texas Triple Chance" Draw Game Rule) because that draw game is no longer offered. The proposed amendments also remove references to "Lotto Texas® Winner Take All®" from §401.305 ("Lotto Texas®" Draw Game Rule) because that promotion was never implemented. The proposed removal of the foregoing provisions will further streamline and simplify the Commission's rules.

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

Ryan Mindell, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit expected is a greater understanding of the Commission's rules and games by licensed lottery retailers and lottery players based on the removal of obsolete language and the use of updated and consistent terminology. By simplifying the rules, an increase in understanding should lead to increased compliance by retailers and increased play by players.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

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

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

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

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

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

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

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

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

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

SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §401.158, §401.160

These amendments are proposed under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

§401.158. Suspension or Revocation of License.

(a) The commission may suspend or revoke any license issued under this subchapter if the commission finds that any factor listed as grounds for denial of a license under §401.153(b) of this title (relating to Qualifications for License) or any factor listed in subsection (b) of this section apply to the licensee. The commission shall inform the sales agent in writing of the decision to suspend or revoke a license for any of these reasons. In addition, in the event of a license suspension under this section, the director of the Lottery Operations Division shall also inform the licensee of the terms under which the suspended license may be reissued.

(b) Without limiting the commission's ability to consider factors listed in §401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

(1) licensee engages in telecommunication or printed advertising that the director determines to have been false, deceptive or misleading;

(2) licensee conditions redemption of a lottery prize upon the purchase of any other item or service;

(3) licensee imposes a restriction upon the redemption of a lottery prize not specifically authorized by the director;

(4) licensee fails to follow instructions and procedures for the conduct of any [~~particular~~] lottery game, lottery special event or promotion;

(5) licensee and/or its employee(s) exhibit discourteous treatment including, but not limited to, abusive language toward customers, commission employees or commission vendors;

(6) licensee fails to establish or maintain reasonable security precautions regarding [~~with regard to~~] the handling of lottery tickets and other materials;

(7) licensee fails to deface a validated ticket;

(8) licensee sells a draw game ticket for a draw that has already taken place;

(9) licensee fails to follow validation procedures, including, but not limited to, paying a claim without validating the ticket, failing to pay a valid prize after validating a customer's winning ticket, or retaining a customer's winning ticket that has not been validated;

[~~(7) licensee endangers the security and/or integrity of the lottery games operated by the commission;~~]

(10) [~~(8)~~] licensee violates any directive or instruction issued by the director of the Lottery Operations Division;

(11) [~~(9)~~] licensee violates any express term or condition of its license not specifically set forth in this subchapter;

[~~(10) licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period;~~]

(12) [~~(11)~~] licensee sells a scratch ticket from a game that has closed after the date designated for the end of the game;

[~~(12) licensee fails to pay a valid prize in the amount specified on the validation slip generated on the licensee's terminal or to pay the authorized amount;~~]

[~~(13) licensee fails to pay a valid prize the licensee is required to pay;~~]

[~~(14) licensee refuses or fails to sell lottery tickets during all normal business hours of the lottery retailer;~~]

(13) [~~(15)~~] licensee refuses to refund or properly cancel [~~and/or fails to properly cancel~~] a Pick 3 or Daily 4 ticket;

(14) [~~(16)~~] licensee fails to return an exchange ticket to a prize claimant claiming a prize on a multi-draw ticket if an exchange ticket is produced by the licensee's terminal;

(15) [~~(17)~~] licensee fails to keep accurate and complete records of all tickets that have not been sold from confirmed, active, and settled packs; [~~from confirmed, active, and settled packs that have not been sold;~~]

[~~(18) licensee fails or refuses to meet minimum sales criteria;~~]

(16) [~~(19)~~] licensee fails to meet any requirement under §401.368 of this title (relating to Lottery Ticket Vending Machines), if the licensee has been supplied with a self-service lottery ticket vending machine by the commission;

(17) [~~(20)~~] licensee fails to take readily achievable measures within the allowed time period to comply with the barrier removal requirements regarding the ADA;

(18) [~~(21)~~] licensee fails to prominently post license;

(19) Licensee sells tickets that were assigned to another licensed location;

(20) [~~(22)~~] licensee knowingly sells a ticket or pays a lottery prize to another person who is:

(A) an officer or an employee of the commission;

(B) an officer, member, or employee of a lottery operator;

(C) an officer, member, or employee of a contractor or subcontractor that is excluded by the terms of its contract from playing lottery games;

(D) the spouse, child, brother, sister, or parent of a person described by subparagraph (A), (B), or (C) of this paragraph who resides within the same household as that person;

(21) Licensee endangers the security and/or integrity of the lottery games operated by the commission;

(22) [~~(23)~~] licensee intentionally or knowingly sells a ticket at a price the licensee knows is greater than the price set by the executive director;

(23) Licensee charges a fee for lottery ticket purchases using a debit card and/or requires a minimum dollar amount for debit card purchases of only lottery tickets;

(24) licensee sells tickets at a location [~~issued to a licensed location at another location~~] that is not licensed;

(25) licensee intentionally or knowingly sells a ticket by extending credit or lends money to enable a person to buy a ticket;

(26) licensee intentionally or knowingly sells a ticket to a person that the licensee knows is younger than 18 years;

(27) licensee intentionally or knowingly sells a ticket and accepts anything for payment not specifically allowed under the State Lottery Act;

(28) licensee sells tickets over the telephone or via mail order sales, establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the licensee intentionally or knowingly:

(A) uses any part of the funds solicited or accepted for a purpose other than purchasing tickets on behalf of the group or pool; or

(B) retains a share of any prize awarded as compensation for establishing or promoting the group purchase or pooling arrangement;

(29) licensee intentionally or knowingly alters or forges a ticket;

(30) licensee intentionally or knowingly influences or attempts to influence the selection of a [~~the~~] winner of a lottery game;

(31) licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation;

(32) licensee intentionally or knowingly tampers with, damages, defaces, or renders inoperable any vending machine, electronic computer terminal, or other mechanical device used in a lottery game, or fails to exercise due care in the treatment of commission property;

(33) licensee:

(A) induces another person to assign or transfer a right to claim a prize;

(B) initiates or accepts an offer to sell the right to claim a prize;

(C) initiates or accepts an offer of compensation from another person to claim a lottery prize; or

(D) purchases, for anything of value, a lottery ticket from a person who is not a licensed lottery retailer;

(34) licensee intentionally or knowingly makes a statement or entry that the person knows to be false or misleading on a required report;

(35) licensee fails to maintain or make an entry the licensee knows is required to be maintained or made for a required report;

(36) licensee knowingly refuses to permit the director of the Lottery Operations Division, the executive director, commission, the lottery operator, the employees or agents of the lottery operator, or the state auditor to examine the agent's books, records, papers or other objects, or refuses to answer any question authorized under the State Lottery Act;

(37) licensee intentionally or knowingly makes a material and false or incorrect, or deceptive statement, written or oral, to a person conducting an investigation under the State Lottery Act or a commission rule;

(38) licensee commits an offense of conspiracy as defined in the State Lottery Act;

(39) licensee sells or offers for sale any interest in a lottery of another state or state government or an Indian tribe or tribal government, including an interest in an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of the interest; [~~or~~]

(40) licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period;

(41) licensee fails to pay the full amount of money owed to the commission after a nonsufficient funds transfer or non-transfer of funds to the commission's account; or

(42) [~~(40)~~] licensee has violated a provision of the State Lottery Act, Government Code, Chapter 466, or a commission rule adopted under the State Lottery Act.

§401.160. Standard Penalty Chart.

(a) The commission, through the director of the Lottery Operations Division, may offer settlements to persons charged with violating the provisions of the State Lottery Act or rules of the commission. Settlement of those cases, unless otherwise provided for elsewhere in this rule, shall be in compliance with the following standard penalty chart. A settlement will be in the form of an Agreement and Consent Order of the commission.

(b) A repeat violation by a licensee justifies the penalty for a second or third violation if it occurs within 12 months of the first violation. Violations need not be the same or similar in nature to previous violations to be considered repeat violations.

(c) A penalty for an alleged repeat violation shall not be assessed unless the alleged violation occurs after the licensee has been notified, in writing, of the first alleged violation. Notwithstanding the preceding sentence, if an alleged violation is discovered during an undercover operation, then no notice of any prior alleged violations may be necessary to assess a penalty for a repeat violation. The requirement that written notice be given to a licensee shall not be interpreted to require that a notice of hearing for the violation be delivered to the licensee.

(d) The list of violations in the standard penalty chart is not an exclusive list of violations of the commission or rules of the commission. The commission is authorized to assess penalties for any violation of any of the foregoing statutes or rules for which a penalty is not provided on the chart. Any penalty assessed for a violation not provided for on the standard penalty chart shall be approved by the director of the Lottery Operations Division or his/her designee prior to its assessment.

(e) Any person responsible for assessing a penalty for a violation may deviate from the standard penalty chart if mitigating circumstances are involved and consideration will be given to all the factors listed in subsection (g) of this section. If a recommendation deviating from the standard penalty chart is made, it must be made in writing and be filed with the case report. Final approval shall be made by the director of the Lottery Operations Division or his/her designee.

(f) The standard penalty chart does not bind an administrative law judge or the commission as to penalties for any violation determined to have occurred by the facts presented in an administrative hearing and the record of that proceeding shall be the determining factor as to the sufficiency of the penalty assessed.

(g) Based upon consideration of the following factors, the commission may impose penalties other than the penalties recommended in §401.158 of this title (relating to Suspension or Revocation of License) and/or this section:

(1) Severity of the offense;

(2) Danger to the public;

(3) Number of repetition of offenses;

(4) Number of complaints previously found justified against the licensee;

(5) Length of time the licensee has held a license;

(6) Actual damage, physical or otherwise, caused by the violations;

(7) Deterrent effect of the penalty imposed;

(8) Attempts by licensee to correct or stop violations or refusal by licensee to correct or stop violations;

(9) Penalties imposed for related offenses; or

(10) Any other mitigating or aggravating circumstances.

(h) Standard Penalty Chart.

Figure: 16 TAC §401.160(h)

[~~Figure: 16 TAC §401.160(g)(10)~~]

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 D. LOTTERY GAME RULES

16 TAC §§401.301, 401.302, 401.304, 401.305, 401.307, 401.308, 401.312, 401.315 - 401.317, 401.320, 401.321

These amendments are proposed under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

§401.301. General Definitions.

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

(1) Caption--The letters appearing below the play symbols in the play area of a ticket that verify the correctness of the play symbols.

(2) Certified drawing--A drawing in which a lottery drawing representative and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination occurred.

(3) Claim center--A claims office of the commission at which a claimant may claim a prize.

(4) Claim form--The printed form authorized and provided by the commission that a claimant shall complete and submit to the commission when claiming a prize.

(5) Claimant--A player who has submitted a valid claim for payment within the required time frame.

(6) Commission--The Texas Lottery Commission. Unless the context clearly requires otherwise, "commission" includes authorized Texas Lottery commission staff members/employees.

(7) Current draw period--The period of time in which the player selections and Quick Pick selections are accumulated into a pool of plays eligible for winning in a drawing held at the end of the designated period.

(8) Director--The director of Lottery Operations [~~Director~~] of the Texas Lottery Commission [~~, Lottery Operations~~].

(9) Direct prize category contribution--A specified percentage of net sales allocated to the prize categories as described in the rules of the specific game being played.

(10) Division--Lottery Operations of the Texas Lottery Commission.

(11) Draw break--Time periods [~~A period of time~~] before a drawing for a draw game during which no request for plays for that drawing [~~player selections for that drawing may not be entered into the lottery gaming system and during which no requests for Quick Pick selections for that drawing~~] may be entered into the lottery gaming system.

(12) Draw game--A lottery game which utilizes a computer system to administer plays, the type of game, and amount of play for a specified drawing date, and in which a player either selects a combination of numbers or allows number selection by a random number generator approved by the commission, referred to as Quick Pick. The commission, or other authorized entity, will conduct a drawing to determine the winning combination(s) in accordance with the rules of the specific game being played and the draw procedures for the specific game. Sometimes, draw games are called "on-line games."

(13) Draw game ticket--A ticket issued to a player, by a retailer, and generated by a terminal provided by the commission or commission's vendor on official Texas Lottery paper stock, or, for third-party point-of-sale systems approved by the commission, printed on paper stock or otherwise issued in a manner approved by the commission to provide tangible evidence of participation in a lottery game. That ticket shall be the only acceptable evidence of the combination of digits, numbers, or symbols selected. Draw game tickets may be purchased only from retailers.

(14) Drawing--The procedure by which the commission randomly selects winning combinations of digits, numbers, or symbols in accordance with the rules of the game as set forth in the rules of the specific game being played and the draw procedures for the specific game.

(15) Drawing pool--The amount of money available for all prize categories for a specific drawing.

(16) Draw procedures--The written document approved by the executive director that specifies the draw procedures for a particular game, if a drawing is designed as part of the game.

(17) Duplicate ticket--A ticket produced by photograph, xerography, or any other method other than a ticket generated by a terminal.

(18) Executive director--The executive director of the Texas Lottery Commission.

(19) Game number--The number on the back of the scratch ticket which refers to the number associated with the particular scratch ticket game.

(20) Game procedures--The written document approved by the director that includes, among other things, the game name, how a prize is won, game prize structure, play style, and eligibility for a drawing, if any.

(21) High-tier prize--A prize of $600 or more.

(22) Indirect prize category contribution--Amounts allocated from the [~~prize reserve fund,~~] roll-over and prize breakage for a specific draw game drawing.

(23) Invalid ticket--Any ticket that fails to meet all validation requirements of the commission.

(24) Lottery gaming system--The commission or commission's vendor's computer system consisting of terminals, central processing equipment, and a communication network.

(25) Lottery retailer or retailer--A licensed sales agent, as contemplated by Chapter 466, Government Code.

(26) Low-tier prize--A prize of less than $25.

(27) Mid-tier prize--A prize of $25 or more but less than $600.

(28) Minor--An individual younger than 18 years of age.

(29) Pack number--The unique number on the back of the scratch ticket that designates the number of the pack within a specific scratch ticket game.

(30) Play--A set of numbers that appear on a ticket that are to be wagered by a player in a lottery game, or as otherwise defined in a particular draw game rule.

(31) Playslip--The physical or electronic means by which a player communicates their intended Play selection, plus any game specific add-on features, to the retailer. A playslip has no pecuniary

value and shall not constitute evidence of ticket purchase or of numbers selected.

(32) [~~(30)~~] Play area--The [~~latex~~] covered area of a scratch ticket that when removed, reveals the ticket play symbols.

(33) [~~(31)~~] Play style--The method of play to determine a winner for an individual game.

(34) [~~(32)~~] Play symbol--The printed data [~~under the latex~~] on a scratch ticket that is used to determine eligibility for a prize. The symbols for individual games will be specified in individual scratch ticket game procedures.

~~[(33) Present at the terminal--A player remains physically present at the terminal from the time the player's order for the purchase of draw game tickets is paid for and accepted by the retailer until the processing of the order is completed and the tickets are delivered to the player at the retailer terminal location.]~~

(35) [~~(34)~~] Prize amounts--The amount of money payable to each share in a prize category, the annuitized future value of each share in a prize category, or the net present cash value of each share in a prize category for each draw game drawing. Prize amounts are calculated by dividing the prize category contribution, the annuitized future value of the prize category contribution, or the net present cash value of the prize category contribution by the number of shares determined for the prize category.

(36) [~~(35)~~] Prize breakage--The money which is left over from the rounding down of the pari-mutuel prize levels to the next lowest whole dollar amount or money which is in excess of the amount needed to pay a prize.

(37) [~~(36)~~] Prize category--The matching combinations of numbers and their corresponding prize levels as described in rules for the specific game being played.

(38) [~~(37)~~] Prize category contributions--Refers to contributions for each drawing to each prize category, including direct and indirect prize category contributions.

(39) [~~(38)~~] Prize fund--The monies allocated to be returned to players in winning tickets within a specific scratch ticket game.

(40) [~~(39)~~] Prize pool--In a draw game, the total amount of money available for prizes as a percentage of the total sales for the current draw period.

(41) [~~(40)~~] Prize structure--The number, value, prize payout [~~pay out~~] percentage, and odds of winning prizes for an individual game as approved by the executive director.

(42) [~~(41)~~] Promotion--One or more events coordinated or conducted by the commission at retail sites, fairs, festivals and other appropriate venues, or in conjunction with one or more particular Texas Lottery games, to educate players about Texas Lottery products and/or sell Texas Lottery games through a retailer in specific markets to maximize Texas Lottery sales and statewide awareness.

(43) [~~(42)~~] Promotional drawing--A drawing in which qualified contestants are awarded prizes in a random manner in accordance with the procedures set forth for a specific promotion. [~~promotional event.~~]

(44) [~~(43)~~] Quick Pick--A play option that generates random numbers in a manner approved by the commission.

(45) [~~(44)~~] Roll-over--The amount in a specific draw game prize pool category resulting from no matching combinations and/or prize breakage from the previous drawing.

(46) [~~(45)~~] Sales agent--A person licensed under the State Lottery Act to sell Texas Lottery tickets.

(47) [~~(46)~~] Scratch ticket--A scratch ticket lottery game, developed and offered for sale to the public in accordance with commission rules, that is played by revealing [~~removing the latex covered play area on a scratch ticket to reveal~~] the ticket play symbols. [~~Sometimes, scratch ticket games are called "instant games."~~]

(48) [~~(47)~~] Shares--In a draw game, the total number of matching combinations within each prize category as determined for each drawing.

~~[(48) Sign-on slip--The receipt produced by a dedicated lottery ticket terminal when the retailer signs on to the lottery gaming system.]~~

(49) Terminal--A device authorized by the commission for the purpose of issuing draw game tickets and/or validating claims, including the commission or commission's vendor's computer hardware as well as commission-authorized third-party point-of-sale systems.

(50) Third-party point-of-sale systems--Self-contained computerized equipment (not owned or operated by the commission or lottery operator) that performs sales-related tasks at a licensed lottery ticket retailer's checkout counter and that has the sole Texas Lottery-related purpose of selling lottery [~~draw game~~] tickets [~~printed on paper~~]. Third-party point-of-sale systems will only perform the same lottery-related tasks as terminals owned or operated by the commission or lottery operator and may not issue electronic tickets or display outcomes for draw games using casino-style graphics of any kind. Third-party point-of-sale systems do not include any gambling device.

(51) Ticket--Any tangible evidence issued to provide participation in a lottery game or activity authorized by the State Lottery Act.

(52) Ticket bearer--The person who has signed the ticket or who has possession of an unsigned ticket.

(53) Ticket number--The number on the back of the scratch ticket that refers to the ticket sequence within a specific pack of a scratch ticket game.

(54) Validation number--The unique number sequence printed on a ticket that provides for the verification of the ticket as a valid winner.

(55) Valid ticket--A ticket which meets all specifications and validation requirements and entitles the holder to a specific prize amount.

(56) Void ticket--Any ticket that is stolen, unissued, illegible, mutilated, altered, counterfeit in whole or part, misregistered, defective, incomplete, printed or produced in error, multiply printed, fails any of the commission's confidential validation tests, or is a ticket produced by or for the commission for education and training purposes.

(57) Winning combination--One or more digits, numbers, or symbols randomly selected by the commission in a drawing which has been certified.

§401.302. Scratch Ticket Game Rules.

(a) Sale of scratch tickets.

(1) Only retailers who have been licensed by the commission are authorized to sell scratch tickets, and tickets may be sold only at a licensed location.

(2) Each scratch ticket shall sell for the retail sales price authorized by the executive director and stated in the individual game

procedures; provided that, the purchase price for promotional groups of tickets shall be determined by the executive director.

(3) Each scratch ticket shall state the overall estimated odds of winning a prize of any kind, including a break-even prize.

(b) Game procedures.

(1) The director may approve and publish individual game procedures prior to each scratch ticket game being introduced for sale to the public. Game procedures shall be published in the *Texas Register* and shall be made available upon request to the public.

(2) At a minimum, the game procedures for each game shall contain the following information:

(A) confirming captions;

(B) game name;

(C) game number;

(D) prize structure;

(E) play style;

(F) play symbols;

(G) ticket order quantity;

(H) retail sales price;

(I) dollar amount of prizes that may be paid by retailers; and

(J) eligibility requirements for a prize or promotional drawing, if any.

(3) The play style for an individual game shall be fully described in the game procedures and may take the form of one of the following methods of play:

(A) match up;

(B) add up;

(C) three in a line;

(D) key number/symbol match;

(E) yours beats theirs;

(F) prize legend;

(G) cards;

(H) bingo;

(I) directional arrows through maze;

(J) bonus game features; or

(K) any other approved play style or bonus game feature developed by the commission.

(c) Determination of prize winner.

(1) The play symbols shall be used by a player to determine eligibility for prizes. Qualifying play symbols are stated in the game procedures.

(2) A player's eligibility to win a prize is subject to the ticket validation requirements provided in subsection (d) of this section.

(3) For each individual game, the player shall [~~rub off the latex covering on the ticket to~~] reveal the play symbols according to the play instructions for the game. Eligibility to win a prize is based on the approved play style as follows.

(A) Match up. If the designated number of identical play symbols is revealed on the ticket, the player shall win the prize indicated.

(B) Add up. If the player adds up all of the play symbols printed on the ticket and the amount is greater than or equal to the required total amount printed on the ticket, the player shall win the prize indicated.

(C) Three in a line. If the player reveals three identical play symbols, either diagonally, vertically, or horizontally, on the same ticket, the player shall win the prize indicated.

(D) Key number/symbol match. If the player reveals a play symbol that matches the designated key play symbol, the player shall win the prize indicated.

(E) Yours beats theirs. If the player reveals a play symbol designated as yours that is greater than the play symbol(s) designated as theirs, the player shall win the prize indicated.

(F) Prize legend. If the player reveals the designated number of play symbols, the player wins the prize amount that corresponds to the legend.

(G) Cards. If the player reveals the play symbol needed for that particular card game in a winning combination, the player shall win the prize indicated.

(H) Bingo. If the player matches their Bingo card numbers with all of the Caller's Card numbers and reveals certain patterns as specified on the ticket, the player shall win the prize indicated for that Bingo card and pattern.

(I) Directional arrows through maze. If the player follows the directional arrows to make a path or paths through a maze and the path(s) leads to a prize amount, the player shall win that prize.

(J) Bonus game features. These features are added to the game for extra play value and entertainment. The specific variants, as described below, are used for a particular game and are described in the individual game procedures:

(i) Doubler. If the player reveals the designated play symbol as part of the winning combination of the game, the player doubles their prize. The player may also reveal the "doubler" play symbol in a prize box, in which case the prize amount that the player won is doubled.

(ii) Wild card. The player may use this designated play symbol as part of the winning combination of the game.

(iii) Double and Double Doubler. If the player reveals one of these designated play symbols as part of the winning combination of the game, the player either doubles or quadruples their prize respectively, as stated in the game card itself. The player may also reveal the "double" or "double doubler" play symbols in a prize box, in which case the prize amount that the player won is either doubled or quadrupled respectively, as stated in the game card itself.

(iv) Tripler. If the player reveals the designated play symbol as part of the winning combination of the game, the player triples their prize. The player may also reveal the "tripler" play symbol in a prize box, in which case the prize amount that the player won is tripled.

(v) Auto win. If the player reveals the designated play symbol, the player wins the corresponding prize automatically.

(vi) Entry ticket. If the player reveals the designated play symbol, the player may use the ticket as a means of entering a drawing, subject to the game procedures for each game.

(K) Any other approved play style or bonus game feature developed by the commission. If the player reveals the designated play symbols or bonus play features, the player shall win the prize(s) as indicated.

(d) Ticket validation requirements.

(1) Each scratch ticket shall be validated according to validation procedures prior to payment of a prize.

(2) A scratch ticket shall comply with all of the following.

(A) The ticket shall not be stolen or appear on any list of omitted tickets on file with the commission.

(B) The ticket shall not be counterfeit or forged, in whole or in part.

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

(D) The ticket shall have been issued by the commission in an authorized manner.

(E) The ticket shall have been received or recorded by the commission by applicable deadlines.

(F) The ticket shall pass all the confidential validation and security tests appropriate to the applicable play style.

(G) The validation number of an apparent winning ticket shall appear on the commission's official list of validation numbers of winning tickets for the particular game and pack. A ticket with that validation number shall not have been paid previously.

(3) The commission may pay the prize for a ticket that is partially mutilated or not intact if the ticket can still be verified as a valid ticket and validated by the other validation requirements and procedures.

(4) Any ticket not passing all of the validation tests and requirements is void and ineligible for any prize and shall not be paid. The executive director may, at his/her exclusive determination, reimburse the player for the cost of the void ticket.

(5) If a defective ticket is purchased and is void, the sole remedy available against the commission and the commission's sole liability shall be, at the executive director's sole discretion, reimbursement for the cost of the void ticket, or replacement of the defective ticket with another unplayed ticket in that scratch ticket game (or a ticket of equivalent sales price from any other current scratch ticket game).

(e) Payment of low-tier and mid-tier prizes.

(1) Any prize less than $600 may [~~Low-tier and mid-tier prizes shall~~] be paid by any retailer [~~or claim center~~].

(2) Retailers may pay cash prizes in cash. If acceptable to the claimant, retailers may also pay cash prizes [~~or~~] by business check, certified check, cashier's check, [~~or~~] money order, gift card, stored-value card, or store merchandise. [~~Retailers may also pay prizes by business check if acceptable to the claimant.~~] If a retailer decides to pay with anything other than cash, it is the responsibility of the retailer to ensure the claimant has voluntarily agreed to the non-cash prize payment. [~~a prize with a business check, the retailer shall inform the claimant prior to ticket validation.~~]

(3) Retailers may pay claims for prizes [~~during their normal business hours~~], if the commission's validation system is operational.

(4) Before paying a prize, retailers shall validate the winning ticket according to established validation requirements and procedures.

(5) Payment of a prize by a retailer will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification, if appropriate.

(6) If a low- or mid-tier claim is presented to the commission, the claimant shall follow all procedures of the commission related to claiming a prize, including but not limited to filling out a claim form, presenting appropriate identification if required, completing the back of the ticket, and submitting these items including the apparent winning ticket to the commission by mail or in person. [~~Upon validation of a winning ticket, the commission shall present or mail a check to the claimant in payment of the amount due.~~] If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. Tickets will not be returned to the claimant.

(f) Payment of high-tier prizes.

(1) High-tier prizes must be presented for payment to the commission. For purposes of this provision, the term "commission" includes claim centers located throughout Texas. In connection with certain scratch ticket games, the top-level prizes must be claimed at commission headquarters.

(2) If a high-tier claim is presented to the commission, the claimant shall follow all procedures of the commission related to claiming a prize, including but not limited to filling out a claim form, presenting appropriate identification as required, completing the back of the ticket, and submitting these items including the apparent winning ticket to the commission by mail or in person. Upon validation of the ticket as a winning ticket, the commission shall pay the claimant the amount due in accordance with commission procedures. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. Tickets will not be returned to the claimant.

(3) Before paying any prize, claim center personnel shall validate the winning ticket according to established validation requirements and procedures.

(4) All prizes shall be subject to tax withholding, offsets, and other withholdings as provided by law.

(5) If a person is indebted or owes delinquent taxes to the state, other than those specified in paragraph (4) of this subsection, the winnings of a person shall be withheld until the debt or taxes are paid.

(6) When paying a prize of $600 or more, the commission shall file the appropriate income reporting form with the Internal Revenue Service.

(7) Payment of a prize will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification.

(8) The director shall recognize only one person as claimant of a particular prize. A claim may be made in the name of a person other than an individual only if the person possesses a federal employer identification number (FEIN) issued by the Internal Revenue Service and such number is shown on the claim form. Groups, family units, clubs, organizations, or other persons without an FEIN shall designate one individual in whose name the claim is to be filed. If a claim is erroneously entered with multiple claimants, the claimants shall designate one of them as the individual recipient of the prize, or, if they fail to designate an individual recipient, the director may designate any one of the claimants as the sole recipient. In either case, the claim shall then be considered as if it were originally entered in

the name of the designated individual and payment of any prizes won shall be made to that single individual. Once a ticket is submitted as a claim, it will not be returned to the winner.

(9) The executive director has discretion to set a maximum total cash amount or maximum payment time period for each prize level.

(g) Payment of prize awarded to minor.

(1) A person 18 years of age or older may purchase a ticket to give as a gift to another person, including a minor.

(2) If a minor is entitled to a cash prize of less than $600, the commission shall deliver to an adult member of the minor's family or to the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

(3) If a minor is entitled to a cash prize of [~~more than~~] $600 or more, the commission 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.

(4) If a minor is entitled to a prize other than money, the commission shall pay the cash equivalent of such prize in the manner provided by paragraphs (2) and (3) of this subsection.

(5) A retailer is not authorized to pay a prize claimed by a minor.

(h) Ticket responsibility.

(1) A ticket is a bearer instrument until signed on the back by the ticket holder.

(2) The commission shall not be responsible for lost, stolen, or destroyed tickets.

(3) The commission shall not be responsible for erroneous or mutilated tickets.

(4) The commission shall not be responsible for tickets claimed by a player in error for a lower prize at a retailer.

(5) The commission shall not be responsible for tickets delivered to any address other than that designated by the commission for such purpose.

(i) Disputed ticket. If a dispute arises between the commission and a ticket claimant concerning whether the ticket is a winning ticket and if the ticket prize has not been paid, the executive director may, exclusively at his/her determination, reimburse the claimant for the cost of the disputed ticket. This shall be the claimant's exclusive remedy.

(j) Game closing.

(1) The executive director or his/her designee shall determine the closing date for an individual scratch ticket game in accordance with a scratch ticket game closing procedure that defines the criteria used to monitor scratch ticket sales performance and that identifies when scratch ticket games should be closed.

(A) The procedure shall provide for the timely closing of a scratch ticket game after all top-level prizes in the game have been claimed or on an earlier date as determined by the executive director.

(B) The procedure shall provide for ending ticket sales in a scratch ticket game within 45 days after game closing procedures have been initiated.

(2) No tickets in a scratch ticket game may be sold after the scratch ticket game closing date.

(k) Governing law. In purchasing a scratch ticket, the lottery player agrees to comply with and abide by Texas law, all rules, procedures, and final decisions of the commission, and all procedures and instructions established by the executive director for the conduct of the scratch ticket game.

§401.304. Draw Game Rules (General).

(a) Price of tickets and prizes.

(1) The purchase price of each draw game ticket shall be as set forth in the rules of the specific game being played; provided that, the purchase price for promotional groups of tickets shall be determined by the executive director.

[~~(2) The total amount of prize money allocated to the prize pool for draw games from the total of draw game sales shall be a minimum of 50%.~~]

(2) [~~(3)~~] The prize pool for draw games shall have contributions to prize categories as set forth in the rules of the specific game being played.

(b) Sale of tickets.

(1) Entry of Plays. Plays may be entered using the lottery retailer terminal keypad or touch screen, by means of a playslip, using authorized third-party point-of-sale ("POS") systems, or by other means approved by the commission. Retailers shall not permit any device to be physically or wirelessly connected to a lottery terminal to enter Plays, except as approved by the commission. A ticket generated using a selection method that is not approved by the commission is not valid. Acceptable methods of Play selection may include:

(A) using a self-service lottery ticket vending machine;

(B) using a playslip;

(C) using a previously-generated draw game ticket, from the game being played, provided by the player;

(D) selecting a Quick Pick;

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

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

(2) [~~(1)~~] Except to the extent that sales in draw games are impeded by draw breaks, draw game tickets may be sold [~~during all normal business hours of the lottery retailer~~] during draw game operating hours. Retailers must give prompt service to lottery customers present and waiting at the terminal to purchase tickets for draw games. [~~Prompt service includes interrupting processing of draw game ticket orders for which the customer is not present at the terminal.~~]

(3) [~~(2)~~] Draw game tickets shall be sold only at the location listed on each retailer's license from the commission. For purposes of this section, the sale of a draw game lottery ticket at the licensed location means a lottery transaction in which all elements of the sale between the retailer and the purchaser must take place at the retailer location using their terminal, including the exchange of consideration, the exchange of the playslip if one is used, and the exchange of the draw game ticket. [~~No part of the sale may take place away from the terminal.~~]

(4) The executive director may authorize promotions in connection with any draw game.

(5) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning

and ending time, if applicable, of the incentive or bonus program and the value for the award.

(c) Drawings and end of sales prior to drawings.

(1) The manner and frequency of drawings shall be as set forth in the rules of the specific game being played and the draw procedures for the specific game.

(2) The drawings shall be conducted at times and locations to be announced by the executive director.

(3) The executive director shall establish the times for draw breaks for each draw game.

(4) The executive director or his/her designee shall designate the type of drawing equipment to be used and shall establish draw procedures to randomly select the winning combination for each type of draw game. Draw procedures shall include provisions for the substitution of backup drawing equipment in the event the primary drawing equipment malfunctions or fails for any reason.

(5) A lottery drawing representative and an independent certified public accountant, shall be responsible for conducting the drawing in compliance with the lottery's draw procedures. A lottery drawing representative and an independent certified public accountant, shall attest whether the drawing was conducted in accordance with proper draw procedures at the end of each drawing.

(d) Procedures for claiming draw game prizes.

(1) All apparent winning tickets presented for payment to the lottery or a retailer must meet the commission's validation requirements as set forth in subsection (e) of this section.

(2) To claim a draw game prize of less than $600, the claimant may [~~shall~~] present the winning draw game ticket to a retailer or to the commission. All tickets validated by a retailer must be paid by that retailer. If the retailer chooses not to validate the winning draw game ticket, the retailer does not have to pay the draw game prize. The commission will pay all winning draw game tickets pursuant to this section.

[~~(3) If a claim of less than $600 is presented to a retailer, the retailer must validate the claim, and, if determined to be a winning ticket, make payment of the amount due the claimant.~~]

(3) [~~(4)~~] To claim a draw game prize of $600 or more, the claimant shall present the winning draw game ticket to the commission. For purposes of this provision, the term "commission" includes claim centers located throughout Texas. In connection with certain draw games, the top-level prizes must be claimed at commission headquarters. For any claim presented to the commission, the claimant shall follow all procedures of the commission related to claiming a prize, including but not limited to filling out a claim form, presenting appropriate identification as required, completing the back of the ticket, and submitting these items including the apparent winning ticket to the commission by mail or in person. Upon validation of the ticket as a winning ticket, the commission shall pay the claimant the amount due in accordance with commission procedures. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. Tickets will not be returned to the claimant.

(4) [~~(5)~~] Before paying any prize, claim center personnel shall validate the winning ticket according to established validation requirements and procedures.

(5) [~~(6)~~] All prizes shall be subject to tax withholding, offsets, and other withholdings as provided by law.

(6) [~~(7)~~] If a person is indebted or owes delinquent taxes to the state, other than those specified in paragraph (5) [~~(6)~~] of this subsection, the winnings of a person shall be withheld until the debt or taxes are paid.

(7) [~~(8)~~] When paying a prize of $600 or more, the commission shall file the appropriate income reporting form with the Internal Revenue Service.

(8) [~~(9)~~] Payment of a prize will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification following the completion of all procedures of the commission related to claiming a prize.

(9) [~~(10)~~] The commission shall recognize only one person as claimant of a particular prize. A claim may be made in the name of a person other than an individual only if the person possesses a federal employer identification number (FEIN) issued by the Internal Revenue Service and such number is shown on the claim form. Groups, family units, clubs, organizations, or other persons without an FEIN shall designate one individual in whose name the claim is to be filed. If a claim is erroneously entered with multiple claimants, the claimants shall designate one of them as the individual recipient of the prize, or, if they fail to designate an individual recipient, the director may designate any one of the claimants as the sole recipient. In either case, the claim shall then be considered as if it were originally entered in the name of the designated individual and payment of any prizes won shall be made to that single individual. Once a ticket is submitted as a claim, it will not be returned to the winner.

(10) [~~(11)~~] The executive director has discretion to set a maximum total cash amount or maximum payment time period for each prize level.

(e) Validation requirements.

(1) To be a valid winning draw game ticket, all of the following conditions must be met.

(A) All printing on the ticket shall be present in its entirety, be legible, and correspond, using the computer validation file, to the combination and data printed on the ticket. The ticket must have been produced prior to the drawing.

(B) The ticket shall not be mutilated, altered, unreadable, reconstituted, misregistered, defective, incomplete, or tampered with in any manner.

(C) The ticket shall not be counterfeit or forged, in whole or in part, or an exact duplicate of another winning ticket.

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

(E) The ticket shall not be stolen. Neither the commission nor its retailers shall be responsible for the payment of prizes for lost or stolen tickets.

(F) The ticket shall not have been previously paid.

(G) The ticket data shall have been recorded on the central computer system prior to the drawing, and the ticket data must match the computer record data in every respect.

(H) The ticket shall pass all other confidential security checks of the commission.

(2) The commission may pay the prize for a draw game ticket that is partially mutilated or not intact if the ticket can still be validated by the other validation requirements.

(3) Liability for void tickets, if any, is limited to the replacement of ticket or refund of the sales price.

(4) A ticket shall be the only valid receipt for claiming a prize. A copy of a ticket or a playslip has no pecuniary or prize value and shall not constitute evidence of ticket purchase or of numbers selected.

(5) In submitting an official draw game ticket for validation, the player agrees to abide by applicable laws, all commission rules, regulations, policies, directives, instructions, conditions, procedures, and final decisions of the executive director.

(6) All prizes shall be subject to tax withholdings, offsets, and other withholdings as provided by law.

(f) Payment of prizes by retailers.

(1) A retailer may pay to the ticket bearer game prizes of an amount less than $600 [~~$599 or less~~] for any valid claims presented to that retailer. All tickets validated by a retailer must be paid by that retailer. Retailers may pay claims for prizes if the commission's validation system is operational. [~~These prizes may be paid during normal business hours of a retailer, provided the lottery gaming system is operational and claims can be validated.~~] The [~~on-line~~] retailer shall not charge the claimant any fee for payment of the prize or for cashing a business check drawn on the licensed retailer's account.

(2) Retailers may pay prizes in cash. If acceptable to the claimant, retailers may also pay cash prizes [~~or~~] by business check, certified check, cashier's check, [~~or~~] money order, gift card, stored-value card, or store merchandise. [~~Retailers may also pay prizes by business check if acceptable to the claimant.~~] If a retailer decides to pay with anything other than cash, it is the responsibility of the retailer to ensure the claimant has voluntarily agreed to the non-cash prize payment. [~~a prize with a business check, the retailer shall inform the claimant prior to ticket validation. A retailer that pays a prize with a check that is dishonored may be subject to suspension or revocation of its license.~~]

(g) Payment of prize awarded to minor.

(1) A person 18 years of age or older may purchase a ticket to give as a gift to another person, including a minor.

(2) If a minor is entitled to a cash prize of less than $600, the commission shall deliver to an adult member of the minor's family or to the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

(3) If a minor is entitled to a cash prize of [~~more than~~] $600 or more, the commission 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.

(4) If a minor is entitled to a prize other than money, the commission shall pay the cash equivalent of such prize in the manner provided by paragraphs (2) and (3) of this subsection.

(5) A retailer is not authorized to pay a prize claimed by a minor.

(h) Game termination and prize claim period.

(1) The executive director or his/her designee, at any time, may announce the termination date for a draw game. If this occurs, no tickets for that draw game shall be sold past the termination date.

(2) Draw game prizes shall be claimed no later than 180 days after the applicable draw date of the draw game. In the event any player who has a valid winning ticket does not claim the prize within 180 days after the drawing in which the prize was won, the prize amount shall be deposited in accordance with Government Code, §466.408.

§401.305. "Lotto Texas[®]" Draw Game Rule.

(a) Lotto Texas®. The executive director is authorized to conduct a game known as "Lotto Texas." The executive director may issue further directives for the conduct of Lotto Texas that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to Draw Game Rules (General)). Lotto Texas consists of a base game for which plays may be purchased for the opportunity to win prizes during drawings in accordance with this section. Lotto Texas With Extra!® is an add-on feature that allows players who purchase this feature to increase non-jackpot prize amounts. [~~Lotto Texas® Winner Take All® (LTWTA) is a promotional play option which offers the players who purchase this option the opportunity to win the Lotto Texas Winner Take All Prize (LTWTA Prize) in a promotional drawing conducted in accordance with this section.~~]

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

(1) Lotto Texas Play--A Lotto Texas Play refers to the selection of six different numbers from 1 to [~~through~~] 54 for one opportunity to win a prize in the Lotto Texas base game and the purchase of a ticket evidencing that selection. A Lotto Texas With Extra! Play refers to a play purchased as part of the Extra! feature fully described in subsection (g) of this section. [~~A Lotto Texas Winner Take All Play (LTWTA Play) refers to a play purchased as part of the LTWTA promotion fully described in subsection (i) of this section.~~]

(2) Playboard--A [~~panel on a Playslip containing a~~] field of 54 numbers from 1 to 54 found on the playslip. [~~for use in selecting numbers for a Lotto Texas Play.~~]

[~~(3) Playslip--An optically readable card issued by the commission for use in selecting numbers for one or more Lotto Texas Plays.~~]

(3) [~~(4)~~] Roll cycle--A series of drawings that ends when there is a drawing for which one or more tickets are sold that match the six numbers drawn in the Lotto Texas base game drawing. A new roll cycle begins with the next Lotto Texas base game drawing after one or more tickets are sold that match the six numbers drawn in the drawing. [~~The LTWTA promotion does not contribute to increases in the Lotto Texas base game jackpot roll cycle.~~]

[~~(5) Lotto Texas Winner Take All Drawing (LTWTA Drawing)--The LTWTA Drawing refers to the drawing event separate from the Lotto Texas base game drawing which determines the winning combination of numbers for the LTWTA promotion. The numbers selected during the Lotto Texas base game drawing will not be used to determine the winning combination of numbers for the LTWTA Prize.~~]

[~~(6) Lotto Texas Winner Take All Prize (LTWTA Prize)--The LTWTA Prize refers to the prize for the LTWTA promotion set forth in subsection (i) of this section. The LTWTA Prize is determined by the sales of LTWTA Plays.~~]

(c) Lotto Texas Plays and tickets.

(1) A Lotto Texas base game ticket may be sold only by a retailer and only at the location listed on the retailer's license. A ticket sold by a person other than a retailer is not valid.

(2) The price of a single play for the Lotto Texas base game is $1.

[(3) A player may complete up to five playboards on a single playslip.]

(3) [(4)] A player may use a single playslip or other commission-approved method of play to purchase the same Lotto Texas or Lotto Texas With Extra! play(s) for up to 10 consecutive drawings, to begin with the next drawing after the purchase. [Advanced purchases are prohibited for the LTWTA promotion described in subsection (i) of this section.]

[(5) Acceptable methods to select numbers for a play may include:]

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

[(B) using a playslip;]

[(C) requesting a retailer to use Quick Pick;]

[(D) requesting a retailer to manually enter numbers;]

[(E) using a previously-generated "Lotto Texas" ticket provided by the player; or]

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

[(6) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually, or using a selection method that is not approved by the commission, is not valid.]

[(7) A retailer may only accept a request for play using a commission-approved method of play, and if the request is made in person.]

(4) [(8)] At the time of making a play, a player may select the option for payment of the cash value or annuitized payments of a share of the jackpot if the play is a winning play. If no selection is made, payment option will be as described in the chart below:
Figure: 16 TAC §401.305(c)(4)
[Figure: 16 TAC §401.305(c)(8)]

(5) [(9)] A retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers selected for each play, the number of plays, the draw date(s) for which the plays were purchased, the cost of the ticket, the jackpot payment option, and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock, or, for third-party point-of-sale systems approved by the commission, printed on paper stock or otherwise issued in a manner approved by the commission to provide tangible evidence of participation in a lottery game.

[(10) A playslip, or any document other than a ticket issued as described in paragraph (9) of this subsection, has no monetary value and is not evidence of a play.]

(6) [(11)] It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket.

(7) [(12)] An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

[(13) The executive director may authorize promotions in connection with Lotto Texas.]

(d) Drawings.

(1) Lotto Texas base game drawings shall be held each week on Wednesday and Saturday at 10:12 p.m. Central Time. The executive director may change the drawing schedule, if it is deemed necessary.

(2) Six different numbers from 1 to [through] 54 shall be drawn at each drawing.

(3) Numbers drawn must be certified by the commission in accordance with the commission's draw procedures.

(4) The numbers selected in each drawing shall be used to determine all winning plays for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a commission drawings representative and the independent certified public accountant immediately before each drawing and immediately after each drawing.

(e) Lotto Texas Advertised Jackpots. For the Lotto Texas base game drawing, the commission shall approve a jackpot amount to be advertised in a manner prescribed by written procedure. The advertised amount shall be an amount payable in 30 annual installments. To the extent that advertised amount is based on projected sales, the projections shall be fair and reasonable. The commission may approve an increase in the amount of the jackpot originally advertised for a drawing if the increase is supported by reasonable sales projections and is prescribed by written procedure.

(f) Lotto Texas Prizes. The following prizes are intended for the Lotto Texas base game drawing only. [These prizes do not apply to LTWTA promotional drawings.]

(1) Jackpot prize (first prize).

(A) A person who holds a valid ticket for a play matching (in any order) the six numbers drawn in a drawing is entitled to a share of the jackpot prize (first prize) for the drawing.

(B) The jackpot prize for a drawing is the greater of:

(i) 40.47 percent of the proceeds from Lotto Texas ticket sales for all drawings in the roll cycle and any earnings on an investment of all or part of the proceeds from ticket sales, paid in 30 annual installments; or

(ii) The amount advertised in accordance with subsection (e) of this section as the estimated jackpot for the drawing, paid in 30 annual installments.

(C) Except as provided by subparagraph (F) of this paragraph, a person who is entitled to a share of a jackpot prize and who opted for annualized installment payments, shall receive payment in 30 annual installments.

(D) The first installment payment shall be made upon completion of commission validation procedures. The subsequent 29 installment payments shall be made annually on the 15th day of the month in which the applicable drawing occurred.

(E) The second through 29th installment payments shall be in equal amounts. The first installment payment may be equal to or higher than the subsequent installment payments.

(F) If a person would otherwise receive total installment payments of $2 million or less, the commission shall pay the person, upon completion of all validation procedures, a single payment in the amount of the cash value of those total installment payments. The cash value is the cost on the first business day after the applicable drawing of funding those installment payments.

(G) A person who is entitled to a share of the jackpot and who selected the cash value option, or for whom the cash value

option was automatically selected shall receive the greater of the following two amounts:

(i) a share of 40.47 percent of the proceeds from Lotto Texas ticket sales; or

(ii) the cost on the day after the drawing of funding a share of installment payments under subparagraph (B)(ii) of this paragraph.

(H) A payment under subparagraph (G) of this paragraph shall be made upon completion of commission validation procedures.

(I) Any investment necessary to fund a jackpot prize shall be made on the first business day after a drawing for which one or more tickets were sold that match the six numbers drawn in the drawing.

(J) A claim for a jackpot prize must be presented at the Austin claim center.

(K) If 40.47 percent of the proceeds from Lotto Texas ticket sales is not sufficient to pay a jackpot prize, the commission shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, §466.355.

(2) Second prize.

(A) A person who holds a valid ticket for a play matching (in any order) five of the six numbers drawn in a drawing is entitled to a share of the second prize for that drawing.

(B) The second prize consists of 2.23 percent of the proceeds from Lotto Texas ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the second prize for a drawing shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the second prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the second prize for the next drawing.

(3) Third prize.

(A) A person who holds a valid ticket for a play matching (in any order) four of the six numbers drawn in a drawing is entitled to a share of the third prize for that drawing.

(B) The third prize consists of 3.28 percent of the proceeds from Lotto Texas ticket sales for the drawing and any amounts carried forward under subparagraphs (C) and (D) of this paragraph.

(C) A payment made to a person for a share of the third prize for a drawing shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the third prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the third prize for the next drawing.

(4) Fourth prize.

(A) A person who holds a valid ticket for a play matching (in any order) three of the six numbers drawn in a drawing is entitled to a guaranteed prize of $3.

(B) If 4.02 percent of the proceeds from Lotto Texas ticket sales is not sufficient to pay all fourth prizes for a draw, the commission shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, §466.355.

(C) To the extent that the total amount of fourth prizes for a drawing is less than 4.02 percent of the proceeds from ticket sales for the drawing, the difference shall be carried forward to fund future fourth prize payments.

(5) A person may win only one prize per play per drawing. A player who holds a valid ticket for a winning play is entitled to the highest prize for that play.

(6) A share of a prize is determined by dividing the prize by the number of winning plays for that prize.

(7) Jackpot payment amounts are calculated on the first business day after the applicable drawing. A claimant is not entitled to interest or other earnings on those amounts, regardless of when the claim is actually presented and regardless of the dates on which payments are made.

(g) Lotto Texas With Extra![®].

(1) A Lotto Texas player may purchase the Extra! feature by paying an additional $1 per play at the time of his/her Lotto Texas base game ticket purchase.

(2) Extra! offers players a chance to increase the amount of any of the non-jackpot prizes won in a Lotto Texas base game drawing, and to win a prize for matching two of the six numbers drawn. The Extra! feature does not apply to a Lotto Texas base game jackpot prize (match six-of-six) [~~or the LTWTA Prize~~].

(3) A Lotto Texas Play that wins one of the non-jackpot prizes or matches two of the six numbers drawn, and for which the player paid an additional $1 for Extra!, shall be paid as follows:
Figure: 16 TAC §401.305(g)(3)
[~~Figure: 16 TAC §401.305(g)(3)~~]

(h) Lotto Texas Jackpot information on commission website.

(1) After the commission has approved an advertised estimated annuitized jackpot under subsection (e) of this section, the commission shall post the following information on the agency website:

(A) the amount of ticket sales, if any, for previous drawings in the roll cycle;

(B) the amount of projected ticket sales for the upcoming drawing;

(C) investment information used to determine the advertised estimated jackpot; and

(D) other information used to determine the advertised estimated jackpot.

(2) After the commission determines that one or more tickets have been sold that match the six numbers drawn in a drawing, the commission shall post on the agency website information used to calculate the Lotto Texas base game jackpot prize.

[~~(i) Lotto Texas® Winner Take All® . LTWTA is a promotional play option for the Lotto Texas base game and is conducted in accordance with this Lotto Texas draw game rule.~~]

[~~(1) The promotion will begin at a time announced by the commission and will continue until discontinued by the commission.~~]

[~~(2) This promotion will offer to the holders of a qualifying LTWTA Play a chance to win the LTWTA Prize as a result of the selection of the winning combination of numbers in the LTWTA Drawing.~~]

[(3) To participate in the LTWTA promotion, a player must first purchase a Lotto Texas Play, as well as a Lotto Texas With Extra! Play, and then must pay an additional one dollar ($1.00) per LTWTA Play for each Lotto Texas Play and Lotto Texas With Extra! Play purchased.]

[(4) LTWTA is a six (6) out of fifty-four (54) play option promotion, to be drawn weekly on Mondays and/or Thursdays, as determined by the executive director, and which pays a single LTWTA Prize paid as a pari-mutuel single lump sum payment. The Lotto Texas base game numbers selected by the player (or randomly generated as a Quick Pick selection) in the qualifying purchase shall be used as the LTWTA Play numbers if the LTWTA promotion has been purchased. The ticket evidencing the LTWTA Play shall conspicuously indicate the LTWTA Play numbers and shall indicate the date of drawing(s) for which the LTWTA Play is applicable. This information shall be on a separate ticket from the Lotto Texas Play and Lotto Texas With Extra! Play.]

[(5) A LTWTA Drawing shall determine the winning combination of numbers for this promotion. During the drawing, six (6) numbers shall be drawn from a set of fifty-four (54) numbers, which shall constitute the winning combination of numbers.]

[(6) All LTWTA Play purchases shall qualify for the Drawing as indicated to the Player on the ticket as recorded on the commission's lottery gaming system. LTWTA Play(s) shall qualify for the next scheduled LTWTA Drawing, regardless of the date of the Drawing(s) for the qualifying purchased Lotto Texas Plays. A LTWTA Play purchased before the close of sales on the day of the scheduled LTWTA Drawing will be eligible for that day's Drawing, otherwise, the LTWTA Play is eligible only for the next scheduled LTWTA Drawing. Advanced purchase for consecutive LTWTA Drawings is not available for the LTWTA promotion. Examples: (a) If a Player purchases one (1) Lotto Texas and Lotto Texas With Extra! Play applicable for the next five (5) consecutive Lotto Texas Drawings, and selects the LTWTA option, the Player will receive one (1) LTWTA Play for the next scheduled LTWTA Drawing in addition to the one (1) Lotto Texas and Lotto Texas With Extra! Play for the next five (5) Lotto Texas Drawings. The purchase price for this selection would be eleven dollars ($11.00), reflecting ten dollars ($10.00) for the five (5) advanced purchased Lotto Texas and Lotto Texas With Extra! Plays, and one dollar ($1.00) for the LTWTA Play; (b) If a Player purchases two (2) Lotto Texas and Lotto Texas With Extra! Plays applicable for the next five (5) consecutive Lotto Texas Drawings, and selects the LTWTA option, the Player will receive two (2) LTWTA Plays for the next scheduled LTWTA drawing in addition to the two (2) Lotto Texas and Lotto Texas With Extra! Plays for the next five (5) Lotto Texas Drawings. The purchase price for this selection would be twenty-two dollars ($22.00), reflecting twenty dollars ($20.00) for the five (5) advanced purchased Lotto Texas and Lotto Texas With Extra! Plays, and two dollars ($2.00) for the LTWTA Plays.]

[(7) The winning LTWTA Play(s) are determined as the play(s) matching the highest LTWTA winning combination of numbers drawn in the applicable LTWTA Drawing (see paragraph (10) of this subsection). There is only one LTWTA Prize for each LTWTA Drawing and the LTWTA Prize will be divided on a pari-mutuel basis among all winning LTWTA Plays. For instance, if a LTWTA Play matching five (5) of six (6) numbers is the highest level of matching combination of numbers, then all Plays of that level will divide the entire LTWTA Prize, and all remaining LTWTA Plays matching any combination of numbers will not qualify for a prize.]

[(8) The Lotto Texas With Extra! add-on feature is not applicable to the LTWTA promotional drawings and prize.]

[(9) LTWTA Prize Pool. The prize pool for the LTWTA Prize shall consist of fifty percent (50%) of each LTWTA Drawing period's sales of LTWTA Plays.]

[(10) LTWTA Expected Prize Payout Percentage and Winning Numbers Match Determination.]

[(A) Pari-Mutuel Determination. The LTWTA Prize payout shall be determined on a pari-mutuel basis. The LTWTA Prize awarded will consist of 100% of the allocated prize pool and shall be paid as a single lump sum payment to the LTWTA Play(s) matching the most winning numbers in a LTWTA Drawing as indicated below:]

[(i) The LTWTA Prize will be paid to the holder(s) of the LTWTA Play(s) that matches all six (6) of the numbers selected in the LTWTA Drawing.]

[(ii) If the LTWTA Prize has not been awarded under clause (i), then the LTWTA Prize will be awarded to the holder(s) of any LTWTA Play(s) that matches five (5) of the six (6) numbers selected in the LTWTA Drawing.]

[(iii) If the LTWTA Prize has not been awarded under clauses (i) or (ii), then the LTWTA Prize will be awarded to the holder(s) of any LTWTA Play(s) that matches four (4) of the six (6) numbers selected in the LTWTA Drawing.]

[(iv) If the LTWTA Prize has not been awarded under clauses (i) through (iii), then the LTWTA Prize will be awarded to the holder(s) of any LTWTA Play(s) that matches three (3) of the six (6) numbers selected in the LTWTA Drawing.]

[(v) If the LTWTA Prize has not been awarded under clauses (i) through (iv), then the LTWTA Prize will be awarded to the holder(s) of any LTWTA Play(s) that matches two (2) of the six (6) numbers selected in the LTWTA Drawing.]

[(vi) If the LTWTA Prize has not been awarded under clauses (i) through (v), then the LTWTA Prize will be awarded to the holder(s) of any LTWTA Play(s) that matches one (1) of the six (6) numbers selected in the LTWTA Drawing.]

[(vii) If all or a portion of the LTWTA Prize pool has not been awarded under clauses (i) through (vi), then the prize pool shall be carried forward to the subsequent LTWTA Drawing.]

[(B) LTWTA Prize Pool Allocation. The LTWTA Prize Pool money allocated to the LTWTA Prize shall be divided on a pari-mutuel basis by the number of winning LTWTA Plays.]

[(C) LTWTA Prize Rounded; Breakage Carried Forward. The LTWTA Prize is a single prize that will be divided on a pari-mutuel basis among all holders of winning LTWTA Plays and shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount. A LTWTA Prize will never be less than one dollar ($1.00). Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next LTWTA Drawing.]

[(11) LTWTA Probabilities. The odds of winning a prize in the LTWTA promotion depend on the highest prize level at which the LTWTA Prize is won. As fully described in subparagraph (10) above, the winning LTWTA Play(s) are determined as the LTWTA Play(s) matching the highest LTWTA Winning Numbers drawn in the applicable Drawing. The following table sets forth the probability of a LTWTA Play matching the winning numbers from the LTWTA Drawing.]
[Figure: 16 TAC §401.305(i)(11)]

§401.307. "Pick 3" Draw Game Rule.

(a) Pick 3™. The executive director is authorized to conduct a game known as "Pick 3." The executive director may issue further

directives and procedures for the conduct of Pick 3 that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to Draw Game Rules (General)).

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

(1) Pick 3 Play--A play other than a Pick 3 *plus* FIREBALL[®] play consists of:

(A) the selection of a play type;

(B) the selection of a Pick 3 base play amount of $.50, $1, $2, $3, $4 or $5;

(C) the selection of a draw date and time;

(D) the selection of numbers in accordance with this section; and

(E) the purchase of a ticket evidencing those selections.

(2) Pick 3 *plus* FIREBALL Play--A Pick 3 *plus* FIREBALL play refers to a play purchased as part of the Pick 3 *plus* FIREBALL add-on feature fully described in subsection (h) [~~(i)~~] of this section. A Pick 3 FIREBALL number is the additional number drawn from [~~zero to nine (~~]0 to 9[~~)~~] that is used to replace any one [~~(1)~~] of the three [~~(3)~~] Pick 3 winning numbers to make FIREBALL prize winning combinations. The Pick 3 *plus* FIREBALL option cannot be purchased independently of a Pick 3 play.

(3) Playboard--Three [~~A panel on a Pick 3 playslip containing three~~] fields of numbers found on the playslip, with each field containing 10 numbers from 0 to 9. [~~for use in selecting numbers for a Pick 3 play, with each field of numbers containing the numbers 0, 1, 2, 3, 4, 5, 6, 7, 8 and 9.~~]

[~~(4) Playslip--An optically readable card issued by the commission for use in making selections for one or more Pick 3 plays and the option to select the Pick 3 *plus* FIREBALL feature.~~]

(c) Play types.

(1) Pick 3 may include the following play types: exact order, any order, exact/any order, combo, and Pick 3 *plus* FIREBALL.

(A) An "exact order" play is a winning play if the player's three single-digit numbers match in exact order the three single-digit numbers drawn in the applicable drawing.

(B) An "any order" play is a winning play if the player's three single-digit numbers match in any order the three single-digit numbers drawn in the applicable drawing.

(C) An "exact order/any order" play is a winning play if either the player's three single-digit numbers match in exact order the numbers drawn in the applicable drawing or the player's three single-digit numbers match in any order the numbers drawn in the applicable drawing.

(i) An exact order/any order play is a 3-way play when exact order/any order play is selected as the play type in connection with a set of three single-digit numbers that includes two occurrences of one single-digit number and one occurrence of one other single-digit number. An exact order/3-way any order play involves three possible winning combinations.

(ii) An exact order/any order play is a 6-way play when exact order/any order play is selected as the play type in connection with a set of three single-digit numbers that includes a single occurrence of three different single-digit numbers. An exact order/6-way any order play involves six possible winning combinations.

(iii) An exact order/any order play is not permitted in connection with a set of numbers that includes three occurrences of one single-digit number.

(D) A "combo" play combines all of the possible straight (exact) plays that can be played with the three single-digit numbers selected for the play.

(i) A combo play may be a 3-way combo play or a 6-way combo play.

(ii) 3-way combo play is a combo play in connection with a set of three single-digit numbers that includes two occurrences of one single-digit number and one occurrence of one other single-digit number. A 3-way combo play involves three possible winning combinations.

(iii) 6-way combo play is a combo play in connection with a set of three single-digit numbers that includes a single occurrence of three different single-digit numbers. A 6-way combo play involves six possible winning combinations.

(iv) Combo play is not permitted in connection with a set of numbers that includes three occurrences of one single-digit number.

(E) A Pick 3 *plus* FIREBALL play wins a FIREBALL prize for each winning combination of numbers created by replacing any one [~~(1)~~] of the three [~~(3)~~] Pick 3 winning numbers with the Pick 3 FIREBALL number for that drawing, as determined by the selected play type and wager amount.

(2) The executive director may allow or disallow any type of play described in this subsection.

(d) Plays and tickets.

(1) A ticket may be sold only by a retailer and only at the location listed on the retailer's license. A ticket sold by a person other than a retailer is not valid.

(2) A Pick 3 play involves the selection of three single-digit numbers, with each selected from the numbers 0 to [~~, 1, 2, 3, 4, 5, 6, 7, 8, and~~] 9.

(3) The cost of an exact order play is the same as the Pick 3 base play amount selected for the play.

(4) The cost of an any order play is the same as the Pick 3 base play amount selected for the play.

(5) The cost of an exact order/any order play is:

(A) $1 if the Pick 3 base play amount selected for the play is $.50;

(B) $2 if the Pick 3 base play amount selected for the play is $1;

(C) $4 if the Pick 3 base play amount selected for the play is $2;

(D) $6 if the Pick 3 base play amount selected for the play is $3;

(E) $8 if the Pick 3 base play amount selected for the play is $4; or

(F) $10 if the Pick 3 base play amount selected for the play is $5.

(6) The cost of a combo play is determined by multiplying the Pick 3 base play amount selected for the play by the number

of winning combinations possible with the three single-digit numbers selected for the play.

(7) The cost of a Pick 3 *plus* FIREBALL play is equal to the cost of the connected Pick 3 wager for the base game, thereby doubling the purchase. The cost of a Pick 3 *plus* FIREBALL play is in addition to the cost of the connected Pick 3 play.

(8) The cost of a ticket is determined by the total cost of the plays evidenced by the ticket.

~~[(9) A player may complete up to five playboards on a single playslip.]~~

~~[(10) Acceptable methods to select numbers for a play, play type, base play amount, and draw date and time for a play may include:]~~

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

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

~~[(C) requesting a Quick Pick;]~~

~~[(D) requesting a retailer to manually enter numbers;]~~

~~[(E) using a previously-generated "Pick 3" ticket provided by the player; or]~~

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

~~[(11) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually, or using a selection method that is not approved by the commission, is not valid.]~~

~~[(12) A retailer may only accept a request for a play using a commission-approved method of play, and if the request is made in person.]~~

(9) [~~(13)~~] Consecutive plays. A player may purchase one or more plays for any one or more of the next 24 drawings after the purchase and may purchase up to 24 consecutive plays for a particular drawing time.

(10) [~~(14)~~] A retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers, play type and base play amount selected for each play; the number of plays, the draw date(s) for which the plays were purchased; cost of the ticket, and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock, or, for third-party point-of-sale systems approved by the commission, printed on paper stock or otherwise issued in a manner approved by the commission to provide tangible evidence of participation in a lottery game.

~~[(15) A playslip has no monetary value and is not evidence of a play.]~~

(11) [~~(16)~~] The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.

(12) [~~(17)~~] An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(e) Cancellation of plays. A retailer may cancel a Pick 3 play only in accordance with the following provisions:

(1) the ticket evidencing the play must have been sold at the retail location at which it is cancelled;

(2) the retailer must have possession of the ticket evidencing the play;

(3) all Pick 3 plays evidenced by a single ticket must be cancelled;

(4) cancellation may occur no later than 60 minutes after sale of the ticket evidencing the play;

(5) cancellation must occur before the beginning of the next draw break after the sale of the ticket evidencing the play;[~~and~~]

(6) cancellation must occur before midnight on the day the ticket evidencing the play was sold; and[~~.~~]

(7) the play was not generated as part of a promotion.

(f) Drawings.

(1) Pick 3 drawings shall be held four times a day, Monday through Saturday, at 10:00 a.m., 12:27 p.m., 6:00 p.m., and 10:12 p.m. Central Time. The executive director may change the drawing schedule, if necessary.

(2) At each Pick 3 drawing, three single-digit numbers shall be drawn for the base game. Each single-digit number will be drawn from a set that includes a single occurrence of all 10 [~~ten~~] single-digit numbers (0 to [~~, 1, 2, 3, 4, 5, 6, 7, 8, and~~] 9). After the Pick 3 base game drawing, the Pick 3 FIREBALL number will be randomly drawn from a set of 10 numbered balls (0 to [~~-~~] 9).

(3) Numbers drawn and the order in which the numbers are drawn must be certified by the commission in accordance with the commission's draw procedures.

(4) The numbers selected in a drawing and the order of the numbers selected in the drawing shall be used to determine all winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a lottery drawing representative and the independent certified public accountant immediately before each drawing and immediately after each drawing.

(g) Prizes.

(1) Prize payments shall be made upon completion of commission validation procedures.

(2) A Pick 3 *plus* FIREBALL play is a separate play from the exact order play, any order play, exact order/any order play, or combo play with which it is connected.

(3) The executive director may temporarily increase any prize set out in this paragraph for promotional or marketing purposes.

(4) A person who holds a valid ticket for a winning exact order play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(4) (No change.)

(5) A person who holds a valid ticket for a winning 3-way any order play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(5) (No change.)

(6) A person who holds a valid ticket for a winning 6-way any order play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(6) (No change.)

(7) A person who holds a valid ticket for a winning exact order/3-way any order play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(7) (No change.)

(8) A person who holds a valid ticket for a winning exact order/6-way any order play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(8) (No change.)

(9) A person who holds a valid ticket for a winning combo play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(9) (No change.)

[(h) The executive director may authorize promotions in connection with Pick 3.]

[(i) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award.]

(h) [(j)] Pick 3 *plus* FIREBALL[®].

(1) Pick 3 *plus* FIREBALL is an add-on feature to the Pick 3 base game. Adding the Pick 3 *plus* FIREBALL option doubles the cost of wager and creates more possible winning combinations. For instance, if a player purchases a Pick 3 play with an exact order play type for $1.00, the Pick 3 *plus* FIREBALL play will cost an additional $1.00. If a player purchases a Pick 3 "6-way combo" for $6, the Pick 3 *plus* FIREBALL play will cost an additional $6. The Pick 3 FIREBALL number will be randomly drawn from a set of [ten (]10[)] numbers from [zero to nine (]0 to 9[)]. The Pick 3 FIREBALL number drawn will apply exclusively to the Pick 3 base game drawing and prizes. The Pick 3 *plus* FIREBALL option cannot be purchased independently of a Pick 3 play.

(2) The Pick 3 FIREBALL number is used to replace any one [(1)] of the three [(3)] drawn Pick 3 winning numbers to create FIREBALL prize winning combinations.

(3) If the player's selected numbers match any of the FIREBALL prize winning combinations, the Pick 3 *plus* FIREBALL play wins in accordance with the charts in Figures 401.307(g)(4) through 401.307(g)(9).

(4) All FIREBALL prizes are in addition to any Pick 3 base game wins. Specifically, if a player purchases the Pick 3 *plus* FIREBALL option, then if the Pick 3 FIREBALL number is the same as one of the three numbers drawn in the Pick 3 base game drawing, and the player's numbers already match the numbers drawn for the player's play type, the player will be awarded the FIREBALL prize in addition to the Pick 3 prize as identified in subsection (g) of this section (relating to the Pick 3 prize charts). For instance, assume a player selects an exact order $1.00 base game play of 1, 2, and 3, and purchases a Pick 3 *plus* FIREBALL play for an additional $1.00 (total $2.00 wager). If the Pick 3 winning numbers drawn are 1-2-3, and the Pick 3 FIREBALL number is 1, the play will win the base game prize of $500 and the FIREBALL prize of $180 for a total of $680. As another example, assume the player selects an exact order 1-2-2 for $1.00 and purchases a Pick 3 *plus* FIREBALL play for an additional $1.00 (total $2.00 wager). If the Pick 3 winning numbers drawn are 1-2-2 and the Pick 3 FIREBALL number is 2, then the play will win the base game prize of $500 and win the FIREBALL prize of $180 twice for a total of $860.

§401.308. "Cash Five" Draw Game Rule.

(a) Cash Five®. A Texas Lottery draw game to be known as "Cash Five" is authorized to be conducted by the executive director under the following rules and under such further instructions and directives as the executive director may issue in furtherance thereof. If a conflict arises between this rule and §401.304 of this title (relating to Draw Game Rules (General)), this section shall have precedence.

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

(1) Multi-draw--A player may purchase a Cash Five play for up to 12 consecutive drawings beginning with the current draw.

[(2) Number--Any play integer from one through 35 inclusive.]

(2) [(3)] Play--The five numbers selected and printed on the ticket.

(3) [(4)] Playboard [Play board]--A field of [the] 35 numbers from 1 to 35 found on the playslip.

[(5) Playslip--An optically readable card issued by the commission used by players of Cash Five to elect plays. There shall be five play boards on each playslip identified as A, B, C, D, and E. A playslip has no pecuniary value and shall not constitute evidence of play purchase or of numbers selected.]

(c) Play for Cash Five.

(1) Type of play. A Cash Five player must select [5 (]five[)] numbers out of a field of 35 [(thirty-five)] numbers in each play or allow number selection by a random number generator approved by the commission, referred to as Quick Pick. A winning play is achieved only when two, three, four, or five of the numbers selected by the player match, in any order, two, three, four or five, respectively, of the five winning numbers drawn by the lottery.

(2) The price of a single Cash Five play for the Cash Five game is $1.00.

[(3) Method of play. The player may use playslips, or other commission-approved method of play, to make number selections. A ticket generated using a selection method that is not approved by the commission is not valid. A selection of a play may be made only if the request is made in person. Acceptable methods to select numbers for a play may include:]

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

[(B) using a playslip;]

[(C) using a previously-generated "Cash Five" ticket provided by the player;]

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

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

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

[(4) Except as provided in paragraph (3) of this subsection, Cash Five plays must be purchased using official Cash Five playslips. Playslips which have been mechanically completed are not valid. Cash Five tickets must be printed on official Texas Lottery paper stock or, for third-party point-of-sale systems approved by the commission, printed on paper stock or otherwise issued in a manner approved by the commission to provide tangible evidence of participation in a lottery game.]

(3) [(5)] Cash Five plays may be purchased only at a licensed location from a lottery retailer authorized to sell draw game tickets.

(4) A retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers selected for each play, the number of plays, the draw date(s) for which the plays were purchased, the cost of the ticket, and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock, or, for third-party point-of-sale systems approved by the commission, printed on paper stock or otherwise issued in a manner approved by the commission to provide tangible evidence of participation in a lottery game.

[(6) Cash Five tickets shall show the player's selection of numbers, or Quick Pick (QP) numbers, boards played, drawing date(s), and serial numbers. It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. A ticket is a bearer instrument until signed.]

(5) [~~(7)~~] One prize per play. The holder of a winning play may win only one prize per play in connection with the winning numbers drawn and shall be entitled only to the highest prize category won by those numbers.

(d) Prizes for Cash Five. The first, second, and third prize amounts, for each drawing, paid to each Cash Five player who selects a matching combination of numbers is a fixed amount shown in the chart below, Figure: 16 TAC §401.308(d). The Match 5 top prize is a guaranteed (fixed) amount of $25,000; provided that, in any drawing where the number of top prize winning plays is greater than three (3), the top prize shall be paid on a pari-mutuel rather than fixed prize basis and a liability cap of $75,000 (Seventy-Five Thousand Dollars) will be divided equally by the number of top prize winning plays. In this case, the calculation of the Match 5 top prize shall be rounded down so that prizes can be paid in multiples of whole dollars. Any part of the top pari-mutuel prize for a drawing that is not paid in prizes (breakage) shall be applied to offset prize expense. The Match 2 (fourth prize) is a guaranteed free Cash Five Quick Pick ticket. All other prizes are paid in cash.

Figure: 16 TAC §401.308(d) (No change.)

(e) Drawings.

(1) The Cash Five drawings shall be held each week on Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday evenings at 10:12 p.m. Central Time except that the drawing schedule may be changed by the executive director, if necessary.

(2) The drawings will be conducted by lottery officials.

(3) Each drawing shall determine, at random, five winning numbers in accordance with Cash Five draw procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the lottery in accordance with the draw procedures. The winning numbers shall be used in determining all Cash Five winners for that drawing.

(4) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a lottery drawing representative and the independent certified public accountant immediately prior to a drawing and immediately after the drawing.

(5) A drawing will not be invalidated based on the financial liability of the lottery.

[~~(f) The executive director may authorize promotions in connection with Cash Five.~~]

[~~(g) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award.~~]

§401.312. "Texas Two Step" Draw Game Rule.

(a) Texas Two Step®. The executive director is authorized to conduct a game known as "Texas Two Step." The executive director may issue further directives for the conduct of Texas Two Step that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to Draw Game Rules (General)).

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

(1) Play--The selection of four different numbers from 1 to [~~one through~~] 35 and the selection of an additional number from 1 to [~~one through~~] 35 for one opportunity to win in Texas Two Step, and the purchase of a ticket evidencing that selection.

(2) Playboard--Two fields found on the [~~a~~] playslip, [~~each~~] with each field containing 35 numbers from 1 to 35. [~~, for use in selecting numbers for a Texas Two Step play.~~]

[~~(3) Playslip--An optically readable card issued by the commission for use in selecting numbers for one or more Texas Two Step plays.~~]

(3) [~~(4)~~] Roll cycle--A series of one or more drawings that ends when there is a drawing for which one or more tickets are sold that match, in accordance with the provisions of subsection (e)(1)(A) of this section, the numbers drawn in the drawing. A new roll cycle begins with the next drawing after a drawing for which one or more jackpot tickets are sold that match, in accordance with the provisions of subsection (e)(1)(A) of this section, the numbers drawn in the drawing.

(c) Plays and tickets.

(1) A ticket may be sold only by a retailer and only at the location listed on the retailer's license. A ticket sold by a person other than a retailer is not valid.

(2) The price of a play is $1.

[~~(3) A player may complete up to five playboards on a single playslip.~~]

(3) [~~(4)~~] A player may use a single playslip, or other commission-approved method of play, to purchase the same play(s) for up to 10 consecutive drawings, to begin with the next drawing after the purchase.

[~~(5) Acceptable methods to select a play may include:~~]

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

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

[~~(C) requesting a retailer to use Quick Pick;~~]

[~~(D) requesting a retailer to manually enter numbers;~~]

[~~(E) using a previously-generated "Texas Two Step" ticket provided by the player; or~~]

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

[~~(6) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually, or using a selection method that is not approved by the commission, is not valid.~~]

[~~(7) A retailer may only accept a request for a play using a commission-approved method of play, and if the request is made in person.~~]

(4) [~~(8)~~] A retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers selected for each play, the number of plays, the draw date(s) for which the plays were purchased, the cost of the ticket, and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock, or, for third-party point-of-sale systems approved by the commission, printed on paper stock or otherwise issued in a manner approved by the commission to provide tangible evidence of participation in a lottery game.

[~~(9) A playslip has no monetary value and is not evidence of a play.~~]

(5) [~~(10)~~] The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.

(6) [~~(11)~~] An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(d) Drawings.

(1) Texas Two Step drawings shall be held each week on Monday and Thursday at 10:12 p.m. Central Time. The executive director may change the drawing schedule, if necessary.

(2) At each Texas Two Step drawing, the commission shall draw four different numbers from a set of numbers from 1 to [~~one through~~] 35, and the commission shall draw a single number from a separate set of numbers from 1 to [~~one through~~] 35.

(3) Numbers drawn must be certified by the commission in accordance with the commission's draw procedures.

(4) The numbers selected in a drawing shall be used to determine all winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a lottery drawing representative and the independent certified public accountant immediately before each drawing and immediately after each drawing.

(e) Prizes.

(1) Jackpot prize (first prize).

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a share of the jackpot prize (first prize) for a drawing if:

(i) the four numbers the player selected from a field of 35 numbers match (in any order) the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers matches the single number selected from a set of 35 numbers at the drawing.

(B) The jackpot prize for a Texas Two Step drawing is the amount the commission establishes and authorizes vendors to publicize for the drawing.

(C) If 23.78 percent of Texas Two Step sales proceeds for a roll cycle are not sufficient to pay a jackpot prize, [~~the commission shall use remaining funds in the Texas Two Step prize reserve fund to pay the prize. If 23.78 percent of Texas Two Step sales proceeds for a roll cycle and any remaining funds in the Texas Two Step prize reserve fund are not sufficient to pay a jackpot prize,~~] the commission shall use funds from other authorized sources, including the State Lottery Account established by Government Code §466.355, to pay the prize.

(2) Second prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a share of the second prize for a drawing if:

(i) the four numbers the player selected from a field of 35 numbers match (in any order) the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers does not match the single number selected from a set of 35 numbers at the drawing.

(B) The second prize consists of 2.79 percent of the proceeds from Texas Two Step ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the second prize for a drawing shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the second prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the second prize for the next drawing.

(3) Third prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a share of the third prize for a drawing if:

(i) three of the four numbers the player selected from a field of 35 numbers match (in any order) three of the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers matches the single number selected from a set of 35 numbers at the drawing.

(B) The third prize consists of 0.34 percent of the proceeds from Texas Two Step ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the third prize for a drawing shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the third prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the third prize for the next drawing.

(4) Fourth prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a share of the fourth prize for a drawing if:

(i) three of the four numbers the player selected from a field of 35 numbers match (in any order) three of the four numbers selected at the drawing from a set of 35 numbers; and

(ii) the single number the player selected from a field of 35 numbers does not match the single number selected from a set of 35 numbers at the drawing.

(B) The fourth prize consists of 4.60 percent of the proceeds from Texas Two Step ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the fourth prize for a drawing shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the fourth prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the fourth prize for the next drawing.

(5) Fifth prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a share of the fifth prize for a drawing if:

(i) two of the four numbers the player selected from a field of 35 numbers match (in any order) two of the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers matches the single number selected from a set of 35 numbers at the drawing.

(B) The fifth prize consists of 3.04 percent of the proceeds from Texas Two Step ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the fifth prize for a drawing shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the fifth prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the fifth prize for the next drawing.

(6) Sixth prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a $7 prize for a drawing if:

(i) one of the four numbers the player selected from a field of 35 numbers matches one of the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers matches the single number selected from a set of 35 numbers at the drawing.

(B) If 6.87 percent of sales proceeds for the drawing are not sufficient to pay all of the sixth prizes for that drawing, [~~the commission shall use remaining funds in the Texas Two Step prize reserve fund to pay the prizes. If 6.87 percent of sales proceeds for a drawing and any remaining funds in the Texas Two Step prize reserve fund are not sufficient to pay all of the sixth prizes for a drawing,~~] the commission shall use funds from other authorized sources, including the State Lottery Account established by Government Code §466.355, to pay the prize.

(C) To the extent that the total amount of sixth prizes for a Texas Two Step drawing is less than 6.87 percent of the proceeds from ticket sales for the drawing, the difference shall be carried forward to fund future sixth prize payments.

(7) Seventh prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a $5 prize for a drawing if:

(i) none of the four numbers the player selected from a field of 35 numbers match any of the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers matches the single number selected from a set of 35 numbers at the drawing.

(B) If 8.58 percent of sales proceeds for the drawing are not sufficient to pay all of the seventh prizes for that drawing, [~~the commission shall use remaining funds in the Texas Two Step prize reserve fund to pay the prizes. If 8.58 percent of sales proceeds for a drawing and any remaining funds in the Texas Two Step prize reserve fund are not sufficient to pay all of the seventh prizes for a drawing,~~] the commission shall use funds from other authorized sources, including the State Lottery Account established by Government Code §466.355, to pay the prize.

(C) To the extent that the total amount of seventh prizes for a Texas Two Step drawing is less than 8.58 percent of the proceeds from ticket sales for the drawing, the difference shall be carried forward to fund future seventh prize payments.

(8) A person may win only one prize per play per drawing. A player who holds a valid ticket for a winning play is entitled to the highest prize for that play.

(9) A share of a prize is determined by dividing the prize by the number of winning plays for that prize.

(10) A Texas Two Step prize payment shall be made upon completion of commission validation procedures.

(11) A claimant is not entitled to interest or other earnings on a prize, regardless of when a claim is actually presented and regardless of when payment is made.

[~~(f) Texas Two Step prize reserve fund.~~]

(f) [~~(g)~~] Jackpot information on commission website. After the commission has approved an advertised estimated jackpot under subsection (e) of this section, the commission shall post the following information on the agency website:

(1) the amount of ticket sales, if any, for previous drawings in the roll cycle; and

(2) the amount of projected ticket sales for the upcoming drawing.

[~~(h) The executive director may authorize promotions in connection with Texas Two Step.~~]

[~~(i) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award.~~]

§401.315. "Mega Millions" Draw Game Rule.

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

(b) Definitions. In addition to the definitions provided in §401.301 of this subchapter (relating to General Definitions), and

unless the context in this section otherwise requires, the following definitions apply.

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

(2) "Drawing" refers collectively to the formal draw event for randomly selecting the winning numbers that determine the number of winning Plays for each prize level of the Mega Millions game and Megaplier® Promotion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Cancellations Prohibited. In all instances, a Play recorded on the Lottery gaming system may not be voided or cancelled by returning the ticket to the selling agent or to the commission, including tickets that are misprinted, illegible, printed in error, or for any reason not successfully transferred to an authorized selling entity or player. A Selling Lottery may develop an approved method of compensating retailers for Plays that are not transferred to a player for

a reason acceptable to the Selling Lottery and not prohibited by the Mega Millions Product Group. No Play that is eligible for a prize can be returned to the commission for credit. Plays accepted by retailers as returned Plays and which cannot be re-sold shall be deemed owned by the bearer thereof.

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

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

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

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

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

~~[(D) selecting a Quick Pick;]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(H) Any amount remaining in the Mega Millions prize pool accounts or prize reserve accounts when the Product Group declares the end of the game shall be returned to the lotteries participating

in the prize pool and prize reserve accounts after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game, or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction statute.

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

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

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

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

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

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

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

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

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

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

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

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

(f) Mega Millions Prize Payment.

(1) Mega Millions Grand Prize. The prize money allocated from the current Mega Millions prize pool for the Grand Prize, plus any previous portions of prize money allocated to the Grand Prize category in which no matching MM Plays or JJ Plays were sold will be divided equally among all Grand Prize winning MM Plays and JJ Plays in all Participating Lotteries. The Annuity Grand Prize amount will be paid in thirty (30) graduated annual installments. Grand Prizes won shall be funded by the Selling Lotteries in accordance with the formula set by the Mega Millions Lotteries. The Mega Millions Lotteries may set a minimum guaranteed annuitized Grand Prize amount that shall be advertised by the Selling Lotteries as the starting guaranteed annuitized Grand Prize amount. At the time of ticket purchase, a player must select a payment option of either a single cash value payment or annuitized payments of a share of the Grand Prize if the Play is a winning Play. A player's selection of the payment option at the time of purchase from the commission is final and cannot be revoked, withdrawn, or otherwise changed. If no selection is made, payment option will be as described in the chart below:
Figure: 16 TAC §401.315(f)(1)
[~~Figure: 16 TAC §401.305(g)(3)~~]

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

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

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

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

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

Millions game. A Party Lottery may elect to make the initial payment from its own funds after validation, with notice to MUSL.

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

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

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

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

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

(g) Ticket Validation.

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

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

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

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

(B) The ticket must be intact;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Ticket Responsibility.

(1) Prize Claims. Prize claim procedures shall be governed by the rules of the commission. The MUSL and the Selling Lotteries

shall not be responsible for prizes that are not claimed following the proper procedures as determined by the commission.

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

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

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

(i) Ineligible Players.

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

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

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

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

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

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

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

(j) Applicable Law.

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

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

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

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

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

(k) Mega Millions Megaplier Promotion.

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

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

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

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

(5) Megaplier Prize Pool.

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

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

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

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

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

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

(9) Limitation on Payment of Megaplier Prizes.

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

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

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

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

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

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

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

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

(l) Just the Jackpot[™] Promotion.

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

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

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

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

(5) The purchase price of a single JJ Play shall be three dollars (US $3.00) for two (2) Plays, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a

lottery JJ Play. JJ Plays must be printed on separate tickets from MM Plays and must clearly indicate the Plays are for the Just the Jackpot Promotion. Each JJ Play is played separately in determining matches to winning numbers and prize amounts. JJ Plays may be purchased from any authorized Texas Lottery sales agent in a manner as approved by the commission and in accordance with this section and the MUSL rules. The winning numbers for the JJ Plays will be the winning numbers drawn in the applicable Mega Millions Drawing. The Grand Prize will not be multiplied or increased by means of the Megaplier Promotion.

(6) Just the Jackpot Prize Pool Contributions.

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

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

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

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

(7) Expected Prize Payout Percentage. The Mega Millions Grand Prize payout shall be determined on a pari-mutuel basis. The Grand Prize amount shall be divided equally by the number of MM Plays and JJ Plays winning the Mega Millions Grand Prize. All prize payouts are made with the following expected prize payout percentages, which does not include any additional amount held in prize reserves:
Figure: 16 TAC §401.315(l)(7) (No change.)

§401.316. "Daily 4" Draw Game Rule.

(a) Daily 4™. The executive director is authorized to conduct a game known as "Daily 4." The executive director may issue further directives and procedures for the conduct of Daily 4 that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to Draw Game Rules (General)).

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

(1) Daily 4 Play--A play other than a Daily 4 *plus* FIREBALL play consists of:

(A) the selection of a play type;

(B) the selection of a Daily 4 base play amount of $.50, $1, $2, $3, $4 or $5;

(C) the selection of a draw date and time;

(D) the selection of numbers in accordance with this section; and

(E) the purchase of a ticket evidencing those selections.

(2) Daily 4 *plus* FIREBALL Play--A Daily 4 *plus* FIREBALL play refers to a play purchased as part of the Daily 4 *plus* FIREBALL add-on feature fully described in subsection (h)[~~(j)~~] of this section. A Daily 4 FIREBALL number is the additional number drawn from [~~zero to nine (~~]0 to 9[~~)~~] that is used to replace any one [~~(1)~~] of the four [~~(4)~~] Daily 4 winning numbers to make FIREBALL prize winning combinations. The Daily 4 *plus* FIREBALL option cannot be purchased independently of a Daily 4 play.

(3) Playboard--Four [~~A panel on a Daily~~ 4 ~~playslip containing four~~] fields of numbers found on the playslip, with each field containing 10 numbers from 0 to 9. [~~for use in selecting numbers for a Daily~~ 4 ~~play, with each field of numbers containing the numbers 0, 1, 2, 3, 4, 5, 6, 7, 8 and 9.~~]

[~~(4) Playslip--An optically readable card issued by the commission for use in making selections for one or more Daily~~ 4 ~~plays and the option to select the Daily~~ 4 ~~*plus* FIREBALL feature.~~]

(c) Play types.

(1) Daily 4 may include the following play types: straight, box, straight/box, combo, front-pair, mid-pair, back-pair, and Daily 4 *plus* FIREBALL.

(A) A "straight" play is a winning play if the player's four single-digit numbers match in exact order the four single-digit numbers drawn in the applicable drawing.

(B) A "box" play is a winning play if the player's four single-digit numbers match in any order the four single-digit numbers drawn in the applicable drawing.

(i) A box play may be a 4-way box play, a 6-way box play, a 12-way box play, or a 24-way box play.

(I) A box play is a 4-way box play when box play is selected as the play type in connection with a set of four single-digit numbers that includes three occurrences of one single-digit number and one occurrence of one other single-digit number. A 4-way box play involves four possible winning combinations.

(II) A box play is a 6-way box play when box play is selected as the play type in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and two occurrences of another single-digit number. A 6-way box play involves six possible winning combinations.

(III) A box play is a 12-way box play when box play is selected as the play type in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and one occurrence of two other single-digit numbers. A 12-way box play involves 12 possible winning combinations.

(IV) A box play is a 24-way box play when box play is selected as the play type in connection with a set of four single-digit numbers that includes a single occurrence of four different single-digit numbers. A 24-way box play involves 24 possible winning combinations.

(ii) Box play is not permitted in connection with a set of numbers that includes four occurrences of one single-digit number.

(C) A "straight/box" play is a winning play either if the player's four single-digit numbers match in exact order the numbers

drawn in the applicable drawing or if the player's four single-digit numbers match in any order the numbers drawn in the applicable drawing. The prize amount is greater if the player's four single-digit numbers match in exact order the numbers drawn in the applicable drawing.

(i) A straight/box play may be a 4-way straight/box play, a 6-way straight/box play, a 12-way straight/box play, or a 24-way straight/box play.

(I) A straight/box play is a 4-way straight/box play when straight/box play is selected in connection with a set of four single-digit numbers that includes three occurrences of one single-digit number and one occurrence of one other single-digit number. A 4-way straight/box play involves four possible winning combinations.

(II) A straight/box play is a 6-way straight/box play when straight/box play is selected in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and two occurrences of another single-digit number. A 6-way straight/box play involves six possible winning combinations.

(III) A straight/box play is a 12-way straight/box play when straight/box play is selected in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and one occurrence of two other single-digit numbers. A 12-way straight/box play involves 12 possible winning combinations.

(IV) A straight/box play is a 24-way straight/box play when straight/box play is selected in connection with a set of four single-digit numbers that includes a single occurrence of four different single-digit numbers. A 24-way straight/box play involves 24 possible winning combinations.

(ii) Straight/box play is not permitted in connection with a set of numbers that includes four occurrences of one single-digit number.

(D) A "combo" play combines into a single play all of the possible straight plays that can be played with the four single-digit numbers selected for the play.

(i) A combo play may be a 4-way combo play, a 6-way combo play, a 12-way combo play, or a 24-way combo play.

(I) 4-way combo play is a combo play in connection with a set of four single-digit numbers that includes three occurrences of one single-digit number and one occurrence of one other single-digit number. A four-way combo play involves four possible winning combinations.

(II) 6-way combo play is a combo play in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and two occurrences of another single-digit number. A six-way combo play involves six possible winning combinations.

(III) 12-way combo play is a combo play in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and one occurrence of two other single-digit numbers. A 12-way combo play involves 12 possible winning combinations.

(IV) 24-way combo play is a combo play in connection with a set of four single-digit numbers that includes a single occurrence of four different single-digit numbers. A 24-way combo play involves 24 possible winning combinations.

(ii) Combo play is not permitted in connection with a set of numbers that includes four occurrences of one single-digit number.

(E) Pair play.

(i) A "front-pair" play is a winning play if the player's two single-digit numbers match in exact order the first two single-digit numbers drawn in the applicable drawing.

(ii) A "mid-pair" play is a winning play if the player's two single-digit numbers match in exact order the second and third single-digit numbers drawn in the applicable drawing.

(iii) A "back-pair" play is a winning play if the player's two single-digit numbers match in exact order the last two single-digit numbers drawn in the applicable drawing.

(F) A Daily 4 *plus* FIREBALL play wins a FIREBALL prize for each winning combination of numbers created by replacing any one [~~(1)~~] of the four [~~(4)~~] Daily 4 winning numbers with the Daily 4 FIREBALL number for that drawing, as determined by the selected play type and wager amount.

(2) The executive director may allow or disallow any type of play described in this subsection.

(d) Plays and tickets.

(1) A ticket may be sold only by a retailer and only at the location listed on the retailer's license. A ticket sold by a person other than a retailer is not valid.

(2) The selection of numbers for a straight play, a box play, a straight/box play, or a combo play involves the selection of four single-digit numbers, with each selected from the numbers 0 to [~~, 1, 2, 3, 4, 5, 6, 7, 8, and~~] 9.

(3) The selection of numbers for a front-pair play, a mid-pair play, or a back-pair play involves the selection of two single-digit numbers, with each selected from the numbers 0 to [~~, 1, 2, 3, 4, 5, 6, 7, 8, and~~] 9.

(4) The cost of a play varies according to the play type selected for the play and the base play amount selected for the play.

(A) The cost of a straight play is the same as the base play amount selected for the play.

(B) The cost of a box play is the same as the base play amount selected for the play.

(C) The cost of a straight/box play is:

(i) $1 if the base play amount selected for the play is $.50;

(ii) $2 if the base play amount selected for the play is $1;

(iii) $4 if the base play amount selected for the play is $2;

(iv) $6 if the base play amount selected for the play is $3;

(v) $8 if the base play amount selected for the play is $4; or

(vi) $10 if the base play amount selected for the play is $5.

(D) The cost of a combo play is determined by multiplying the base play amount selected for the play by the number of winning combinations possible with the four single-digit numbers selected for the play.

(E) The cost of a front-pair, mid-pair, or back-pair play is the same as the base play amount selected for the play.

(F) The cost of a Daily 4 *plus* FIREBALL play is equal to the cost of the connected Daily 4 wager for the base game, thereby doubling the purchase. The cost of a Daily 4 *plus* FIREBALL play is in addition to the cost of the Daily 4 play with which the Daily 4 *plus* FIREBALL play is connected.

(5) The cost of a ticket is determined by the total cost of the plays evidenced by the ticket.

[~~(6) A player may complete up to five playboards on a single playslip.~~]

[~~(7) Acceptable methods to select numbers for a play, play type, base play amount, and draw date and time for a play may include:~~]

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

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

[~~(C) requesting a Quick Pick;~~]

[~~(D) requesting a retailer to manually enter numbers;~~]

[~~(E) using a previously-generated "Daily 4" ticket provided by the player; or~~]

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

[~~(8) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually, or using a selection method that is not approved by the commission, is not valid.~~]

[~~(9) A retailer may only accept a request for a play using a commission-approved method of play, and if the request is made in person.~~]

(6) [~~(10)~~] A player may purchase one or more plays for any one or more of the next 24 drawings after the purchase and may purchase up to 24 consecutive plays for a drawing time.

(7) [~~(11)~~] A retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers, play type and base play amount selected for each play; the number of plays, the draw date(s) for which the plays were purchased; the cost of the ticket, and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock, or, for third-party point-of-sale systems approved by the commission, printed on paper stock or otherwise issued in a manner approved by the commission to provide tangible evidence of participation in a lottery game.

[~~(12) A playslip has no monetary value and is not evidence of a play.~~]

(8) [~~(13)~~] The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.

(9) [~~(14)~~] An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(e) Cancellation of plays. A retailer may cancel a Daily 4 play, including a Daily 4 *plus* FIREBALL play, only in accordance with the following provisions:

(1) The ticket evidencing the play must have been sold at the retail location at which it is cancelled;

(2) The retailer must have possession of the ticket evidencing the play;

(3) All Daily 4 plays evidenced by a single ticket must be cancelled;

(4) Cancellation must occur no later than 60 minutes after sale of the ticket evidencing the play;

(5) Cancellation must occur before the beginning of the next draw break after the sale of the ticket evidencing the play; [~~and~~]

(6) Cancellation must occur before midnight on the day the ticket evidencing the play was sold; and [~~.~~]

(7) the play was not generated as part of a promotion.

(f) Drawings.

(1) Daily 4 drawings shall be held four times a day, Monday through Saturday, at 10:00 a.m., 12:27 p.m., 6:00 p.m., and 10:12 p.m. Central Time. The executive director may change the drawing schedule, if necessary.

(2) At each Daily 4 drawing, four single-digit numbers shall be drawn for the base game. Each single-digit number will be drawn from a set that includes a single occurrence of all ten single-digit numbers (0 to [~~, 1, 2, 3, 4, 5, 6, 7, 8, and~~] 9). After the base game drawing, the Daily 4 FIREBALL number will be randomly drawn from a set of 10 numbered balls (0 to [~~-~~] 9).

(3) Numbers drawn and the order in which the numbers are drawn must be certified by the commission in accordance with the commission's draw procedures.

(4) The numbers selected in a drawing and the order of the numbers selected in the drawing shall be used to determine all winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a lottery drawing representative and the independent certified public accountant immediately before each drawing and immediately after each drawing.

(g) Prizes.

(1) Prize payments shall be made upon completion of commission validation procedures.

(2) A Daily 4 *plus* FIREBALL play is a separate play from the straight play, box play, straight/box play, combo play or pairs play with which it is connected.

(3) The executive director may temporarily increase any prize set out in this subsection for promotional or marketing purposes.

(4) A person who holds a valid ticket for a winning straight play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(4) (No change.)

(5) A person who holds a valid ticket for a winning 4-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(5) (No change.)

(6) A person who holds a valid ticket for a winning 6-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(6) (No change.)

(7) A person who holds a valid ticket for a winning 12-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(7) (No change.)

(8) A person who holds a valid ticket for a winning 24-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(8) (No change.)

(9) A person who holds a valid ticket for a winning straight/4-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(9) (No change.)

(10) A person who holds a valid ticket for a winning straight/6-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(10) (No change.)

(11) A person who holds a valid ticket for a winning straight/12-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(11) (No change.)

(12) A person who holds a valid ticket for a winning straight/24-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(12) (No change.)

(13) A person who holds a valid ticket for a winning combo play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(13) (No change.)

(14) A person who holds a valid ticket for a winning front-pair, mid-pair, or back-pair play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(14) (No change.)

~~[(h) The executive director may authorize promotions in connection with Daily 4.]~~

~~[(i) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award.]~~

(h) [~~(j)~~] Daily 4 *plus* FIREBALL[®].

(1) Daily 4 *plus* FIREBALL is an add-on feature to the Daily 4 base game. Adding the Daily 4 *plus* FIREBALL option doubles the cost of the wager and creates more possible winning combinations. For instance, if a player purchases a Daily 4 play with a straight order play type for $1.00, the Daily 4 *plus* FIREBALL play will cost an additional $1.00. If a player purchases a Daily 4 "6-way combo" for $6, the Daily 4 *plus* FIREBALL play option will cost an additional $6. The Daily 4 FIREBALL number will be randomly drawn from a set of [~~ten~~ (]10[)] numbers from [~~zero to nine~~ (]0 to 9[)]. The Daily 4 FIREBALL number drawn will apply exclusively to the Daily 4 base game drawing and prizes. The Daily 4 *plus* FIREBALL option cannot be purchased independently of a Daily 4 play.

(2) The Daily 4 FIREBALL number is used to replace any one [~~(1)~~] of the four [~~(4)~~] drawn Daily 4 winning numbers to create FIREBALL prize winning combinations.

(3) If the player's selected numbers match any of the FIREBALL prize winning combinations, the Daily 4 *plus* FIREBALL play wins in accordance with the charts in Figures 401.316(g)(4) through 401.316(g)(14).

(4) All FIREBALL prizes are in addition to any Daily 4 base game wins. Specifically, if a player purchases the Daily 4 *plus* FIREBALL option, then if the Daily 4 FIREBALL number is the same as one of the four numbers drawn in the Daily 4 base game drawing, and the player's numbers already match the numbers drawn for the player's play type, the player will be awarded the FIREBALL prize, in addition to the Daily 4 prize as identified in subsection (g) of this section (relating to the Daily 4 prize charts). For instance, assume a player selects 1, 2, 3, and 4 in a straight play order for the base game at $1.00 and purchases a Daily 4 *plus* FIREBALL play for an additional $1.00 (total $2.00 wager). If the numbers drawn are 1, 2, 3, and 4 and the Daily 4 FIREBALL number is 4, the play will win the base game prize of $5000 and the FIREBALL prize of $1350, for a total of $6350.

§401.317. "Powerball[®]" Draw Game Rule.

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

(b) Definitions.

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

(2) A "Drawing" refers collectively to the formal draw event for randomly selecting the Winning Numbers that determine the number of winning Plays for each prize level of the Powerball game and Power Play promotion.

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

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

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

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

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

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

game. "Selling Lottery" or "Participating Lottery" shall mean a lottery authorized by the Product Group to sell Plays, including Party Lotteries and Licensee Lotteries.

(9) "Play" means the six (6) numbers, the first five (5) from a field of sixty-nine (69) numbers and the last one (1) from a field of twenty-six (26) numbers, that appear on a ticket and are to be played by a player in the Powerball game.

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

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

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

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

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

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

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

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

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

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

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

(c) Game Description.

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

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

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

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

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

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

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

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

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

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

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

[(D) selecting a Quick Pick;]

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

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

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

(6) [(7)] Maximum Purchase. The maximum number of consecutive Drawings on a single PB Play purchase is ten (10), including Power Play Plays if purchased.

(d) Powerball Prize Pool.

(1) Powerball Prize Pool.

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

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

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

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

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

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

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

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

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

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

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

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

(B) Powerball Set Prize Pool Carried Forward. For Party Lotteries, the Powerball Set Prize Pool (for single payment prizes of $1,000,000 or less) shall be carried forward to subsequent

draws if all or a portion of it is not needed to pay the Powerball Set Prizes awarded in the current draw.

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

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

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

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

(f) Powerball Prize Payment.

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

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

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

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

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

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

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

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

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

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

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

(6) Funding of Guaranteed Powerball Prizes. The Powerball Group may offer guaranteed minimum Grand Prize amounts or

minimum increases in the Grand Prize amount between Drawings or make other changes in the allocation of prize money where the Powerball Group finds that it would be in the best interest of the game. If a minimum Grand Prize amount or a minimum increase in the Grand Prize amount between Drawings is offered by the Powerball Group, then the Grand Prize shares shall be determined as follows:

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

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

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

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

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

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

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

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

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

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

(B) The ticket must be intact.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Ticket Responsibility.

(1) Signature. Until such time as a signature is placed upon a ticket in the area designated for signature, a ticket shall be owned by the bearer of the ticket. When a signature is placed on the ticket in the place designated, the person whose signature appears in such area shall be the owner of the ticket and shall be entitled (subject to the validation

requirements in subsection (g) of this section (Ticket Validation) and state or district law) to any prize attributable thereto.

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

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

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

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

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

(i) Ineligible Players.

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

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

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

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

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

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

(j) Applicable Law.

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

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

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

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

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

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

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

(2) Qualifying Play. A qualifying Play is any single PB Play for which the player pays an extra dollar ($1.00) for the Power Play option and which is recorded at the commission's lottery gaming system as a qualifying Power Play Play.

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

(4) Prize Pool.

(A) Power Play Prize Pool. The Power Play Prize Pool is created to be used to fund Power Play Prizes and shall hold the temporary balances that may result from having fewer than expected winners in the Power Play. The source of the Power Play Prize Pool is the Party Lottery's weekly prize contributions less actual Power Play Prize

liability. In total, fifty percent (50%) of each draw's sales shall be collected for the payment of prizes.

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

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

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

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

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

(D) Probability of Power Play Numbers Being Drawn. The following table sets forth the probability of the various Power Play numbers being drawn during a single Powerball Power Play Drawing. The Powerball Group may elect to run limited promotions that may modify the multiplier features. Power Play does not apply to the Powerball Grand Prize. Except as provided in subparagraph (C) of this paragraph, a Power Play Match 5 + 0 prize is set at two million dollars ($2,000,000.00), regardless of the multiplier selected.
Figure: 16 TAC §401.317(k)(4)(D) (No change.)

(5) Limitations on Payment of Power Play Prizes.

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

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

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

(6) Prize Payment.

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

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

§401.320. "All or Nothing" Draw Game Rule.

(a) ["]All or Nothing™.["] The executive director is authorized to conduct a game known as "All or Nothing." The executive director may issue further directives for the conduct of ["]All or Nothing["] that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to Draw Game Rules (General)).

(b) Object of the Game. The object of the game is to either select as many or as few numbers that match the 12 numbers drawn in the drawing. If a player matches more than 7 (seven) or fewer than 5 (five) numbers drawn in the drawing, the player wins a prize. (See the prize schedule chart in subsection (g) of this section.) If the player matches all 12 numbers drawn in the drawing, or does not match any numbers drawn in the drawing, the player wins the Top Prize. If more than one ticket has been sold in which a player has matched all or none of the numbers drawn in the drawing, each player possessing such ticket shall win the Top Prize.

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

(1) Play--The selection of twelve different numbers from 1 to [through] 24 for one opportunity to win in ["]All or Nothing["] and the purchase of a ticket evidencing that selection.

(2) Playboard--A field of 24 numbers from 1 to 24 found on the[a] playslip. [for use in selecting numbers for an "All or Nothing" play.]

[(3) Playslip--An optically readable card issued by the commission for use in selecting numbers for one or more "All or Nothing" plays.]

(d) Plays and tickets.

(1) A ticket may be sold only by a retailer and only at the location listed on the retailer's license. A ticket sold by a person other than a retailer is not valid.

(2) The price of an individual play is $2.

[(3) A player may complete up to five playboards on a single playslip.]

(3) [(4)] A player may use a single playslip or other commission-approved method of play to purchase the same play(s) for up to 24 consecutive drawings, to begin with the next drawing after the purchase.

[(5) Acceptable methods to select a play may include:]

[(A) using a playslip to select numbers;]

[(B) requesting a retailer to use Quick Pick;]

[(C) by requesting a retailer to manually enter numbers;]

[(D) by using a self-service terminal;]

[(E) by using a previously-generated "All or Nothing" ticket provided by the player; or]

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

[(6) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually, or using a selection method that is not approved by the commission, is not valid.]

[(7) A retailer may only accept a request for a play using a commission-approved method of play, and if the request is made in person.]

(4) [(8)] A retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers selected for each play, the number of plays, the draw date(s) and time(s) for which the plays were purchased, the cost of the ticket and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock, or, for third-party point-of-sale systems approved by the commission, printed on paper stock or otherwise issued in a manner approved by the commission to provide tangible evidence of participation in a lottery game.

[(9) A playslip, or any document other than a ticket issued as described in paragraph (8) of this subsection, has no monetary value and is not evidence of a play.]

(5) [(10)] It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket.

(6) [(11)] An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

[(12) The executive director may authorize promotions in connection with All or Nothing.]

(e) Drawings.

(1) ["]All or Nothing["] drawings will be held four times a day, (at 10:00 a.m., 12:27 p.m., 6:00 p.m., and 10:12 p.m. Central Time) six days a week (Monday through Saturday). The executive director may change the drawing schedule, if it is deemed necessary.

(2) Twelve different numbers from 1 to [through] 24 shall be drawn at each ["]All or Nothing["] drawing.

(3) Numbers drawn must be certified by the commission in accordance with the commission's draw procedures.

(4) The numbers selected in a drawing shall be used to determine all winners for that drawing.

(5) A drawing will not be invalidated based on the financial liability of the lottery.

(f) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award.

(g) Prizes.

(1) The Top Prize.

(A) Each person who holds a valid ticket for a play matching (in any order) the twelve numbers drawn in a drawing, or matching none of the twelve numbers drawn in a drawing is entitled to a top prize in the amount of $250,000; provided that, in any drawing where the number of top prize winning plays is greater than twenty (20), the top prize shall be paid on a pari-mutuel rather than fixed prize basis and a liability cap of $5 million will be divided equally by the number of top prize winning plays. For purposes of prize calculation with respect to the pari-mutuel prize, the calculation shall be rounded down so that prizes shall be paid in multiples of one dollar. Any part of the top pari-mutuel prize for a drawing that is not paid in prizes (breakage) shall be applied to offset prize expense. All other prizes are in amounts for matching or non-matching selections as shown in the following chart. All prizes are paid in cash.
Figure: 16 TAC §401.320(g)(1)(A) (No change.)

(B) All payments shall be made upon completion of commission validation procedures.

(C) A claim for any prize of $600 or more must be presented at a claim center.

(2) A person may win only one prize per play per drawing. A player who holds a valid ticket for a winning play is entitled to the highest prize for that play.

§401.321. Scratch [Instant Game] Tickets Containing Non-English Words.

If a scratch [an instant game] ticket features five or more words in a language other than English, then the ticket must include disclosures in the same non-English language used in addition to any other disclosures provided.

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

Filed with the Office of the Secretary of State on June 15, 2020.

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Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: July 26, 2020
For further information, please call: (512) 344-5392

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16 TAC §401.322

This repeal is proposed under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

§401.322. "Texas Triple Chance" Draw Game Rule.

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. RETAILER RULES

16 TAC §§401.351, 401.353, 401.355, 401.363, 401.366, 401.368

STATUTORY AUTHORITY

These amendments are proposed under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

§401.351. Proceeds from Ticket Sales.

All proceeds from the sale of lottery tickets received by a retailer shall constitute a trust fund until paid to the commission either directly or through the commission's authorized collection representative. A retailer shall have a fiduciary duty to preserve and account for lottery proceeds and retailers shall be personally liable for all proceeds. Proceeds shall include unsold scratch [~~instant~~] tickets and commission and/or commission vendor property received by a retailer and cash proceeds of sale of any lottery products, net of allowable sales commissions and credit for lottery prizes to winners by retailers. Sales proceeds, unused scratch [~~instant~~] tickets, and commission and/or commission vendor property shall be delivered to the commission or its authorized collection representative on demand. Retailers shall place all lottery proceeds due the commission in accounts in institutions insured by the United States government not later than the close of the next banking day after the date of their collection by the retailer until the date that they are paid over to the commission.

§401.353. Retailer Settlements, Financial Obligations, and Commissions.

(a) Each retailer shall provide authorization for an account with EFT (electronic funds transfer) capability to be used for weekly billing of all lottery products.

(b) Each retailer shall maintain an account balance sufficient to cover monies due the commission for the established billing period. The commission shall withdraw by EFT the amount due the commission on the day specified by the executive director. In the event a bank holiday falls on or before the day specified for withdrawal during the same business week, the withdrawal shall occur one day later in the week than normally scheduled. "Business week" means Sunday through Saturday. In the event the commission changes the beginning and ending days of the business week, the commission shall notify the retailers prior to the change.

(c) Each retailer shall receive credit on the retailer's lottery account for redeeming winning tickets.

(d) Each retailer shall receive 5.0% compensation on all sales from lottery games. A retailer may not accept compensation for the sale of lottery tickets other than compensation referenced in this section, regardless of the source. At the sole discretion of the executive director, a retailer may receive additional compensation which may include but is not limited to incentive or bonus programs.

(e) If a retailer fails to maintain a sufficient account balance to cover monies due the commission for the established billing period, the retailer's license shall be summarily suspended. If a retailer's license is summarily suspended for insufficient funds or non-transfer of funds four times in a 12-month period, the retailer's license shall be revoked.

~~[(f) A retailer must retain all sign-on slips for a minimum of seven weeks from the date the sign-on slip is produced. Sign-on slips must be surrendered to commission security personnel upon request.]~~

§401.355. Restricted Sales.

(a) Retailers shall not sell lottery tickets by mail, phone, fax, or other similar method of communications. Retailers shall not sell a lottery ticket or any other document evidencing a right, privilege, or share in a lottery ticket from another jurisdiction by any means.

(b) Retailers shall not sell tickets to persons under the age of 18. Any ticket purchased by or sold to an individual under the age of 18 years shall be void and the prize otherwise payable on the ticket is treated as an unclaimed prize under §401.302(j)(3) of this title (relating to Scratch Ticket [~~Instant~~] Game Rules).

(c) Retailers shall not sell a ticket or pay a lottery prize to another person that the retailer knows is:

(1) an officer or an employee of the commission;

(2) an officer, member, or employee of a lottery operator;

(3) an officer, member, or employee of a contractor or subcontractor that is excluded by the terms of its contract from playing lottery games;

(4) the spouse, child, brother, sister, or parent of a person described by paragraph (1), (2), or (3) of this subsection who resides within the same household as that person.

(d) Retailers shall not sell tickets from a game after the game's closing date.

§401.363. Retailer Record.

Each retailer shall keep accurate and complete records of all tickets from active and settled packs that have not sold. All commission records maintained by a retailer shall be open to inspection by the commission [~~at all times during normal business hours~~]. The commission may make summaries or notes of any such records and may copy any such records either at the retailer's place of business or off such premises so long as such records are returned within 48 hours of the time they are removed from such place of business.

§401.366. Compliance with All Applicable Laws.

Each retailer agrees to operate in a manner consistent with the State Lottery Act, applicable federal laws, Texas laws, local ordinances, with all terms and conditions related to the retailer's license, with all requirements set forth in the most recent Retailer Manual, the rules and regulations promulgated by the commission, and with his/her or its license from [~~agreements with~~] the Texas Lottery.

§401.368. Lottery Ticket Vending Machines.

(a) No sales agent may distribute or sell lottery game tickets from a lottery ticket vending machine, except those lottery ticket vending machines supplied and placed by the commission. For purposes of this section lottery ticket vending machine is defined as a ticket dispensing machine that dispenses lottery game tickets without the assistance of a sales agent's personnel.

(b) Lottery ticket vending machines may be placed by the commission in a sales agent's location based upon criteria established by the executive director. The criteria may include consideration of the location of the sales agent, the type of the sales agent's location, e.g., grocery store, the size of the sales agent's location, and minimum sales criteria that shall be provided to the sales agents prior to implementation of such criteria.

(c) A lottery sales agent must maintain the minimum sales criteria established by the executive director in order to obtain and retain a lottery ticket vending machine. A sales agent who does not maintain minimum sales in accordance with such sales criteria may be placed in a sales review period unless good cause exists as determined by the executive director. After the sales agent's sales review period has expired, the sales agent's sale of lottery game tickets shall be reviewed. If the sales agent has not maintained the minimum sales in accordance with the minimum ticket sales criteria during such sales review period, the commission or commission's designated representative may remove the lottery ticket vending machine.

(d) The minimum sales criteria established by the executive director shall be provided to the sales agents at least 30 days prior to imposition of such minimum sales criteria.

(e) Lottery ticket vending machines may only be placed within the sales agent's location in a site approved by the commission.

(f) A lottery sales agent may redeem any lottery prize of less than $600.

(g) Every lottery sales agent location equipped with a lottery ticket vending machine(s) will be provided a remote shut off device to allow for the control of sales transactions.

(h) A lottery sales agent shall keep the lottery ticket vending machine stocked with printer supplies and tickets.

(i) A lottery sales agent shall provide designated sales reports to the commission or the commission's designated representative(s).

(j) A lottery sales agent shall undergo required training relating to the use and maintenance of lottery ticket vending machines prior to ticket sales from the lottery ticket vending machine.

(k) A lottery sales agent shall allow commission designated service technicians access to the lottery ticket vending machine [~~during normal business hours~~] to allow service and repair of the lottery ticket vending machine.

(l) A sales agent is expected to make every reasonable effort to provide player resolution at the retail location if a player's lottery purchase, or attempted purchase, from a lottery vending machine results in a need to refund the player's money. The sales agent is to contact the Lottery Operations Division for service to resolve a mechanical error and the commission to request any refund due to player reimbursement. Resolution due to player errors or requests for ticket cancellations must follow the specific lottery game rule for the game played.

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

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §228.1

The State Board for Educator Certification (SBEC) proposes an amendment to §228.1, concerning general provisions for educator preparation programs. The proposed amendment would provide additional flexibility for educator preparation programs (EPPs) and candidates to fulfill educator preparation requirements related to clinical teaching, internships, and practicums when those assignments occur at least partially in virtual settings due to campus and district modifications in response to COVID-19 during the 2020-2021 academic year.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 228, Requirements for Educator Preparation Programs, establish the requirements for EPPs. The proposed amendment in new §228.1(e) would allow EPPs to provide internships, clinical teaching, practicum assignments, and related educator observations in a virtual setting for the 2020-2021 academic year to manage the impact of the public health crisis on educator candidates and EPPs. Current SBEC rules require these activities to be conducted in an actual school setting with face-to-face observations and do not permit virtual settings. If public health conditions in the upcoming academic year necessitate providing instruction through virtual platforms, educator candidates will be unable to complete the required experience in actual, face-to-face school settings. Allowing clinical assignments and observations to occur in virtual school settings will minimize disruptions to the educator production pipeline.

FISCAL IMPACT: Ryan Franklin, associate commissioner for educator leadership and quality, has determined that there is no additional fiscal impact on state and local governments and there are no additional costs to entities required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (TGC), §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in TGC, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to TGC, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

GOVERNMENT GROWTH IMPACT: The Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation by temporarily removing the requirements for educator preparation experiences to occur in actual, face-to-face school settings during the 2020-2021 academic year.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: The public benefit anticipated as a result of the proposal would be clear guidance to EPPs on requirements for providing preparation to an individual seeking certification as an educator. The TEA staff has determined there is no anticipated cost to persons required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins June 26, 2020 and ends July 27, 2020. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/. The SBEC will take registered oral and written comments on the proposal at the July 31, 2020 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 26, 2020.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §§21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.044, as amended by Senate Bills (SBs) 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017, and House Bill (HB) 18, 86th Texas Legislature, 2019, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.0442(c), as added by HB 3349, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to ensure that an EPP requires at least 80 hours of instruction for a candidate seeking a Trade and Industrial Workforce Training certificate; TEC, §21.0443, which requires the SBEC to establish rules for the approval and renewal of EPPs; TEC, §21.0453, which states that the SBEC may propose rules as necessary to ensure that all EPPs provide the SBEC with accurate information; TEC, §21.0454, which requires the SBEC to develop a set of risk factors to assess the overall risk level of each EPP and use the set of risk factors to guide the Texas Education Agency (TEA) in conducting monitoring, inspections, and evaluations of EPPs; TEC, §21.0455, which requires the SBEC to propose rules necessary to establish a process for complaints to be directed against an EPP; TEC, §21.046(b), which states that the qualifications for certification as a principal must be sufficiently flexible so that an outstanding teacher may qualify by substituting approved experience and professional training for part of the educational requirements; TEC, §21.0485, which states the issuance requirements for certification to teach students with visual impairments; TEC, §21.0487(c), which states that because an effective principal is essential to school improvement, the SBEC shall ensure that each candidate for certification as a principal is of the highest caliber and that multi-level screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success; TEC, §21.0489(c), as added by SB 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017, which states the eligibility for an Early Childhood: Prekindergarten-Grade 3 certificate; TEC, §21.049(a), which authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs; TEC, §21.0491, as added by HB 3349, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(b), which states that the SBEC may not require more than 18 semester credit hours of education courses at the bac-

calaureate level for the granting of a teaching certificate; TEC, §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §21.051, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision; and Texas Occupations Code, §55.007, which provides that verified military service, training, and education be credited toward licensing requirements.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.031; 21.041(b)(1); 21.044, as amended by Senate Bills (SBs) 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017, and House Bill (HB) 18, 86th Texas Legislature, 2019; 21.0442(c), as added by HB 3349, 85th Texas Legislature, Regular Session, 2017; 21.0443; 21.0453; 21.0454; 21.0455; 21.046(b); 21.0485; 21.0487(c); 21.0489(c), as added by SB 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017; 21.049(a); 21.0491, as added by HB 3349, 85th Texas Legislature, Regular Session, 2017; 21.050(b) and (c); and 21.051, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017; and the Texas Occupations Code, §55.007.

§228.1. General Provisions.

(a) To ensure the highest level of educator preparation and practice, the State Board for Educator Certification (SBEC) recognizes that the preparation of educators must be the joint responsibility of educator preparation programs (EPPs) and the Early Childhood-Grade 12 public and private schools of Texas. Collaboration in the development, delivery, and evaluation of educator preparation is required.

(b) Consistent with the Texas Education Code, §21.049, the SBEC's rules governing educator preparation are designed to promote flexibility and creativity in the design of EPPs to accommodate the unique characteristics and needs of different regions of the state as well as the diverse population of potential educators.

(c) All EPPs are subject to the same standards of accountability, as required under Chapter 229 of this title (relating to Accountability System for Educator Preparation Programs).

(d) If the governor declares a state of disaster consistent with the Texas Government Code, §418.014, Texas Education Agency staff may extend deadlines in this chapter for up to 90 days and decrease clinical teaching, internship, and practicum assignment minimums by up to 20 percent as necessary to accommodate persons in the affected disaster areas.

(e) For purposes of educator preparation training under §228.35 of this title (relating to Preparation Program Coursework and/or Training) during the 2020-2021 academic year, actual school settings and authentic school settings may include campuses with a traditional, in-person setting that are temporarily functioning in a virtual setting, and face-to-face settings for observations may include synchronous virtual settings.

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

Filed with the Office of the Secretary of State on June 15, 2020.

TRD-202002387
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: July 26, 2020
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.10

The Texas Optometry Board proposes amendments to 22 TAC §273.10 to implement Senate Bill 37, 86th Legislature, Regular Session, prohibiting disciplinary action by a licensing agency because of a default on a student loan or a breach of a student loan repayment contract or scholarship contract.

Chris Kloeris, executive director of the Texas Optometry Board, estimates that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments. Mr. Kloeris has also determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that licensees will be able to practice without regard to a default on a student loan.

The amendments are necessary to implement the above described legislation and are necessary to protect the health, safety, and welfare of the residents of this state. The amendments apply to designated licensed optometrists, the individuals affected by this rule. It is predicted that there will be no economic costs for licensees subject to the amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

The agency licenses approximately 4,250 optometrists affected by the rule amendments. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. Some of these practices are in rural communities. The agency does not license these practices; it only licenses individual optometrists. The projected economic impact of this new rule on the small businesses and rural communities is projected to be neutral based on the analysis in the preceding paragraph.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed rule will be in effect, it is anticipated that the proposed rule will not create or eliminate a government program. Further, implementation of the proposed amendments will not require the creation of new employee position or the elimination of an existing employee position; implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency; and the proposed amendments will not require an increase or decrease in fees paid to the agency. The proposed amendments do not create a new regulation. The proposed amendments do not change the number of individuals subject to the rule, and the effect on the state's economy is neutral.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register.*

The amendment and new rule are proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and Senate Bill 37, 86th Legislature, Regular Session.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets Senate Bill 37 (Texas Occupations Code §56.003) to prohibit disciplinary action against a licensee because of a default on a student loan or a breach of a student loan repayment contract or scholarship contract.

No other sections are affected by the amendments.

§73.10. Licensee Compliance with Payment Obligations.

~~[(a) Texas Guaranteed Student Loan Corporation]~~

~~[(1) If, after a hearing or an opportunity for hearing, the board determines that a licensee is in default on a loan guaranteed by the Texas Guaranteed Student Loan Corporation, the license shall not be renewed unless the licensee presents a certificate issued by the corporation certifying that:~~

~~[(A) the licensee has entered into a repayment agreement on the defaulted loan; or~~

~~[(B) the licensee is not in default on a loan guaranteed by the corporation.]~~

~~[(2) If, after a hearing or an opportunity for hearing, the board determines that a licensee has defaulted on a repayment agreement with the Texas Guaranteed Student Loan Corporation, the license shall not be renewed unless the licensee presents a certificate issued by the corporation certifying that:~~

~~[(A) the licensee has entered into another repayment agreement on the defaulted loan; or~~

~~[(B) the licensee is not in default on a loan guaranteed by the corporation or on a repayment agreement.]~~

[~~(b)~~)] Child support payments; Chapter 232 of the Texas Family Code.

(1) An application for license renewal will not be accepted if a child support agency provides the board with notice that a licensee has failed to pay child support for six months or more and requests that the board not accept the application.

(2) The application will be considered once the board receives notice from the child support agency that the licensee is in compliance with the requirements of Chapter 232 of the Texas Family Code.

(3) The board may charge the licensee a fee in an amount sufficient to recover the administrative costs incurred by the board under this chapter.

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

Filed with the Office of the Secretary of State on June 8, 2020.

TRD-202002314
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: July 26, 2020
For further information, please call: (512) 305-8500

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER B. PUBLIC PROCUREMENT AUTHORITY AND ORGANIZATION

DIVISION 5. CONTRACT ADVISORY TEAM

34 TAC §§20.160 - 20.166

The Comptroller of Public Accounts proposes new §§20.160 concerning definitions, 20.161 concerning scope, 20.162 concerning solicitation review, 20.163 concerning expedited solicitation review, 20.164 concerning enhanced solicitation review, 20.165 concerning contract formation and award, and 20.166 concerning contract management and termination. These rules will be included in Subchapter B (Public Procurement Authority and Organization), new Division 5 (Contract Advisory Team).

These rules are proposed to implement Government Code, §2054.158(d) and §2261.258(d), added by Senate Bill 65, 86th Legislature, 2019. This legislation requires the comptroller to provide guidelines for additional and reduced monitoring of certain agencies. In order to accomplish this, these rules describe the Contract Advisory Team monitoring procedure that generally applies to solicitations and contracts subject to CAT monitoring.

Section 20.160 sets out the definitions for Division 5. Paragraph (1) defines "CAT" as the Contract Advisory Team established in Government Code, Chapter 2262, Subchapter C. Paragraph (2) identifies the key terms of a solicitation or contract.

Section 20.161 defines the scope of the division. Subsection (a) clarifies that this division does not apply unless a solicitation or contract is subject to monitoring by the Contract Advisory Team. Subsection (b) implements Government Code, §2054.158(d), by creating a guideline for the monitoring of major information resources projects, which will be governed by rules adopted by the Department of Information Resources.

Section 20.162 describes the requirement for pre-publication review of solicitations by CAT. Subsection (a) requires an agency

to obtain solicitation review from CAT before publication, and either comply with each recommendation or explain why it does not apply. Subsection (b) identifies the documents that must be submitted to obtain CAT review. Subsection (c) addresses solicitations that are substantially revised after CAT review and requires them to be resubmitted before publication. The guidelines described in this section generally pre-date Senate Bill 65 and are restated in the rule to provide a baseline for additional or reduced monitoring.

Section 20.163 defines the circumstances under which CAT may conduct an expedited solicitation review. Subsection (a) states that an agency may designate a solicitation as low-risk when submitting it for CAT review. Subsection (b) sets out conditions under which solicitations that follow a template may be designated as low-risk. Subsection (c) sets out conditions under which a solicitation may be designated as low-risk based on an agency risk analysis. Subsection (d) sets out a lesser requirement for agencies subject to reduced monitoring to demonstrate their risk analysis. Subsection (e) states that agencies subject to additional monitoring may not seek review through an expedited procedure.

Section 20.164 requires an enhanced review of solicitations submitted by agencies subject to additional monitoring. It requires those agencies to submit additional documents to facilitate the review.

Section 20.165 provides guidelines for CAT monitoring of contract formation and award. Subsection (a) permits an agency to request recommendations and assistance from CAT. Subsection (b) requires agencies subject to additional monitoring to provide contract documents to CAT upon request, so that CAT can develop recommendations for improving contract formation and award practices.

Section 20.166 provides guidelines for CAT monitoring of contract management and termination. Subsection (a) permits an agency to request recommendations and assistance from CAT. Subsection (b) requires agencies subject to additional monitoring to obtain additional training for their contract managers. Subsection (c) requires agencies subject to additional monitoring to submit documents describing certain contract management procedures to CAT annually. Subsection (d) requires agencies subject to additional monitoring to retain contract closeout documentation and provide it to CAT or auditors upon request.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed new rules are in effect, the rules: 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.

Mr. Currah also has determined that the proposed new rules would have no fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by conforming the rule to current statute. There would be no anticipated significant economic cost to the public. The proposed new rules would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Sarah Chacko, Comptroller of Public Accounts, at P.O. Box 13528 Austin, Texas 78711 or Sarah.Chacko@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

These rules are proposed under Government Code §2054.158(d) and §2261.258(d).

These rules implement Government Code §2054.158(d) and §2261.258(d). The comptroller consulted the Contract Advisory Team before proposing these rules.

§20.160. Definitions.

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

(1) CAT--The Contract Advisory Team established in Government Code, Chapter 2262, Subchapter C.

(2) Key terms--Deliverables, duration, performance standards, amount of compensation or method of computing compensation to the contractor, specification or limitation of remedies, and any other term identified as a "key term" in the procurement manual and contract management guide developed under §20.131 of this chapter (relating to Procurement Manual and Contract Management Guide).

§20.161. Scope.

(a) This division applies only to solicitations and contracts subject to monitoring by CAT.

(b) Major information resources projects, as defined in Government Code, Chapter 2054, are subject to monitoring by the Quality Assurance Team under the rules of the Department of Information Resources.

§20.162. Solicitation Review.

(a) An agency may not publish a solicitation on the ESBD or in the *Texas Register* until it obtains a CAT review of the solicitation and either complies with each recommendation or submits a written explanation regarding why the recommendation is not applicable to the solicitation.

(b) To obtain CAT review of a solicitation, an agency must submit all solicitation documents, including the solicitation, any documents that are incorporated by reference into the solicitation, and essential supporting documents such as the proprietary purchase justification.

(c) After obtaining CAT review of a solicitation, if an agency substantially revises the solicitation, it may not publish the revised solicitation until it meets the prerequisites in subsections (a) and (b) of this section.

(d) If an agency cannot obtain CAT review within the amount of time it has to complete a procurement to prevent a hazard to life, health, safety, welfare, or property in an emergency, the requirement to obtain CAT review in this section does not apply. An agency shall justify its reliance on this subsection in the procurement file for each procurement that would otherwise require CAT review.

§20.163. Expedited Solicitation Review.

(a) Low-risk solicitations. If a solicitation qualifies as low-risk according to this section, an agency may designate it as low-risk when submitting it for CAT review. CAT may review a solicitation that has been designated as low-risk using an expedited process that focuses on key terms, or request additional documentation to determine which level of review to perform.

(b) Template solicitations. An agency may request CAT review of a solicitation template, which must include all key terms for a contemplated contract. For one year after a template has been reviewed, the agency may designate a solicitation following that template without substantial revision as low-risk.

(c) Risk analysis procedure. An agency that has developed a risk analysis procedure as described in Government Code, §2261.256(a), may designate a solicitation as low-risk if it submits its analysis and conclusion that the contractor selection process, contract provisions, and payment and reimbursement rates for the types of goods and services to be solicited present a low risk of fraud, abuse, or waste.

(d) Reduced monitoring. An agency that is currently reported by the State Auditor's Office as requiring reduced monitoring during contract solicitation and development may designate a solicitation as low-risk without submitting an analysis to CAT.

(e) Additional monitoring. An agency that is currently reported by the State Auditor's Office as requiring additional monitoring during contract solicitation and development may not designate any solicitation as low-risk, even if the solicitation would otherwise qualify under this section.

§20.164. Enhanced Solicitation Review.

To obtain CAT review of a solicitation, an agency that is currently reported by the State Auditor's Office as requiring additional monitoring during contract solicitation and development must additionally submit the needs assessment, acquisition plan, and risk assessment for the solicitation.

§20.165. Contract Formation and Award.

(a) Recommendations and assistance. An agency may request recommendations and assistance from CAT regarding contract formation and award.

(b) Additional monitoring. An agency that is currently reported by the State Auditor's Office as requiring additional monitoring during contract formation and award shall provide to CAT upon request:

(1) descriptive information on all contracts it has awarded from solicitations that were reviewed by CAT; and

(2) copies of all contract documents requested by CAT for the purpose of providing recommendations and assistance to the agency.

§20.166. Contract Management and Termination.

(a) Recommendations and assistance. An agency may request recommendations and assistance from CAT regarding contract management and termination.

(b) Additional monitoring - training requirement. An agency that is reported by the State Auditor's Office as requiring additional monitoring during contract management and termination shall ensure that each of its contract managers has received additional training specified by and provided by the comptroller before December 31st of the year it is reported, or before another date agreed between the agency and the comptroller.

(c) Additional monitoring - submission of procedures. An agency that is reported by the State Auditor's Office as requiring additional monitoring during contract management and termination shall submit to CAT before November 30th of the year it is reported, or before another date agreed between the agency and the comptroller:

(1) the procedure by which it will identify each contract that requires enhanced contract or performance monitoring; and

(2) its handbook of policies and practices for contract management and termination.

(d) Additional Monitoring - Closeout Report. An agency that is currently reported by the State Auditor's Office as requiring additional monitoring during contract management and termination shall, within 30 days of the closeout of a contract it has identified as one that requires enhanced contract or performance monitoring, place the following information in the contract file, and provide it to the State Auditor, the comptroller, or CAT upon request:

(1) each of its performance expectations for the contract;

(2) the performance indicators it monitored during the contract;

(3) the methods it used to monitor performance indicators;

(4) whether the contractor met its performance expectations;

(5) a summary of corrective action plans and corrective actions taken by the contractor;

(6) any liquidated damages assessed or collected from the contractor; and

(7) a summary of lessons learned during management of the contract that the agency will apply to future procurements.

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

Filed with the Office of the Secretary of State on June 11, 2020.

TRD-202002339
Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Earliest possible date of adoption: July 26, 2020
For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER A. LICENSING REQUIREMENTS

37 TAC §15.6

The Texas Department of Public Safety (the department) proposes amendments to §15.6, concerning Motorcycle License. These amendments are necessitated by the 86th Texas Legislature enactment of SB616, which moves administration of the motorcycle operator training and safety program from the department to the Texas Department of Licensing and Regulation (TDLR). This rule amendment changes references accordingly.

Suzy Whittenton, Assistant Director, Finance, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply

with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of this rule will be knowledge that the motorcycle training courses, required for issuance of a motorcycle license, will be administered by TDLR.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy. However, as a result of HB3171 passed by the 86th Texas Legislature, moped licensing requirements have been eliminated. This will result in fewer people obtaining licenses and a decrease in the fees paid to the department.

Comments on the proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov*. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005 are affected by this proposal.

§15.6. Motorcycle License.

A driver who qualifies to operate a motorcycle will be issued a Class M license. When a driver is also qualified to operate a motor vehicle with a Class A, B, or C license, one license with any applicable restrictions will be issued. Parent or guardian authorization is required for applicants younger than 18 years of age.

(1) Class M license.

(A) The minimum age is 16 years with completion of the classroom phase of driver education and a Texas Department of Licensing and Regulation (TDLR) [~~department~~] approved motorcycle operator training course.

(B) This authorizes operation of all motorcycles and three-wheeled motorcycles.

(2) Restricted Class M license.

(A) The minimum age is 16 years with completion of the classroom phase of driver education and a TDLR [~~department~~] approved motorcycle operator training course specific to the operation of a three-wheeled motorcycle.

(B) The minimum age is 15 years with completion of the classroom phase of driver education and a TDLR [~~department~~] approved motorcycle operator training course specific to 250 cubic centimeter piston displacement or less.

(3) A Motorcycle Operator Training Program Certificate of Completion (Form MSB-8) or a completion card from a state or military motorcycle safety training program showing that the applicant has completed a course in basic motorcycle safety instruction that meets or exceeds the Motorcycle Safety Foundation curriculum standards will be used as proof of successful completion of a TDLR [~~department~~] approved motorcycle operator training course.

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

Filed with the Office of the Secretary of State on June 11, 2020.

TRD-202002354
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: July 26, 2020
For further information, please call: (512) 424-5848

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SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.29

The Texas Department of Public Safety (the department) proposes the repeal of §15.29, concerning Driver Education Forms. The repeal is necessary because the rule is outdated and the relevant information is incorporated into §§15.6, 18.1, and 18.2 of this title.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the repeal is in effect the public benefit antici-

pated as a result of enforcing the repeal will be the repeal of an unnecessary administrative rule.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does repeal existing regulations because relevant information is incorporated into §§15.6, 18.1, and 18.2 of this title. It does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed repeal is in effect, the proposed repeal should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3), and Texas Transportation Code, §521.005 are affected by this proposal.

§15.29. Driver Education Forms.

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

Filed with the Office of the Secretary of State on June 11, 2020.

TRD-202002355
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: July 26, 2020
For further information, please call: (512) 424-5848

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SUBCHAPTER C. EXAMINATION REQUIREMENTS

37 TAC §15.55

The Texas Department of Public Safety (the department) proposes amendments to §15.55, concerning Waiver of Knowledge and/or Skills Tests. These amendments are necessitated by the 86th Texas Legislature enactment of SB616, which moves administration of the motorcycle operator training and safety program from the department to the Texas Department of Licensing and Regulation (TDLR). This rule amendment changes references accordingly.

Suzy Whittenton, Assistant Director, Finance, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of this rule will be knowledge that the motorcycle training courses, required for issuance of a motorcycle license, will be administered by TDLR.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov*. Com-

ments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005 are affected by this proposal.

§15.55. Waiver of Knowledge and/or Skills Tests.

(a) Definitions.

(1) Knowledge exam--Written, computerized, or automated exam.

(2) Skills exam--Driving or road exam.

(3) Unrestricted Class A, B, and C license--A license that allows a person 18 years of age or older to operate a motor vehicle without having a restriction that requires a licensed driver 21 years of age or older in the front seat.

(b) Required completion of the knowledge and/or skills exams.

(1) The skills exam will not be waived for applicants under the age of 18.

(2) Applicants younger than 25 years of age who present driver education completion certificates dated two or more years prior to the date of application will not have any examinations waived. These certificates are acceptable as proof of driver education completion.

(3) If an advance in grade is applied for, the applicant must pass the vision exam and appropriate knowledge and skills exams.

(4) For applicants with an expired out-of-state license or no license, the applicant must pass the vision, knowledge, and skills exams.

(c) Waiver of the knowledge and/or skills exams.

(1) Noncommercial driver license:

(A) Knowledge and skills exams are waived for applicants who hold a valid license from another U.S. state, U.S. territory, or province of Canada when applying for a Texas license of the same or lower type. An applicant with a valid license will be required to pass the vision exam.

(B) The skills exam is waived for applicants who hold a valid U.S. military or Armed Forces license.

(2) Class M License:

(A) The Class M knowledge exam is waived for applicants who have successfully completed a Texas Department of Licensing and Regulation (TDLR) [~~department~~] approved motorcycle operator training course.

(B) The skills exam is waived for individuals age 18 and older who have a valid, unrestricted Class A, B, or C Texas driver license and have successfully completed a TDLR [~~department~~] approved motorcycle operator training course.

(C) All other applicants must take and pass a skills exam for a motorcycle license.

(D) An applicant must present either item detailed in clause (i) or clause (ii) of this subparagraph to confirm successful completion of a TDLR [~~department~~] approved motorcycle operator training course:

(i) a valid Standardized Motorcycle Operator Training Course completion card (Form MSB-8); or

(ii) a valid completion card from a state or military motorcycle safety training program showing that the applicant has completed a course in basic motorcycle safety instruction that meets or exceeds the TDLR [~~department~~] approved curriculum standards.

(iii) The course completion cards are valid for 24 months from the date of issuance.

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

Filed with the Office of the Secretary of State on June 11, 2020.

TRD-202002356
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: July 26, 2020
For further information, please call: (512) 424-5848

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 211. CRIMINAL HISTORY OFFENSE AND ACTION ON LICENSE

SUBCHAPTER A. CRIMINAL OFFENSE AND ACTION ON LICENSE

43 TAC §§211.1 - 211.5

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes new Chapter 211, Subchapter A, 43 TAC §211.1 - 211.5 concerning the review of criminal offenses and their effect on a licensing. The new sections implement licensing requirements in Occupations Code Chapters 53, 2301, and 2302, and Transportation Code Chapter 503, including amendments in House Bill 1342, 86th Legislature, Regular Session (2019); Senate Bill (SB) 604, 86th Legislature, Regular Session (2019); and SB 1217, 86th Legislature, Regular Session (2019).

In conjunction with this proposal, the department has proposed amendments to §215.89 and §221.15, §221.19, §221.111, and §221.112, and repeal of §215.88, §221.113, and §221.114, concerning licenses under Occupations Code Chapter 2301 and Chapter 2301 and Transportation Code Chapter 503 in this issue of the *Texas Register.*

EXPLANATION. Occupations Code Chapter 53 and §2301.651, §2302.104 and §2302.108, and Transportation Code §503.034 and §503.038 authorize the department and its board (board) to take action on an application for a license, or on a license, when a person has committed a criminal offense. The proposed new chapter creates a unified process to promote consistency, efficiency, and predictability in board and department decisions concerning the effect of a criminal offense on licensure and implements the Sunset Advisory Commission's Management Ac-

tion 4.6, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature (2019). The Sunset report directed the department to adopt criminal history evaluation rules consistent with Occupations Code Chapter 53, for salvage industry regulation.

The new sections allow the department to maintain fitness standards related to licensees with prior criminal convictions while implementing the legislature's stated statutory intent in Occupations Code §53.003 to enhance opportunities for a person to obtain gainful employment after the person has been convicted of an offense and discharged the sentence for the offense.

The department must follow the requirements of Occupations Code Chapter 53 in evaluating whether a person's past criminal history can be considered in evaluating the person's fitness for licensing. Occupations Code §53.021 provides that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (1) an offense that directly relates to the duties and responsibilities of the licensed occupation; (2) an offense listed in Article 42A.054, Code of Criminal Procedure; or (3) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure. An offense's inclusion in Occupations Code §53.021(a)(2) and (3) applies to all license applications. It is the department's duty to determine those offenses that directly relate to the duties and responsibilities of a particular licensed occupation.

Occupations Code §53.022 sets out criteria for consideration in determining whether an offense directly relates to the duties and responsibilities of the licensed occupation. Based on those criteria, the department has determined that certain offenses directly relate to the duties and responsibilities of the licensed occupation. However, conviction of an offense that that directly relates to the duties and responsibilities of the licensed occupation or is listed in Occupations Code §53.021(a)(2) and (3) is not an automatic bar to licensing. The department must consider the factors listed under Occupations Code §53.023 in making its fitness determination. The factors include, among other things, the person's age when the crime was committed, rehabilitative efforts, and overall criminal history. The department must publish guidelines relating to its practice under this chapter in accordance with Occupations Code §53.025.

Proposed new §211.1 establishes definitions for terms used in new subchapter A.

Proposed new §211.2(a) establishes the persons to whom subchapter applies. The list mirrors the list of persons currently subject to criminal history review under §215.88(c), which is proposed for repeal in a separate proposal published in this issue of the *Texas Register.*

Proposed new §211.2(b) establishes that the convictions in this subchapter include deferred adjudications deemed convictions under Occupations Code §53.0231.

Proposed new §211.3 publishes the department's criminal history guidelines as required under Occupations Code §53.025 and addressing the requirements of Occupations Code §§53.021, 53.022, and 53.023.

The licenses issued by the department create positions of trust. The department has defined in §211.1 "retail license types" that those licensee types that interact directly with the public, including salvage dealers, converters, independent mobility motor vehicle dealers, lease facilitators, and general distinguishing number holders for the following vehicle categories: all-terrain vehicle, light truck, motorcycle, motorhome, moped/motor scooter, medium duty truck, neighborhood vehicle, other, passenger auto recreational off-highway vehicle, and towable recreational vehicle. The term does not include manufacturers, distributors, and general distinguishing number holders for the following vehicle categories: ambulance, axle, bus, engine, fire truck/fire fighting vehicle, heavy duty truck, and transmission, and other license types that do not generally interact directly with the public.

The department has determined that retail license types, and the individuals who serve in representative capacities for them, also have as an occupation interaction with the general public, and access to confidential information, conveyance, titling, and registration of private property, possession of monies belonging to or owed to private individuals, creditors, and governmental entities, and must comply with federal and state environmental and safety regulations. The department concluded that the types of activities these licensees engage in would involve the same categories of crimes related directly to the occupation.

The department has determined that other license types that do not generally interact directly with the public, including manufacturers, distributors, and general distinguishing number holders for the following vehicle categories: ambulance, axle, bus, engine, fire truck/fire fighting vehicle, heavy duty truck, and transmission, and the individuals who serve in representative capacities for them, have as an occupation access to confidential information, conveyance, titling, and registration of private property, and must comply with federal and state environmental and safety regulations.

The department considers the following offenses relate to all license types:

(1) Offenses involving fraud, theft, deceit, misrepresentation, or that otherwise reflect poorly on the person's honesty or trustworthiness, including an offense defined as moral turpitude, because honesty, integrity, trustworthiness, and a willingness to comply with the law are characteristics necessary for a licensee. A predisposition the opportunity to commit further offenses.

(2) Offenses involving forgery, falsification of records, or perjury, because honesty, integrity, trustworthiness, and a willingness to comply with the law are characteristics necessary for a licensee. A predisposition the opportunity to commit further offenses.

(3) Offenses involving the offering, paying, or taking of bribes, kickbacks, or other illegal compensation, because they violate the trust inherent in the license and allow a person with a predisposition the opportunity to commit further offenses.

(4) Felony offenses against public administration, because honesty, integrity, trustworthiness, and a willingness to comply with the law are characteristics necessary for a licensee. Offenses of this nature reflect a lack of honesty, integrity, trustworthiness, and a willingness to comply with the law. Further, person involved in offenses of this nature would have an opportunity to impede investigations into unlawful or improper activities.

(5) Felony offenses under a state or federal statute or regulation involving the manufacture, sale, finance, distribution, repair, salvage, or demolition, of motor vehicles, because these statutes regulate the industry that the licensee is involved in and would present a person predisposed to such violations an opportunity for to commit an offense.

(6) Felony offenses under a state or federal statute or regulation related to emissions standards, waste disposal, water contamination, air pollution, or other environmental offenses because licensees have access to, store, use and dispose of hazardous materials and must maintain facilities in compliance with federal and state environmental and safety regulations presenting a person predisposed to such violations an opportunity for to commit an offense.

(7) Offenses committed while engaged in a licensed activity or on licensed premise, because the person has shown disregard for the license and a person with a predisposition for crimes involving such activities would have the opportunity to engage in further similar conduct.

(8) Felony offenses involving the possession, manufacture, delivery, or intent to deliver controlled substances, simulated controlled substances, dangerous drugs, or engaging in an organized criminal activity; because licensees have access to unregistered vehicles and are in a unique position to receive, sell or otherwise distribute illegal goods or substances. A person with a predisposition for crimes involving such activities would have the opportunity to engage in further similar conduct.

The department considers the following offenses relate retail license types only:(9) Felony offenses against real or personal property belonging to another, because licensees have the ability to affect property rights presenting a person predisposed to such violations an opportunity for to commit an offense.

(10) Offenses involving the sale or disposition of another person's real or personal property, because licensees have the ability to affect property rights presenting a person predisposed to such violations an opportunity for to commit an offense.

(11) A reportable felony offense conviction under Chapter 62, Texas Code of Criminal Procedure for which the person must register as a sex offender because licensees have direct contact with members of the general public often in settings with no one else present and access to an individual's motor vehicle records, including the individual's address. A person with a predisposition for crimes involving prohibited sexual conduct would have the opportunity to engage in further similar conduct.

(12) A felony stalking offense as described by Penal Code §42.072 because licensees have direct contact with members of the general public and access to an individual's motor vehicle records, including the individual's address. A person with a predisposition for crimes involving stalking would have the opportunity to engage in further similar conduct.

(13) An offense against the family as described by Penal Code §§25.02, 25.07, 25.072, or 25.11, because licensees have direct contact with members of the general public often in settings with no one else present and access to an individual's motor vehicle records, including the individual's address. A person with a predisposition for crimes involving prohibited sexual conduct or violence in violation of a court order would have the opportunity to engage in further similar conduct.

(14) Felony offenses against the person because licensees have direct contact with members of the general public often in settings with no one else present and access to an individual's motor vehicle records, including the individual's address. A person with a predisposition for violence would have the opportunity to engage in further similar conduct.

(15) Felony offenses involving a felony offense against public order and decency as described by Penal Code §§43.24, 43.25, 43.251, 43.26, 43.261, or 43.262, because licensees have direct contact with members of the general public including and access to an individual's motor vehicle records, including the individual's address. A person with a predisposition for crimes involving prohibited sexual conduct or acts with children would have the opportunity to engage in further similar conduct.

(16) Offenses of attempting or conspiring to commit any of the foregoing offenses applicable to the license type, because the offense was intended.

Proposed new §211.3(a) - (c) list the reasons the department has determined that certain offenses directly relate to the duties and responsibilities of the licensed occupation.

Proposed new §211.3(d) lists offenses that directly relate to the duties and responsibilities of the licensed occupation. The list is not exclusive; the department may determine, based on the factors set forth in Occupations Code §53.022, that an unlisted offense directly relates to the duties and responsibilities of the licensed occupation.

Proposed new §211.3(e) lists the factors that the department must consider in making its evaluation of the applicant's fitness for licensing.

Proposed new §211.3(f) states the requirement in new Occupations Code §53.0231(b)(2)(B) that it is the applicant's responsibility to provide evidence concerning the factors listed in §211.3(e).

Proposed new §211.4 addresses imprisonment of an applicant, license holder, or person listed otherwise listed in §211.2(a)(2). Occupations Code §53.021(b) requires an agency to revoke a license holder's license on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. Because the department also licenses persons based on individuals serving in representative capacities, the department will also consider the effect of imprisonment of those persons on license holder. Because the revocation is mandatory, the factors and determinations listed in §211.3 do not apply to a person under this section.

Proposed new §211.5 implements Occupations Code §53.102 that allows a person to request that a licensing authority issue a criminal history evaluation letter regarding the person's eligibility for a license issued by that authority. As authorized in Occupations Code §53.105, §211.5 also proposes a fee in the amount of $100 to cover the cost of the review.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the new sections will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Daniel Avitia, Director of the Motor Vehicle Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Avitia has also determined that, for each year of the first five years the new sections are in effect, there are several public benefits anticipated because the proposed new chapter creates a unified process in line with Occupations Code Chapter 53 that will to promote consistency, efficiency, and predictability in board and department decisions concerning the effect of criminal offenses on licensure. In addition, certain independent motor vehicle dealer applicants will have the opportunity to request an evaluation of their prior

criminal history before enrolling in an independent motor vehicle dealer training under Transportation Code §503.0296. Further, the department has determined those offenses that directly relate to the duties and responsibilities of the licensed occupations, establishing a standard that will protect the public.

Mr. Avitia anticipates that there will be no additional costs on regulated persons to comply with the submission and evaluation of information under this proposal, because the rules do not establish any additional requirements or costs for regulated persons. Some applicants for certain independent motor vehicle licenses may request a preliminary evaluation of their criminal history under §211.5. If they do, the fee will be $100 per person. The preliminary review however, is not required, and must be weighed as a business decision against the cost of enrolling in an independent dealer training course (currently $149) and making the other necessary business investments (including a two-year lease and securing a surety bond) to apply for a license that may ultimately be denied. The department also considers that §211.3 sets forth those offenses that relate to the licensed occupations, and other offenses under Occupations Code §53.021.

The department determined the proposed fee based on its analysis of costs associated with performing the evaluation. Occupations Code §53.105 requires a fee adopted by a licensing authority to be in an amount sufficient to cover the cost of administering this subchapter. The department determined that its costs would be staff time per evaluation, the cost of background checks, and the initial cost to add this feature to the current eLICENSING system. The department estimates staff time of 4-7 hours for each evaluation resulting in a cost or $90 to $160 per evaluation. The department estimates that each background check through the Department of Public Safety would cost $1, or be incorporated in an existing fixed monthly third-party service provider fee. System implementation costs were not available. Total costs are estimated to be $91 to $161. The department believes the $100 fee is sufficient to cover the cost of administration.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that there may be an adverse economic effect or disproportionate economic impact on small or micro businesses as a result of the enforcement or administration of §211.5, based on the cost of the review request.

The department has determined that the proposed new sections will not have an adverse economic effect or a disproportionate economic impact on rural communities because new sections do not uniquely or disproportionately apply to residents of rural communities.

The department considered the following alternatives to minimize any adverse impact on small or micro businesses while still accomplishing the proposal's objectives:

(1) The department considered not proposing the new rules, but ultimately rejected this option because that would deny applicants the opportunity to make the business decision to request the review.

(2) The department also considered exempting small or micro businesses from the requirements of the rule, but ultimately rejected this option because a significant number of persons, if not almost all initial applicants, would be classified as a small or micro business because they would have less than six million dollars in receipts and less than 100 employees. The department has set the fee to cover the costs of the review as required under §53.105. As reviews may differ, the fee is based on an estimated average cost. Excluding a significant number of persons would increase the costs for other persons. Further, Occupations Code §53.105 does authorize an agency to charge different fees to different persons.

(3) Finally, the department also considered imposing a lesser fee on small or micro businesses, but ultimately rejected this option for the same reasons outlined in the second consideration above.

The department, after considering the purpose of the authorizing statutes, does not believe it is feasible to waive or modify the fee requirement of proposed §211.5.

TAKINGS IMPACT ASSESSMENT. The department 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 and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the department;

- will not require an increase or decrease in fees paid to the department;

- will create new regulations in new Chapter 211;

- will not expand existing regulations;

- will replace existing regulation in §215.88 that is being repealed in a separate proposal published in this issue of the *Texas Register;*

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on July 27, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments to §§211.1 - 211.5 under Occupations Code §2301.155 and §2302.051, and Transportation Code §503.002 and §1002.001.

- Occupations Code §2301.155 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code Chapter 2301 and to govern practice and procedure before the board.

- Occupations Code §2302.051 authorizes the board to adopt rules as necessary to administer Occupations Code Chapter 2302.

- Transportation Code §503.002 authorizes the board to adopt rules that are necessary to administer Transportation Code Chapter 503.

- Transportation Code §1002.001,authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §§53.021, 53.022-53.025, 53.102, 53.104, 2301.651; 2301.651, §2302.104 and §2302.108, and Transportation Code §503.034 and §503.038.

§211.1. Definitions.

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

(1) "Department" means the Texas Department of Motor Vehicles.

(2) "License" means any license, registration, or authorization, issued by the department under:

(A) Transportation Code, Chapter 503;

(B) Occupations Code, Chapter 2301;

(C) Occupations Code, Chapter 2302; or

(D) any other license, registration, or authorization, that the department may deny or revoke because of a criminal offense of the applicant or license holder.

(3) "Retail license types" means those licensee types that interact directly with the public, including salvage dealers, converters, independent mobility motor vehicle dealers, lease facilitators, and general distinguishing number holders for the following vehicle categories: all-terrain vehicle, light truck, motorcycle, motorhome, moped/motor scooter, medium duty truck, neighborhood vehicle, other, passenger auto recreational off-highway vehicle, and towable recreational vehicle, but does not include other license types that do not generally interact directly with the public, including manufacturers, distributors, and general distinguishing number holders for the following vehicle categories: ambulance, axle, bus, engine, fire truck/fire fighting vehicle, heavy duty truck, and transmission.

§211.2. Application of Subchapter.

(a) This chapter applies to the following persons:

(1) applicants and holders of any license; and

(2) persons who are acting at the time of application, or will later act, in a representative capacity for an applicant or holder of a license, including the applicant's or holder's officers, directors, members, managers, trustees, partners, principals, or managers of business affairs.

(b) In this chapter a "conviction" includes a deferred adjudication that is deemed to be a conviction under Occupations Code §53.021.

§211.3. Criminal Offense Guidelines.

(a) The licenses issued by the department create positions of trust. License holders provide services to members of the public. License holder services involve access to confidential information, conveyance, titling, and registration of private property, possession of monies belonging to or owed to private individuals, creditors, and governmental entities, and compliance with federal and state environmental and safety regulations. License holders are provided with opportunities to engage in fraud, theft, money laundering, and related crimes and to engage in environmental and safety violations that endanger the public. In addition, licensure provides persons predisposed to commit assaultive or sexual crimes with greater opportunities to engage in such conduct.

(b) Under Occupations Code Chapter 53 the department may suspend or revoke an existing license or disqualify an applicant from receiving a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation. The department shall consider the factors listed in the Occupations Code §53.022 in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensee.

(c) The department has determined under the factors listed in Occupations Code §53.022 that offenses detailed in subsection (d) of this section directly relate to the duties and responsibilities of license holders, either because the offense entails a violation of the public trust; issuance of a license would provide an opportunity to engage in further criminal activity of the same type; or the offense demonstrates the person's inability to act with honesty, trustworthiness, and integrity. Such offenses include crimes under the laws of another state, the United States, or a foreign jurisdiction, if the offense contains elements that are substantially similar to the elements of an offense under the laws of this state. The list of offenses in subsection (d) is in addition to those that are independently disqualifying under Occupations Code §53.021, including:

(1) an offense listed in Article 42A.054, Code of Criminal Procedure; or

(2) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

(d) The list of offenses in this subsection is intended to provide guidance only and is not exhaustive of the offenses that may relate to a particular regulated occupation. After due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in the particular licensed occupation, the department may find that an offense not described below also renders a person unfit to hold a license based on the criteria listed in Occupations Code §53.022. Paragraphs (1) - (8) apply to all license types. Paragraphs (9) - (15) apply only to retail license types. Paragraph (16) applies to offenses applicable to a license type:

(1) offenses involving fraud, theft, deceit, misrepresentation, or that otherwise reflect poorly on the person's honesty or trustworthiness, including an offense defined as moral turpitude;

(2) offenses involving forgery, falsification of records, or perjury;

(3) offenses involving the offering, paying, or taking of bribes, kickbacks, or other illegal compensation;

(4) felony offenses against public administration;

(5) felony offenses under a state or federal statute or regulation involving the manufacture, sale, finance, distribution, repair, salvage, or demolition, of motor vehicles;

(6) felony offenses under a state or federal statute or regulation related to emissions standards, waste disposal, water contamination, air pollution, or other environmental offenses;

(7) offenses committed while engaged in a licensed activity or on licensed premises;

(8) felony offenses involving the possession, manufacture, delivery, or intent to deliver controlled substances, simulated controlled

substances, dangerous drugs, or engaging in an organized criminal activity;

(9) felony offenses against real or personal property belonging to another;

(10) offenses involving the sale or disposition of another person's real or personal property;

(11) a reportable felony offense conviction under Chapter 62, Texas Code of Criminal Procedure for which the person must register as a sex offender;

(12) an offense against the family as described by Penal Code §§25.02, 25.07, 25.072, or 25.11;

(13) felony offenses against the person;

(14) a felony stalking offense as described by Penal Code §42.072;

(15) a felony offense against public order and decency as described by Penal Code §§43.24, 43.25, 43.251, 43.26, 43.261, or 43.262; and

(16) offenses of attempting or conspiring to commit any of the foregoing offenses applicable to the license type.

§211.4. Imprisonment.

(a) Section 211.3 of this Chapter does not apply to persons who are imprisoned at the time the department considers the conviction.

(b) The department shall revoke a license upon the imprisonment of a license holder following a felony conviction or revocation or felony community supervision, parole, or mandatory supervision.

(c) The department may revoke a license upon the imprisonment for a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision of a person described by §211.2(a)(2) of this chapter who remains employed with the licensee.

(d) A person currently imprisoned because of a felony conviction may not obtain a license, renew a previously issued license, or act in a representative capacity for an application or license holder as described by §211.2(a)(2).

§211.5. Criminal History Evaluation Letters.

(a) Pursuant to Texas Occupations Code, Chapter 53, Subchapter D, a person may request that the department evaluate the person's eligibility for a specific occupational license regulated by the department by:

(1) submitting a request on a form approved by the department for that purpose; and

(2) paying the required Criminal History Evaluation Letter fee of $100.

(b) The department shall respond to the request not later than the 90th day after the date the request is received.

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

Filed with the Office of the Secretary of State on June 15, 2020.

TRD-202002385

Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 26, 2020
For further information, please call: (512) 465-5665

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CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER C. LICENSES, GENERALLY

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes the repeal of §215.88 and amendments to 43 TAC §215.89 to update licensing fitness rules under Occupations Code §2301.651 and Transportation Code §503.034, including implementation of Senate Bill (SB) 604, 86th Legislature, Regular Session, (2019). In conjunction with this proposal, the department has proposed new §§211.1 - 211.5, concerning criminal offense and action on licenses, and amendments to §§221.15, 221.19, 221.111, and 221.112, and repeal of §221.113 and §221.114, concerning salvage vehicle dealer licenses, in this issue of the *Texas Register.*

EXPLANATION. Occupations Code §2301.651 and Transportation Code §503.034 and 503.038 require the department and its board (board) to review the fitness of applicants for new and renewal licenses, and license holders. The proposed amendments to §215.89 update the requirements related to review of criminal history information, affiliations, and conform with statute. The repeal of §215.88 is necessary because the determination of an offense that directly relates to the duties or responsibilities of the licensed occupation has been moved to proposed new Chapter 211.

The proposed amendment to §215.89(b)(2) changes the reference from §215.88 to proposed new §211.3. The department has proposed new Chapter 211 in this issue of the *Texas Register.*

The proposed amendment to §215.89(b)(3) eliminates the reference to "criminal history information." The amendment conforms the requirement to Occupations Code §2301.651(a)(2) and Transportation Code §503.038(6), which do not limit consideration of material misstatements just to statements regarding criminal history information.

The proposed amendment to §215.89(b)(7) modifies the consideration to include assessments or penalties addressing the acquisition, sale, repair, rebuild, or reconstruction of a salvage motor vehicle or nonrepairable motor vehicle. The change is to conform review to the expansion of the license authority in SB 604.

The proposed amendment to §215.89(b)(8) changes the reference from §215.88 to proposed new §211.2.

The proposed amendments to §215.89(b)(9) and (10) clarify that the department is concerned with affiliations that allow for control of the license holder, and describe control as "the power to direct or cause the direction of the management, policies, and activities, of an applicant or license holder, whether directly or indirectly."

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the proposed new section

will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Daniel Avitia, Director of the Motor Vehicle Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Avitia has also determined that, for each year of the first five years the proposed new section is in effect, the public benefits include updating the licensing fitness reviews requirements to clarify affiliations that are applicable to licensing, conform to statute, and conform to a proposed amended criminal history review process under proposed new Chapter 211.

Mr. Avitia anticipates that there will be no additional costs on regulated persons to comply with these rules, because the rules do not establish any additional requirements or costs for the regulated person.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002, the department has determined that the proposed new section will not have an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposal imposes no additional requirements, and has no additional financial effect, on any small businesses, micro-businesses, or rural communities. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT. The department 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 and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed new section is in effect, the proposed rule:

--will not create or eliminate a government program;

--will not require the creation of new employee positions or the elimination of existing employee positions;

--will not require an increase or decrease in future legislative appropriations to the department;

--will not require an increase or decrease in fees paid to the department;

--will not create new regulations;

--will not expand existing regulations;

--will repeal existing regulation §215.88, that is being replaced by new Chapter 211 in a separate proposal published in this issue of the *Texas Register;*

--will not increase or decrease the number of individuals subject to the rule's applicability; and

--will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on July 27, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

43 TAC §215.88

STATUTORY AUTHORITY. The department proposes the repeal of §215.88 under Occupations Code §2301.155. and Transportation Code §503.002 and §1002.001.

--Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to adopt rules as necessary or convenient to administer this chapter and to govern practice and procedure before the board.

--Transportation Code §503.002 authorizes the board to adopt rules that are necessary to administer Transportation Code Chapter 503.

--Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code 2301.651, and Transportation Code §503.034 and 503.038.

§215.88 Criminal Offense and Action on License.

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

Filed with the Office of the Secretary of State on June 15, 2020.

TRD-202002388
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 26, 2020
For further information, please call: (512) 465-5665

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43 TAC §215.89

STATUTORY AUTHORITY. The department proposes amendments to §215.89 under Occupations Code §2301.155. and Transportation Code §503.002 and §1002.001.

--Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to adopt rules as necessary or convenient to administer this chapter and to govern practice and procedure before the board.

--Transportation Code §503.002 authorizes the board to adopt rules that are necessary to administer Transportation Code Chapter 503.

--Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code 2301.651, and Transportation Code §503.034 and 503.038.

§215.89. Fitness.

(a) In determining a person's fitness for a license issued or to be issued by the department under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, the board or department will consider:

(1) the requirements of Occupations Code, Chapter 53;

(2) the provisions of Occupations Code, §2301.651;

(3) any specific statutory licensing criteria or requirements;

(4) mitigating factors; and

(5) other evidence of a person's fitness, as allowed by law, including the standards identified in subsection (b) of this section.

(b) The board or department may determine that a person is unfit to perform the duties and discharge the responsibilities of a license holder and may, following notice and an opportunity for hearing, deny a person's license application or revoke or suspend a license if the person:

(1) fails to meet or maintain the qualifications and requirements of licensure;

(2) is convicted or deemed convicted by any local, state, federal, or foreign authority of an offense that directly relates to the duties or responsibilities of the licensed occupation as described in §211.3 [~~listed in §215.88(j)~~] of this title (relating to Criminal Offense Guidelines [~~and Action on License~~]) or is convicted or deemed convicted of an offense that is independently disqualifying under Occupations Code §53.021 [~~containing elements that are substantially similar to the elements in the offenses in §215.88(j)~~];

(3) omits information or provides false, misleading, or incomplete information [~~regarding a criminal conviction~~] on an initial application, renewal application, or application attachment, for a license or other authorization issued by the department or by any local, state, or federal regulatory authority;

(4) is found to have violated an administrative or regulatory requirement based on action taken on a license, permit, or other authorization, including disciplinary action, revocation, suspension, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the board, department, or any local, state, or federal regulatory authority;

(5) is insolvent or fails to obtain or maintain financial resources sufficient to meet the financial obligations of the license holder;

(6) is a corporation that fails to maintain its charter, certificate, registration, or other authority to conduct business in Texas;

(7) is assessed a civil penalty, administrative fine, fee, or similar assessment, by the board, department, or a local, state, or federal regulatory authority, for violation of a requirement governing or impacting the distribution or sale of a vehicle or a motor vehicle, or the acquisition, sale, repair, rebuild, reconstruction, or other dealing of a salvage motor vehicle or nonrepairable motor vehicle, and fails to comply with the terms of a final order or fails to pay the penalty pursuant to the terms of a final order;

(8) was or is a person described in §211.2 of this title (relating to Application of Subchapter) [~~a person defined by §215.88(e) or identified in §215.88(d), or a manager or affiliate of a sole proprietorship, partnership, corporation, association, trust, estate, or other legal entity~~] whose actions or omissions could be considered unfit, who is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment;

(9) has an ownership, organizational, managerial, or other business arrangement, that would allow a person the power to direct or cause the direction of the management, policies, and activities, of an applicant or license holder, whether directly or indirectly, when the [~~interest with a~~] person [~~whose actions or omissions~~] could be considered unfit, [~~who is~~] ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority, has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the board, department, or any local, state, or federal regulatory authority; or

[~~(10) is a business entity that is operated, managed, or otherwise controlled by a relative or family member and that person could be considered unfit, is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment; or~~]

(10) [~~(11)~~]is found in an order issued through a contested case hearing to be unfit or acting in a manner detrimental to the system of distribution or sale of motor vehicles in Texas, the economy of the state, the public interest, or the welfare of Texas citizens.

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

Filed with the Office of the Secretary of State on June 15, 2020.

TRD-202002389
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 26, 2020
For further information, please call: (512) 465-5665

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SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §§215.150 - 215.158

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 TAC §§215.150 - 215.158, concerning buyer's temporary tags issued by a federal, state, or local governmental agency. The amendments are necessary to implement Transportation Code §503.063(h), as added by House Bill 3760, 86th Legislature, Regular Session (2019), update forms in §215.153, and update §215.154 to conform with Transportation Code Chapter 551 and Chapter 551A related to golf carts and off-highway vehicles.

EXPLANATION. Transportation Code §503.063(h) authorizes a federal, state, or local governmental agency that is exempt from the requirement to obtain a dealer general distinguishing number to issue one temporary buyer's tag for a vehicle sold or otherwise disposed of by the governmental agency under state law. Transportation Code §503.063(h)(1) establishes that a governmental agency that issues such a temporary buyer's tag is subject to statutory provisions applicable to a dealer relating to the buyer's temporary tag database and the unauthorized reproduction, purchase, use, or sale of temporary tags. Transportation Code §503.063(h)(2) exempts the governmental agency from collecting the $5 registration fee for the tag.

Proposed amendments to §215.150 state the requirements of Transportation Code §503.063(h).

Proposed amendments to §215.151 require a federal, state, or local governmental agency to secure a temporary buyer's tag or preprinted Internet-down temporary tag issued under §215.150(c) in the same manner as a dealer.

Proposed amendments to §215.152 extend the requirements placed on dealers under that section to a federal, state, or local governmental agency.

Proposed amendments to §215.153 remove outdated requirements that do not apply to temporary tags created on-demand with the department's web-based application and available for printing at time of creation. The department also proposed updating the tag forms in the attached graphics to reflect current online forms.

Proposed amendments to §215.154 add golf carts and off-highway vehicles to vehicles that cannot be issued temporary tags because the vehicles are not eligible for registration by the public under Transportation Code §§502.140, 551.402, 551A.052.

Proposed amendments to §215.155 extend the requirements placed on dealers issuing buyer's temporary tags under that section to a federal, state, or local governmental agency. The proposed amendments also provide a federal, state, or local governmental agency, is not required to collect the $5 fee that dealers must collect under Transportation Code §503.063(g). The proposed amendments also clarify that the $5 fee must be paid to the county tax assessor collector. A dealer selling a vehicle to a Texas resident would submit the fee with the title transfer documents. A dealer selling the vehicle to a non-Texas resident must also submit the fee to the county tax assessor collector even though title transfer documents are not submitted. A federal, state, or local governmental agency selling to any person must also submit the fee, if collected, to the county tax assessor collector even though title transfer documents are not submitted by the agency on behalf of the buyer.

Proposed amendments to §215.156 extend the requirements placed on dealers to provide buyer's temporary tag receipts under that section to a federal, state, or local governmental agency.

Proposed amendments to §215.157 extend the requirements placed on dealers concerning preprinted Internet-down temporary tags with specific numbers and buyer's temporary tag receipts under that section to a federal, state, or local governmental agency.

Proposed amendments to §215.158 extend the requirements placed on dealers concerning the allocation and safekeeping of preprinted Internet-down temporary tags under that section to a federal, state, or local governmental agency.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no revenue impact; only an internal eLICENSING and eTAG programming change. Therefore, for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Kuntz has also determined that, for each year of the first five years the proposed amendments are in effect, the public benefits include increased clarity and consistency for a federal, state, or local governmental agency, issuing buyer's temporary tags, and reference the current internet forms. Adoption of the sections will implement Transportation Code §503.063(e) and allow federal, state, or local governmental agencies selling vehicles to issue valid buyer's temporary tags.

Mr. Kuntz anticipates that there will be no additional costs on regulated persons to comply with these rules. Transportation Code §503.063(h) authorizes a federal, state, or local governmental agency to issue a buyer's temporary tag under the requirements of Transportation Code §§503.063, 503.0631, and 503.067. Section 503.063 requires a dealer issuing a tag to issue the tag and have internet access. The requirements for issuing the tags and internet access exists in §§215.150 - 215.158 and are not changed by this proposal. The proposal requirements are extended to a federal, state, or local governmental agency, that make a business decision to issue a buyer's temporary tag to the purchaser of a qualifying vehicle.

Changes to preprinted Internet-down tags in §215.153 update the version in the rule to the current online version of the form. Thus, any stock of pre-printed tags are not affected by this proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposal only affects federal, state, or local governmental agencies. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department 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 and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments are in effect, the proposed rule:

--will not create or eliminate a government program;

--will not require the creation of new employee positions or the elimination of existing employee positions;

--will not require an increase or decrease in future legislative appropriations to the department;

--will not require an increase or decrease in fees paid to the department;

--will not create new regulations;

--will expand existing regulations §§215.150 - 215.158 to implement Transportation Code §503.063(h);

--will not repeal existing regulations;

--will not increase or decrease the number of individuals subject to the rule's applicability, because the proposal extends requirements to federal, state, or local governmental agencies; and

--will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on July 27, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments to §§215.150 - 215.158 under Transportation Code §§503.002, 503.0626, 503.631, 503.069 and §1002.001.

--Transportation Code §503.002 authorizes the Texas Department of Motor Vehicles Board (board) to adopt rules for the administration of Transportation Code Chapter 503.

--Transportation Code §503.0626 authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0626.

--Transportation Code §503.0631 authorizes the department to adopt rules and prescribe procedures as necessary to implement this §503.0631.

--Transportation Code §503.069 provides that a license plate, other than an in-transit license plate, or a temporary tag issued under this chapter shall be displayed in accordance with department rules.

--Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code, §503.063.

§215.150. Authorization to Issue Temporary Tags.

(a) A dealer that holds a GDN may issue a dealer's temporary tag, buyer's temporary tag, or a preprinted Internet-down temporary tag for each type of vehicle the dealer is licensed to sell. A converter that holds a converter's license under Occupations Code, Chapter 2301 may issue a converter's temporary tag.

(b) A license holder may issue an applicable dealer's temporary tag, buyer's temporary tag, or converter's temporary tag until the license is canceled, revoked, or suspended.

(c) A federal, state, or local governmental agency that is exempt under Section 503.024 from the requirement to obtain a dealer general distinguishing number may issue one temporary buyer's tag, or one preprinted Internet-down temporary tag, in accordance with Transportation Code §503.063. A governmental agency that issues a temporary buyer's tag, or preprinted Internet-down temporary tag, under this subsection:

(1) is subject to the provisions of Transportation Code §503.0631 and §503.067 applicable to a dealer; and

(2) is not required to charge the registration fee under Transportation Code §503.063(g).

§215.151. Temporary Tags, General Use Requirements, and Prohibitions.

(a) A dealer shall secure a temporary tag to a vehicle in the license plate display area located at the rear of the vehicle, so that the entire temporary tag is visible and legible at all times, including when the vehicle is being operated.

(b) A federal, state, or local governmental agency shall secure a temporary buyer's tag or preprinted Internet-down temporary tag issued under 215.150(c) to a vehicle in the license plate display area located at the rear of the vehicle, so that the entire temporary tag is visible and legible at all times, regardless of whether the vehicle is being operated.

(c) [~~(b)~~] All printed information on a temporary tag must be visible and may not be covered or obstructed by any plate holder or other device or material.

(d) [~~(c)~~] A motor vehicle that is being transported using the full mount method, the saddle mount method, the tow bar method, or any combination of those methods in accordance with Transportation Code, §503.068(d), must have a dealer's temporary tag, a converter's temporary tag, or a buyer's temporary tag, whichever is applicable, affixed to the motor vehicle being transported.

§215.152. Obtaining Numbers for Issuance of Temporary Tags.

(a) A dealer, a federal, state, or local governmental agency, or a converter is required to have internet access to connect to the temporary tag databases maintained by the department.

(b) Except as provided by §215.157 of this title (relating to Advance Numbers, Preprinted Internet-down Temporary Tags), before a temporary tag may be issued and displayed on a vehicle, a dealer, a federal, state, or local governmental agency, or converter must:

(1) enter in the temporary tag database information about the vehicle, dealer, converter, or buyer, as appropriate; and

(2) obtain a specific number for the temporary tag.

§215.153. Specifications for All Temporary Tags.

(a) Information printed or completed on a temporary tag must be in black ink on a white background. Other than for a motorcycle, a completed buyer's, dealer's, converter's, or preprinted Internet-down temporary tag shall be six inches high and at least eleven inches wide. For a motorcycle, the completed buyer's, dealer's, converter's, or preprinted Internet-down temporary tag shall be four inches high and at least seven inches wide.

(b) A temporary tag must be:

(1) composed of plastic or other durable, weather-resistant material; or

(2) sealed in a two mil clear poly bag that encloses the entire temporary tag.

(c) [~~A dealer or converter may manually copy the information from the temporary tag database to a preprinted temporary tag template.~~] A temporary tag [~~completed in this manner~~] must[:]

[~~(1) display the information drawn in letters and numerals with a permanent, thick, black marking pen; and~~]

[~~(2)~~] comply with the specifications of the applicable temporary tag identified by the following appendices:

(1) [~~(A)~~] Appendix A-1 - Dealer's Temporary Tag - Assigned to Specific Vehicle;
Figure: 43 TAC §215.153(c)(1)
[~~Figure: 43 TAC §215.153(c)(2)(A)~~]

(2) [~~(B)~~] Appendix A-2 - Dealer's Temporary Tag - Assigned to Agent;
Figure: 43 TAC §215.153(c)(2)
[~~Figure: 43 TAC §215.153(c)(2)(B)~~]

(3) [~~(C)~~] Appendix B-1 - Buyer's Temporary Tag;

Figure: 43 TAC §215.153(c)(3)
[~~Figure: 43 TAC §215.153(c)(2)(C)~~]

(4) [~~(D)~~] Appendix B-2 - Preprinted Internet-down Temporary Tag; and
Figure: 43 TAC §215.153(c)(4)
[~~Figure: 43 TAC §215.153(c)(2)(D)~~]

(5) [~~(E)~~] Appendix C-1 - Converter's Temporary Tag.
Figure: 43 TAC §215.153(c)(5)
[~~Figure: 43 TAC §215.153(c)(2)(E)~~]

§215.154. Dealer's Temporary Tags.

(a) A dealer's temporary tag may be displayed only on the type of vehicle for which the GDN is issued and for which the dealer is licensed by the department to sell.

(b) A wholesale motor vehicle auction license holder that also holds a dealer GDN may display a dealer's temporary tag on a vehicle that is being transported to or from the licensed auction location.

(c) When an unregistered vehicle is sold to another dealer, the selling dealer shall remove the selling dealer's temporary tag. The purchasing dealer may display its dealer temporary tag or its metal dealer's license plate on the vehicle.

(d) A dealer's temporary tag may not be displayed on:

(1) a laden commercial vehicle being operated or moved on the public streets or highways; [~~or~~]

(2) on the dealer's service or work vehicles;[~~,~~]

(3) a golf cart as defined under Transportation Code Chapter 551; or

(4) an all-terrain vehicle, recreational off-highway vehicle, or a utility vehicle as defined under Transportation Code Chapter 551A.

(e) For purposes of this section, a dealer's service or work vehicle includes:

(1) a vehicle used for towing or transporting other vehicles;

(2) a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;

(3) a courtesy car;

(4) a rental or lease vehicle; and

(5) any boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.

(f) For purposes of subsection (d) of this section, a vehicle bearing a dealer's temporary tag is not considered a laden commercial vehicle when the vehicle is:

(1) towing another vehicle bearing the same dealer's temporary tags; and

(2) both vehicles are being conveyed from the dealer's place of business to a licensed wholesale motor vehicle auction or from a licensed wholesale motor vehicle auction to the dealer's place of business.

(g) As used in this section, "light truck" has the meaning assigned by Transportation Code, §541.201.

(h) A dealer's temporary tag may not be used to operate a vehicle for the personal use of a dealer or a dealer's employee.

(i) A dealer's temporary tag must show its expiration date, which must not exceed 60 days after the date the temporary tag was issued.

(j) A dealer's temporary tag may be issued by a dealer to a specific motor vehicle in the dealer's inventory or to a dealer's agent who is authorized to operate a motor vehicle owned by the dealer.

(k) A dealer that issues a dealer's temporary tag to a specific vehicle must ensure that the following information is placed on the temporary tag:

(1) the vehicle-specific number from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN of the vehicle;

(4) the month, day, and year of the temporary tag's expiration; and

(5) the name of the dealer.

(l) A dealer that issues a dealer's temporary tag to an agent must ensure that the following information is placed on the temporary tag:

(1) the specific number from the temporary tag database;

(2) the month, day, and year of the temporary tag's expiration; and

(3) the name of the dealer.

§215.155. Buyer's Temporary Tags.

(a) A buyer's temporary tag may be displayed only on a vehicle that can be legally operated on the public streets and highways and for which a sale has been consummated.

(b) A buyer's temporary tag may be displayed only on a vehicle that has a valid inspection in accordance with Transportation Code Chapter 548, unless the vehicle is exempt from inspection under Chapter 548.

(c) For a wholesale transaction, the purchasing dealer places on the motor vehicle its own:

(1) dealer's temporary tag; or

(2) metal dealer's license plate.

(d) A buyer's temporary tag is valid until the earlier of:

(1) the date on which the vehicle is registered; or

(2) the 60th day after the date of purchase.

(e) The dealer, or federal, state, or local governmental agency, must ensure that the following information is placed on a buyer's temporary tag that the dealer issues:

(1) the vehicle-specific number obtained from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN of the vehicle;

(4) the month, day, and year of the expiration of the buyer's temporary tag; and

(5) the name of the dealer or federal, state, or local governmental agency.

(f) A dealer shall charge a buyer a fee of $5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456 [~~or an all-terrain vehicle or recreational off-highway vehicle under Transportation Code, §502.140 or Transportation Code, Chapter 663~~]. A federal, state, or local governmental

agency may charge a buyer a fee of $5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456, or is a vehicle described in §215.15(d)(3) or (4) of this chapter (relating to Dealer's Temporary Tags). The fee shall be remitted by a dealer to the county in conjunction with the title transfer, and, if collected, by a federal, state, or local government agency, to the county, for deposit to the credit of the Texas Department of Motor Vehicles fund, unless the vehicle is sold by a dealer to an out-of-state resident, in which case:

(1) the dealer shall remit the entire fee to the department for deposit to the credit of the Texas Department of Motor Vehicles fund if payment is made through the department's electronic title system; or

(2) the dealer shall remit the fee to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

§215.156. Buyer's Temporary Tag Receipt.

A dealer, or federal, state, or local government agency, must provide a buyer's temporary tag receipt to the buyer of each vehicle for which a buyer's temporary tag is issued, regardless of whether the buyer's temporary tag is issued using the temporary tag database or if the tag is a preprinted Internet-down temporary tag. The dealer, or federal, state, or local governmental agency, may print the image of the buyer's temporary tag receipt issued from the temporary tag database or create the form using the same information. The dealer, or federal, state, or local governmental agency, shall instruct the buyer to keep a copy of the buyer's temporary tag receipt in the vehicle until the vehicle is registered in the buyer's name and until metal plates are affixed to the vehicle. The buyer's temporary tag receipt must include the following information:

(1) the issue date of the buyer's temporary tag;

(2) the year, make, model, body style, color, and VIN of the vehicle sold;

(3) the vehicle-specific temporary tag number;

(4) the expiration date of the temporary tag;

(5) the date of the sale;

(6) the name of the issuing dealer and the dealer's license number or the name of the issuing federal, state, or local governmental agency; and

(7) the buyer's name and mailing address.

§215.157. Advance Numbers, Preprinted Internet-down Temporary Tags.

(a) In accordance with Transportation Code, §503.0631(d), a dealer, or a federal, state, or local government agency, may obtain an advance supply of preprinted Internet-down temporary tags with specific numbers and buyer's temporary tag receipts to issue in lieu of buyer's temporary tags if the dealer is unable to access the internet.

(b) If a dealer, or a federal, state, or local government agency, is unable to access the internet at the time of a sale, the dealer, or a federal, state, or local government agency, must complete the preprinted Internet-down temporary buyer's tag and buyer's temporary tag receipt by providing details of the sale, signing the buyer's temporary tag receipt, and retaining a copy. The dealer, or a federal, state, or local government agency, must enter the required information regarding the sale in the temporary tag database not later than the close of the next business day that the dealer has access to the internet. The buyer's temporary tag receipt must include a statement that the dealer, or a federal, state, or local government agency, has internet access but, at the time of the sale, the dealer, or a federal, state, or local government agency, was unable to access the internet or the temporary tag database.

§215.158. General Requirements and Allocation of Preprinted Internet-down Temporary Tag Numbers.

(a) The dealer, or a federal, state, or local government agency, is responsible for the safekeeping of preprinted Internet-down temporary tags and shall store them in a secure place. The dealer, or a federal, state, or local government agency, shall report any loss, theft, or destruction of preprinted Internet-down temporary tags to the department within 24 hours of discovering the loss, theft, or destruction.

(b) A dealer, or a federal, state, or local government agency, may use a preprinted Internet-down temporary tag up to 12 months after the date the preprinted Internet-down temporary tag is created. A dealer, or a federal, state, or local government agency, may create replacement preprinted Internet-down temporary tags up to the maximum allowed, when:

(1) a dealer, or a federal, state, or local government agency, uses one or more preprinted Internet-down temporary tags and then enters the required information in the temporary tag database after access to the temporary tag database is again available; or

(2) a preprinted Internet-down temporary tag expires.

(c) The number of preprinted Internet-down temporary tags that a dealer, or federal, state, or local government agency, may create is equal to the greater of:

(1) the number of preprinted Internet-down temporary tags previously allotted by the department to the dealer or a federal, state, or local government agency;

(2) 30; or

(3) 1/52 of the dealer's, or federal, state, or local government agency's, total annual sales.

(d) For good cause shown, a dealer, or a federal, state, or local government agency, may obtain more than the number of preprinted Internet-down temporary tags described in subsection (c) of this section. The director of the Vehicle Titles and Registration Division of the department or that director's delegate may approve, in accordance with this subsection, an additional allotment of preprinted Internet-down temporary tags for a dealer, or a federal, state, or local government agency, if the additional allotment is essential for the continuation of the dealer's, or a federal, state, or local government agency's, business. The director of the Vehicle Titles and Registration Division of the department, or a federal, state, or local government agency, or that director's delegate will base the determination of the additional allotment of preprinted Internet-down temporary tags on the dealer's, or a federal, state, or local government agency's, past sales, inventory, and any other factors that the director of the Vehicle Titles and Registration Division of the department or that director's delegate determines pertinent, such as an emergency. A request for additional preprinted Internet-down temporary tags must specifically state why the additional preprinted Internet-down temporary tags are necessary for the continuation of the applicant's business.

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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TRD-202002375

Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER C. REGISTRATION AND TITLE SYSTEMS

43 TAC §217.74

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 TAC §217.74, concerning access to the department's webDEALER online system (webDEALER). The amendments are necessary to implement Transportation Code §520.005(e) as added by Senate Bill (SB) 604, 86th Legislature, Regular Session (2019).

EXPLANATION. This proposal is necessary to implement Transportation Code §520.005(e), as enacted in SB 604, and required to be effective not later than September 1, 2020 in Section 4.08 of SB 604. Transportation Code §520.005(e) requires each county assessor-collector to make available to motor vehicle dealers the electronic system designed by the department that allows a motor vehicle dealer to submit a title and registration application online in the name of the purchaser of a motor vehicle. The requirement is included within the Sunset Advisory Commission's Change in Statute Recommendation 5.2, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature (2019), which directly refers to webDEALER.

To implement Transportation Code §520.005(e), it is necessary to amend §217.74 to conform with the requirements of Transportation Code §520.005(e), including changing county tax assessor-collector's use of webDEALER and requiring each county tax assessor-collector to grant motor vehicle dealers access to webDEALER. In addition, the department is implementing enhancements to webDEALER to support the expansion required by Transportation Code §520.005(e), which include efficiencies and throughput improvements. The amendments to §217.74 do not add fees or change processing requirements for county tax assessor-collectors or users; or change the access process for users who are not motor vehicle dealers.

The proposed amendments to §217.74(a) change the requirement for a county tax assessor-collector to use webDEALER from permissive to mandatory. The amendment is necessary to implement the requirement that each county tax assessor-collector must allow motor vehicle dealers access to webDEALER.

The proposed amendment to §217.74(b) creates a reference to new §217.74(c), which addresses motor vehicle dealer access to webDEALER. The amendment does not change access to webDEALER by persons who are not motor vehicle dealers or the ability of county tax assessor-collectors to authorize that access.

The proposed new §217.74(c) states the requirement that a county tax assessor-collector must allow motor vehicle dealers to access webDEALER. To clarify the term motor vehicle dealer as used in Transportation Code §520.005(e), the subsection refers to "a holder of a general distinguishing number."

The proposal does not provide county tax assessor-collectors a direct right to terminate a motor vehicle dealer's access to webDealer. The department will pursue action as necessary. A county tax assessor-collector who suspects possible fraud, waste, or abuse by a motor vehicle dealer may submit a request to the department for review and possible investigation under the red flag process.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Kuntz has also determined that, for each year of the first five years the proposed amendments and new sections are in effect, the public benefits include increased use of webDEALER resulting in greater efficiency and reduced costs for county tax assessor-collectors and motor vehicle dealers.

Mr. Kuntz anticipates that there will be no additional costs on regulated persons to comply with these rules. The rules do not establish any additional fee or change existing webDEALER processes. Statute requires county tax assessor-collectors to provide dealers with access to webDEALER, and as such any related costs do not result from this rule. In addition, the department provides the county tax assessor-collectors with access to webDEALER at no charge. Finally, motor vehicle dealers are not charged an additional fee if they decide to use webDEALER. A motor vehicle dealer's choice to use webDEALER would be a business decision of the motor vehicle dealer and not a requirement of this rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposal amends §217.74 to conform with the requirements of Transportation Code §520.005(e) and does not create additional costs or requirements. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department 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 and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments and new sections are in effect, the proposed rule:

--will not create or eliminate a government program;

--will not require the creation of new employee positions or the elimination of existing employee positions;

--will not require an increase or decrease in future legislative appropriations to the department;

--will not require an increase or decrease in fees paid to the department;

--will not create new regulations;

--will expand existing regulation §217.74 to implement Transportation Code §520.005(e);

--will not repeal existing regulations;

--will not increase or decrease the number of individuals subject to the rule's applicability; and

-- will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on July 27, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments to §217.74 under Transportation Code §§501.0041, 502.0021, 520.003, and §1002.001.

--Transportation Code §501.0041 authorizes the department to adopt rules to administer Transportation Code Chapter 501.

--Transportation Code §502.0021 authorizes the department to adopt rules to administer Transportation Code Chapter 502.

--Transportation Code §520.003 authorizes the department to adopt rules to administer Transportation Code Chapter 520.

--Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§501.022, 501.023, 501.0234, and 520.005.

§217.74. Access to and Use of webDEALER.

(a) Each [~~At the discretion of a~~] county tax assessor-collector shall [~~, the county may~~] request access to, and accept title applications submitted through, webDEALER. A county tax assessor-collector must utilize webDEALER in order to accept a title application in the county as provided by subsections [~~subsection~~] (b) and (c) of this section.

(b) Except as provided in subsection (c) of this section, a [~~A~~] person who wishes to become a user of webDEALER must contact each entity to whom they submit title applications for authorization to utilize webDEALER. A user must receive authorization from each entity, including each county tax assessor-collector, to whom the user submits title applications. Title applications submitted to the department require the authorization by the department.

(c) A holder of a general distinguishing number (holder) who wishes to become a user of webDEALER must contact each county tax assessor-collector to whom they submit title applications for webDEALER access. The county must provide the holder access. A holder must obtain access from each county tax assessor-collector to whom the user submits title applications.

(d) [~~(c)~~] A county tax assessor-collector may authorize a deputy appointed by the county tax assessor-collector in accordance with Subchapter H of this chapter (relating to Deputies) to utilize webDEALER.

(e) [~~(d)~~] A person authorized under subsection (b) of this section may have their authorization to use webDEALER revoked, rescinded, or cancelled at any time, with no notice, at the discretion of a county tax assessor-collector or the department.

(f) [~~(e)~~] When submitting a title application through webDEALER, a user must:

(1) stamp the word "SURRENDERED" across the front, face and the next open assignment or reassignment space of any secure title document or other acceptable ownership evidence as determined by the department in:

(A) arial font;

(B) black ink; and

(C) a size of 1/4" height x 2 1/4" length;

(2) retain the physical document described in paragraph (1) of this subsection for a minimum of four calendar years from the date of submitting a scanned copy of the stamped title document using the webDEALER system; and

(3) submit any documents required to be submitted with the title application with a scanned resolution of at least 200 dots per inch (DPI).

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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Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
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CHAPTER 221. SALVAGE VEHICLE DEALERS

The Texas Department of Motor Vehicles (department) proposes amendments to Transportation Code §221.15 relating required license application information; §221.19 related to change of a license holder's name or ownership; §221.111 related to denial of license; and §221.112 related to license suspension, revocation and administrative penalties. The department also proposes to repeal §221.113 and §221.114. The changes update licensing application, fitness, denial, suspension, revocation, and penalty rules under Occupations Code Chapter 2302, and remove references to salvage vehicle agents and salvage vehicle dealer endorsements to implement Senate Bill (SB) 604, 86th Legislature, Regular Session, (2019).

In conjunction with this proposal, the department has proposed new §§211.1 - 211.5 concerning criminal offense and action on licenses, and amendments to §215.89 and repeal of §215.88 concerning licenses under Occupations Code Chapter 2301 and Transportation Code Chapter 503, in this issue of the *Texas Register.*

EXPLANATION. The proposed amendments to §§221.15, 221.19, 221.111, and 221.112, update and clarify requirements, and establish references concerning the review of criminal history information under proposed new Chapter 211 that has

been proposed in accordance with Occupations Code Chapter 53 and the Sunset Advisory Commission's Management Action 4.6, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature (2019).

The Sunset report directs the department to adopt criminal history evaluation rules consistent with Occupations Code Chapter 53, for salvage industry regulation. Occupations Code §53.021, authorizes a licensing authority to suspend or revoke a license, or disqualify a person from receiving a license, if the person has been convicted of a felony or misdemeanor that directly relates to the duties and occupations of the licensed occupation. Proposed new Chapter 211 addresses the requirements under Occupations Code Chapter 53 for licenses issued under Chapter 215 and 221.

Under Occupations Code §2302.104, an application for a salvage dealer license must include a statement of the previous history, record, and associations of the applicant to the extent sufficient to establish, to the satisfaction of the department, the business reputation and character of the applicant. Under Occupations Code §2302.105, the department may not issue a license until the department completes an investigation of the applicant's qualifications.

The proposed amendment to §221.15(2) eliminate references to salvage vehicle dealer license endorsements and salvage vehicle agents to conform with changes in SB 604. The paragraphs are renumbered accordingly.

The proposed amendments to §221.15(9) revise the statement to conform with the requirements of Occupations Code §2302.104.

The proposed amendments to §221.15(12) identify the persons who will be considered in the license review under Occupations Code §2302.104.

The proposed amendments to §221.15(13) clarify that the department is concerned with affiliations that allow for control of the license holder, and describe control as "the power to direct or cause the direction of the management, policies, and activities, of an applicant or license holder, whether directly or indirectly."

The proposed amendment to §221.15(14) clarifies which persons are required to submit criminal history information. Criminal history information will be evaluated under proposed new Chapter 211, as addressed in amendments §221.111(a)(3) and §221.112(16).

The proposed amendment to §221.15(15) clarifies that the department collects professional history information to determine business reputation as required in Occupations Code §2302.104.

Section 221.19 requires license holders to keep certain information current with the department. Proposed amendments to 221.19 clarify what types of organizational changes require notice to the department. These changes include a change in entity type, addition of a new person for whom criminal and professional history information would be required, or a business arrangement that extends control of the license holder to other persons for whom criminal and professional history information would be required.

The amendment to §221.19(c) establishes that the license holder is not required to submit a new application, but just the information that is necessary to address the change. The proposed amendment to §221.19(c) also removes requirements related to a 50% change of ownership, because that is unnecessary based on the proposed amendment to §221.19(b). Finally, the proposed amendment to §221.19 extends the period for compliance to 30 days after the event.

The proposed amendment to §221.111(a) clarifies that the section applies to the board or department's review of an application for issuance or renewal of a license. The proposed amendment to §221.111(a) also replaces "shall" with "may" to clarify that the department's action is discretionary. A license may be denied based on an applicant's prior criminal history after weighing the factors in Occupations Code Chapter 53 and proposed new §211.3, or for reasons authorized in Occupations Code Chapter 2302 and this chapter.

The proposed amendments to §221.111(a)(2) clarify the persons the department will consider in making its evaluation, and in what actions.

The proposed amendments §221.111(a)(3) clarify the persons who will be subject to criminal history review and the offenses that will be reviewed.

The proposed amendment to §221.111(a)(4) clarifies that the department will consider the circumstances related to the revocation of a prior license in its evaluation of fitness for a license under this chapter. The amendment also deletes language addressing the prohibition on applying for a license within one year following revocation of the license under Occupations Code §2302.108. That provision is addressed in proposed §221.111(c).

The proposed amendment to §221.111(a)(5) focuses the review on control, specifically an ownership, organizational, managerial, or other business arrangement, that would "allow a person the power to direct, management, policies, or activities, of the applicant or license holder, whether directly or indirectly." The references to family members are removed. While a family member could be a person described in the proposed amendment, the person would not be included on the basis that they were a family member.

The proposed amendment to §221.111(a)(6) focuses the review on prior disciplinary activity against specified persons with prior administrative action against a license. The proposed amendment deletes language referencing applicants with a child support payment delinquency, which would be handled as required under Family Code Chapter 232.

The proposed amendment to §221.111(b) clarifies that an applicant may request an administrative hearing when the department pursues denial of an application.

The proposed amendment to §221.111(c) addresses Occupations Code §2302.108, which expressly prohibits a person whose license is revoked from applying for a new license before the first anniversary of the date of the revocation. The department will reject such an application.

The proposed amendment to §221.112 clarifies that either the board or the department may take action on a license that has been issued by the Motor Vehicle Division for certain acts or omissions.

The proposed amendment to §221.112(1) clarifies that action on a license may be made for failing to meet qualifications and requirements.

The proposed amendment to §221.112(2) clarifies that the board or department may take action on a person's license if the person

violates laws relating to other sectors of the industry for which a license issued by the Motor Vehicle Division is required.

The proposed amendment to §221.112(3) corrects the spelling of "willfully."

The proposed amendment to §221.112(6) clarifies that a person may not engage in business without the required license and eliminates a reference to salvage vehicle dealer license endorsements.

The proposed amendments to §§221.112(12), 221.112(15), and 221.112(20) correct the spelling of "nonrepairable."

The proposed amendment to §221.112(8) clarifies specific information that must be reported by a license holder to the department within 30 days of a change.

The proposed amendment to §221.112(9) clarifies that any changes made under §221.19(b) must be reported to the department within 30 days.

The proposed amendment to §221.112(10) removes the requirement to notify the department that a salvage vehicle agent has been terminated. The following paragraphs are renumbered accordingly.

The proposed amendments to §§221.112(13) - 221.112(15) correct punctuation and grammatical errors, and clarify that action may be taken on a license for a person's violation of law or board rules relating to the motor vehicle industry for which the board has jurisdictional authority.

The proposed amendment to §221.112(16) clarifies the persons who will be subject to criminal history review and the offenses that will be reviewed.

The proposed amendment to §221.112(19) clarifies that a license holder must pay all administrative penalties imposed by the department, not just those imposed under Occupations Code Chapter 2302.

The proposed amendment to §221.112(20) clarifies that the board or department may take action on a license if a person is engaging in business without a license that is required under Occupations Code Chapter 2301 or Chapter 2302 or Transportation Code Chapter 503. Additionally, the amendment corrects a punctuation error.

Repeal of §221.113, Suspension or Refusal to Renew Due to Failure to Pay Court Ordered Child Support, is required under Family Code Chapter 232.

Repeal of §221.114, Re-application after Revocation of License, is proposed because the subject matter is now found in §221.111(b).

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the proposed new section will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal.

Daniel Avitia, Director of the Motor Vehicle Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Avitia has also determined that, for each year of the first five years the proposed new section is in effect, the public benefits include updating the licensing fitness reviews requirements to clarify affiliations that are applicable to licensing, conform to statute, and conform to a proposed amended criminal history review process under proposed new Chapter 211.

Mr. Avitia anticipates that there will be no additional costs on regulated persons to comply with these rules, because the rules do not establish any additional requirements or costs for the regulated person.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002, the department has determined that the proposed new section will not have an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposal imposes no additional requirements, and has no additional financial effect, on any small businesses, micro-businesses, or rural communities. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT. The department 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 and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the department;

- will not require an increase or decrease in fees paid to the department;

- will not create new regulations;

- will not expand existing regulations;

- will repeal existing regulations §221.113 and §221.114;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on July 27, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER B. LICENSING

43 TAC §221.15, §221.19

STATUTORY AUTHORITY. The department proposes amendments to §§221.15 and §221.19, under Occupations Code §2301.155 and §2302.051, and Transportation Code and §1002.001.

- Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to adopt rules as necessary or convenient to administer Occupations Code Chapter 2301 and to govern practice and procedure before the board.

- Occupations Code §2302.051 authorizes the board to adopt rules as necessary to administer Occupations Code Chapter 2302.

- Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §2302.104 and §2302.108.

§221.15. Required License Application Information.

The following information must be provided on each salvage vehicle dealer application:

(1) the full legal name of the applicant;

[~~(2) the endorsement or endorsements that are being applied for;~~]

(2) [~~(3)~~] the full business address, including number, street, municipality, county, and zip code for each location where the applicant will conduct business under the license if each location is in the same county;

(3) [~~(4)~~] the business telephone number and email address;

(4) [~~(5)~~] the mailing address;

(5) [~~(6)~~] a statement acknowledging that the department will consider the applicant's designated mailing address the applicant's last known address for [~~all~~] department communication, including service of process under Subchapter E of this chapter (relating to Administrative Procedures). The designated mailing address will be considered applicant's last known address until such time that the mailing address is changed in the licensing records of the department after the license holder submits an amendment to change the license holder's mailing address;

(6) [~~(7)~~] all assumed names as registered with the secretary of state or county clerk, as applicable;

(7) [~~(8)~~] if applying as a sole proprietor, the social security number, address and telephone number for the sole proprietor;

(8) [~~(9)~~] if applying as a general partnership, the social security number, address and telephone number for each of the general partners;

(9) [~~(10)~~] if applying as a limited partnership, limited liability company, or corporation, the full name, social security number, address and telephone number for each officer or director of the corporation, each member, officer, or manager of the limited liability company, each partner, and each officer of the limited partnership, including the information for the general partner based on the type of entity [~~or limited liability company~~];

(10) [~~(11)~~] the state sales tax number;

(11) [~~(12)~~] the National Motor Vehicle Title Information System (NMVTIS) number evidencing that the applicant is registered with NMVTIS;

(12) [~~(13)~~] a statement indicating whether the applicant or any person described in §211.2 of this Chapter has previously applied for a license under this chapter or the salvage vehicle dealer licensing laws of another jurisdiction, the result of the previous application, and whether the applicant, including a person described in §211.2 of this Chapter, has ever been the holder of a license issued by the department or another jurisdiction that was revoked, suspended, or subject of an order issued by the board or by another jurisdiction to pay an administrative penalty that remains unpaid;

(13) [~~(14)~~] a statement indicating whether the applicant has an ownership, organizational, affiliation, or other business arrangement that would allow a person to direct the management, policies, or activities of an applicant or license holder, whether directly or indirectly, who [~~is owned, operated, managed, or otherwise controlled by or affiliated with a person, including a family member, corporate officer, entity or shareholder that~~] was the holder of a license issued by the department or by another jurisdiction that was revoked, suspended, or subject of an order issued by the board or by another jurisdiction to pay an administrative penalty that remains unpaid;

(14) [~~(15)~~] details of the criminal history of the applicant and any person described in §211.2 of this Chapter [~~a statement indicating whether the applicant, any owner, corporate officer, partner or director has ever been convicted of a felony, and, if so, whether it has been at least three years since the termination of the sentence, parole, mandatory supervision, or probation for the felony conviction~~];

(15) details of the professional information of the applicant and any person described in §211.2 of this Chapter;

(16) a statement that the applicant at the time of submitting the application is in compliance, and, after issuance of a license, will remain in compliance, with all ordinances and rules of the municipality or county of each location where the applicant will conduct business; and

(17) an acknowledgement that the applicant understands, [~~and~~] is, and will remain in compliance with all state and federal laws relating to the licensed activity.

§221.19. Change of License Holder's Name, [~~or~~] Ownership, or Control.

(a) A license holder shall notify the department to amend its license within 30 [~~10~~] days of a change in the license holder's business name. Upon submission of an amendment to change the business name, the department shall reflect the new business name in the department's records. The dealer shall retain the same salvage vehicle dealer license number except if the business name change is the result of a change in the type of entity being licensed, such as a sole proprietorship becoming a corporation, or if the ownership of the business changes as discussed in subsection (b) [~~(c)~~] of this section.

(b) A salvage vehicle dealer shall notify the department by submitting a request for license amendment within 30 [~~10~~] days of [~~prior to~~] a change to:

(1) the entity type of the applicant or license holder;

(2) the departure or addition of any person reported to the department in the original license application or most recent renewal application, including any person described in §211.2 of this Chapter;

(3) an ownership, organizational, managerial, or other business arrangement that would allow the power to direct or cause the direction of the management and policies and activities of an applicant or license holder, whether directly or indirectly, to be established in or with a person not described in paragraph (1) or (2) of this subsection [~~of ownership~~].

(c) The license-holder must submit to the department a notice of change and all information needed for that specific license modification. [~~Upon notification of a change of more than 50% of the ownership, the department shall:~~]

[~~(1) cancel the existing license; and any salvage dealer agent licenses authorized by the salvage vehicle dealer; and~~]

[~~(2) require that an original application and required fees be submitted by the new owner(s). Any of the new owners' salvage vehicle agents must also apply for a new license and submit the applicable fees.~~]

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

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Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER F. ADMINISTRATIVE SANCTIONS

43 TAC §221.111, §221.112

STATUTORY AUTHORITY. The department proposes amendments to §221.111 and §221.112 under Occupations Code §2301.155 and §2302.051, and Transportation Code and §1002.001.

- Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to adopt rules as necessary or convenient to administer Occupations Code Chapter 2301 and to govern practice and procedure before the board.

- Occupations Code §2302.051 authorizes the board to adopt rules as necessary to administer Occupations Code Chapter 2302.

- Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §2302.104 and §2302.108.

§221.111. Denial of License.

(a) The board or department may [~~shall~~] deny an application for [~~issuance of~~] a license or a renewal of a license under Occupations Code Chapter 53 or Chapter 2302, and §211.3 of this title (relating to Criminal Offense Guidelines) or this chapter [~~salvage vehicle dealer license or a salvage vehicle agent license~~], if:

(1) all the information required on the application is not complete;

(2) the applicant or any owner, officer, director, or other person described in §211.2 of this title (relating to Application of Subchapter) [~~of its owners, officers, or directors~~] made a false statement, [~~or~~] material misrepresentation, or a material omission, on the application to issue, renew, or amend a license;

(3) the applicant, or any owner, officer, director, or other person described in §211.2 of this Chapter, has been [~~of its owners, officers, or directors have been~~] convicted, or deemed convicted by any local, state, federal, or foreign authority, of an offense that directly relates to the duties or responsibilities of the licensed occupation as described in §211.3 of this title or is convicted of an offense that that is independently disqualifying under Occupations Code §53.021 [~~of a felony for which less than three (3) years have elapsed since the termination of the sentence, parole, mandatory supervision, or probation~~];

(4) the applicant's or any owner's, officer's, director's, or other person described in §211.2of this Chapter, [~~of its owners', officers', or directors'~~] previous [~~salvage vehicle dealer or salvage vehicle agent~~] license was revoked [~~and the first anniversary of the date of revocation has not occurred~~];

(5) the applicant or license holder has an ownership, organizational, managerial, or other business arrangement that would allow a person the power to direct, management, policies, or activities, of the applicant or license holder, whether directly or indirectly, who is unfit, ineligible for license, or has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, or similar assessment for a current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority [~~is an immediate family member, such as a spouse, child, parent, grandparent, niece, nephew, uncle, or aunt, of a previously licensed salvage vehicle dealer whose license has been revoked, and the business location is the same as the location of the revoked salvage vehicle dealer~~]; or

(6) the applicant, or any owner, officer, or director, or other person described in §211.2 of this Chapter unfit to hold the license, is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment. [~~is delinquent in any court ordered obligation to pay child support.~~]

(b) If the department denies an application for a license to be issued under the authority of Occupations Code Chapter 2302 [~~application is denied~~], the applicant may request an administrative hearing in the manner specified in §221.91 of this title (relating to Notice of Department Decision).

(c) In accordance with Occupations Code §2302.108, the board or department shall reject any application for issuance of a new license under Occupations Code Chapter 2302 filed by a person whose license is revoked before the first anniversary of the date of revocation.

§221.112. Suspension, Revocation and Administrative Penalties.

The board or department may suspend or revoke a license or impose an administrative penalty if the license holder:

(1) fails to meet or maintain the qualifications and requirements for a license;

(2) violates any law relating to the purchase, sale, exchange, storage, or distribution of motor vehicles, including salvage motor vehicles and nonrepairable [~~and non-repairable~~] motor vehicles;

(3) willfully [~~wilfully~~] defrauds a purchaser;

(4) fails to maintain purchase, sales, and inventory records as required by Occupations Code, Chapter 2302, or this chapter;

(5) refuses to permit, or fails to comply with a request by the department to examine, during normal business hours, the license holder's records as required by Occupations Code, Chapter 2302, or this chapter;

(6) engages in motor vehicle or salvage business without the required license [~~endorsement~~];

(7) engages in business as a salvage vehicle dealer at a location for which a license has not been issued by the department;

(8) fails to notify the department of a change of the salvage vehicle dealer's legal business entity name, assumed name, mailing address, email address, physical address or location within 30 [~~10~~] days of such change by submitting [~~requesting and obtaining from the department~~] an amendment to the [~~salvage vehicle dealer's~~] license;

(9) fails to notify the department of a change described in §221.19(b) of this chapter (relating to Change of License Holder's Name, Ownership, or Control) as required in that section [~~of the salvage vehicle dealer's name or salvage vehicle dealer's ownership within 10 days of such change by requesting and obtaining from the department an amendment to the salvage vehicle dealer's license~~];

(10) [~~fails to notify the department of the termination of a salvage vehicle agent within 10 days after such termination~~];

[~~(11)~~] fails to remain regularly and actively engaged in the business for which the salvage vehicle dealer license is issued;

(11) [~~(12)~~] sells more than five (5) nonrepairable [~~non-repairable~~] motor vehicles or salvage motor vehicles to the same person in a casual sale during a calendar year;

(12) [~~(13)~~]) violates any [~~of the~~] provision of Occupations Code Chapters 2301 or [~~, Chapter~~] 2302, Transportation Code [~~,~~] Chapters 501, 502, or 503, or any board rule or order promulgated under those statutes;

(13) [~~(14)~~] uses or allows use of the salvage vehicle dealer's [~~or salvage vehicle agent's~~] license or business location for the purpose of avoiding the requirements of [~~the license holder or another person avoiding~~] Occupations Code Chapters 2301 or [~~, Chapter~~] 2302, Transportation Code, Chapters 501, 502 or 503, or any board rule or order promulgated under those statutes;

(14) [~~(15)~~] violates any law, ordinance, rule or regulation governing the purchase, sale, exchange, or storage, of salvage motor vehicles or nonrepairable [~~, and non-repairable~~] motor vehicles;

(15) [~~(16)~~] sells or offers for sale a nonrepairable [~~non-repairable~~] motor vehicle [~~vehicles~~] or a salvage motor vehicle [~~vehicles~~] from any location other than the [~~a licensed~~] salvage vehicle dealer's licensed business location [~~that has been approved by the department~~];

(16) [~~(17)~~] is, or any owner, officer, director, or other person described in §211.2, is convicted, or deemed convicted by any local, state, federal, or foreign authority ,of an offense that directly relates to the duties or responsibilities of the licensed occupation as described in §211.3 of this title (relating to Criminal Offense Guidelines) or an offense that that is independently disqualifying under Occupations Code §53.021 [~~of any a felony~~] after initial issuance or renewal of the salvage vehicle dealer license, or that has not been reported to the department as required [~~or salvage vehicle agent license, or less than three (3) years have elapsed since the termination of the sentence, parole, mandatory supervision, or probation for a felony conviction of the license holder~~];

(17) [~~(18)~~] makes a false statement, material misrepresentation, or material omission in any application or other information filed with the department;

(18) [~~(19)~~] fails to timely remit payment for administrative penalties imposed by the department [~~under Occupations Code, §2302.354 and this section~~];

(19) [~~(20)~~] engages in business without a license required under Occupations Code [~~,~~] Chapters 2301 or 2302, or Transportation Code [~~,~~] Chapter 503;

(20) [~~(21)~~] operates a salvage motor vehicle or a nonrepairable [~~non-repairable~~] motor vehicle on the public highways or allows another person to operate a salvage motor vehicle or a nonrepairable [~~non-repairable~~] motor vehicle on public highways;

(21) [~~(22)~~] dismantles a salvage motor vehicle or non-repairable motor vehicle; or

(22) [~~(23)~~] deals in used automotive parts as more than an incidental part of the salvage vehicle dealer's primary business.

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

Filed with the Office of the Secretary of State on June 15, 2020.

TRD-202002391
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 26, 2020
For further information, please call: (512) 465-5665

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SUBCHAPTER F. ADMINISTRATIVE SANCTIONS

43 TAC §221.113, §221.114

STATUTORY AUTHORITY. The department proposes repeal of §221.113 and §221.114 under Occupations Code §2301.155 and §2302.051, and Transportation Code and §1002.001.

- Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to adopt rules as necessary or convenient to administer Occupations Code Chapter 2301 and to govern practice and procedure before the board.

- Occupations Code §2302.051 authorizes the board to adopt rules as necessary to administer Occupations Code Chapter 2302.

- Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §2302.104 and §2302.108.

§221.113. Suspension or Refusal to Renew Due to Failure to Pay Court-ordered Child Support.

§221.114. Re-application after Revocation of License.

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

Filed with the Office of the Secretary of State on June 15, 2020.

TRD-202002392
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 26, 2020
For further information, please call: (512) 465-5665

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING

SUBCHAPTER X. EMERGENCY RULES

DIVISION 1. RULES FOR CERTAIN DAY CARE OPERATIONS IN RESPONSE TO COVID-19

26 TAC §745.10001

The Health and Human Services Commission withdraws the emergency adoption of new 26 TAC §745.10001 which appeared in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2608).

Filed with the Office of the Secretary of State on June 12, 2020.

TRD-202002372
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: June 12, 2020
For further information, please call: (512) 438-2922

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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 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §§2.3, 2.5, 2.7 - 2.9, 2.46, 2.48

The Texas State Library and Archives Commission (commission) adopts amendments to 13 TAC §§2.3, Procedures of the Commission; 2.7, Library Systems Act Advisory Board; 2.8, Texas Historical Records Advisory Board; 2.46, Negotiated Rulemaking; 2.48, Petition for Adoption of Rule Changes; new §2.5, Advisory Committees; General Requirements and new §2.9, TexShare Library Consortium Advisory Board (TexShare Advisory Board). Sections 2.3 and 2.48 are adopted without changes to the proposed text as published in the March 13, 2020 issue of the *Texas Register* (45 TexReg 1780). These sections will not be republished. Sections 2.5, 2.7 - 2.9, and 2.46 are adopted with changes to the text as proposed in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1780) and will be republished.

The amendments and new rule in part implement Government Code, §441.0065 and the Sunset Advisory Commission's Recommendation 4.3, Sunset Advisory Commission Staff Report with Final Results, 2018-2019 (86th Legislature) related to advisory committees. New §2.5 establishes the general requirements for all advisory committees of the commission. Unless otherwise provided by law or a commission rule, the general requirements apply to all commission advisory committees established by rule. The section has been modified on adoption to include the general statement that the section governs procedures for the creation and operation of advisory committees, except as provided by law or commission rule. In the proposed version, a similar disclaimer was included in individual subsections of §2.5. Including this language in subsection (a) clarifies that all sections of §2.5 apply unless otherwise specified.

Amended §2.7 and §2.8 and new §2.9 re-establish the Library Systems Act Advisory Board, the Texas Historical Records Advisory Board, and the TexShare Library Consortium Advisory Board, each with an expiration date of February 20, 2024. On adoption, the commission clarified and simplified each of these sections by removing the subsections that provided that each advisory committee must comply with §2.5, except for certain specified sections. With the clarification to §2.5 referenced above, a restatement of such applicability is unnecessary in §§2.7 - 2.9. As specified in §2.5(a), any provision of law or rule regarding the creation or operation of an advisory committee will control over a requirement of §2.5 in the event of a difference. For example, §2.7(c) and Government Code, §441.124(b) specify that the term of office for each LSA Board member is three years. Therefore, §2.5(e) (providing that members of advisory committees serve two- or four-year terms) will not apply to the LSA Board. Similarly, §2.5(c) regarding appointment procedures will not apply to the THRAB because §2.8(c) and Government Code, §441.243 prescribe the THRAB membership, which includes public members appointed by the Governor.

The amendment to §2.3 amends subsection (e) to change the minimum number of commission meetings per year from six to five.

The amendments to §2.46 update the language for clarity and consistency with the statutory language for negotiated rulemaking in Government Code, Chapter 2008.

The amendments to §2.48 update the rule title and language for clarity and consistency with the statutory language for petitions for the adoption of rules in Government Code, §2001.021.

No comments were received regarding adoption of the amendments or new rules.

STATUTORY AUTHORITY. The amendments and new rules are adopted under Government Code, §441.0065, which authorizes the commission to establish advisory committees by rule; Government Code, §441.226, which requires the commission to adopt rules regarding the organization and structure of the TexShare Advisory Board; Government Code, §2110.005, which requires a state agency that establishes an advisory committee to state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency by rule; Government Code, §2110.008, which authorizes a state agency to designate the date on which an advisory committee will automatically be abolished by rule; Government Code, §2001.021, which requires a state agency to prescribe the form for a petition for the adoption of rules and the procedure for its submission, consideration, and disposition; and Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. Government Code, Chapters 441, 2001, 2008, 2110.

§2.5. Advisory Committees; General Requirements.

(a) Purpose and scope. This section governs procedures for the creation and operation of advisory committees, except as otherwise provided by law or commission rule. The purpose of an advisory committee is to make recommendations to the commission on programs, rules, and policies affecting the delivery of information services in the state. An advisory committee's sole role is to advise the commission.

An advisory committee has no executive or administrative powers or duties with respect to the operation of the commission, and all such powers and duties rest solely with the commission.

(b) Creation and duration of advisory committees. The commission shall create advisory committees by commission order. An advisory committee is abolished on the fourth anniversary of the date of its creation unless the commission designates a different expiration date for an advisory committee or an advisory committee has a specific duration prescribed by law.

(c) Appointment procedures. The commission will appoint members to an advisory committee based on advice and input from the director and librarian. Each advisory committee will elect from its members a presiding officer, who will report the advisory committee's recommendations to the commission.

(d) Size and quorum requirement. An advisory committee must be composed of a reasonable number of members not to exceed 24. A majority of advisory committee membership will constitute a quorum. An advisory committee may act only by majority vote of the members present at the meeting.

(e) Membership terms. Advisory committee members:

(1) may serve two- or four-year staggered terms, as ordered by the commission; and

(2) are appointed by and serve at the pleasure of the commission. If a member resigns, dies, becomes incapacitated, is removed by the commission, otherwise vacates the position, or becomes ineligible prior to the end of the member's term, the commission will appoint a replacement to serve the remainder of the unexpired term.

(f) Conditions of membership.

(1) Qualifications. To be eligible to serve as a member of an advisory committee, a person must have knowledge about and interests in the specific purpose and tasks of an advisory committee as established by commission order.

(2) Conflict of interest. Advisory committee members are subject to the same laws and policies governing ethical standards of conduct as those for commission members and employees.

(3) Training requirements. Each member of an advisory committee must complete training regarding the Open Meetings Act, Chapter 551 of the Government Code, and the Public Information Act, Chapter 552 of the Government Code.

(g) Administrative support. For each advisory committee, the director and librarian will designate a division of the commission that will be responsible for providing any necessary administrative support essential to the functions of the committee.

(h) Meetings.

(1) Meeting requirements. The division designated for an advisory committee under subsection (g) of this section shall submit to the Secretary of State notice of a meeting of the advisory committee. The notice must provide the date, time, place, and subject of the meeting. All advisory committee meetings shall be open to the public.

(2) Scheduling of meetings. Meeting dates, times, places, and agendas will be set by the division designated under subsection (g) of this section.

(3) Attendance. A record of attendance at each meeting of an advisory committee will be made. Unless otherwise provided by law, if a member of an advisory committee misses three consecutive advisory committee meetings, the member automatically vacates the position and the commission will appoint a new member to fill the remainder of the unexpired term created by the vacancy.

(i) Record. Commission staff shall maintain minutes of each advisory committee meeting and distribute copies of approved minutes and other advisory committee documents to the commission and advisory committee members.

(j) Reporting recommendations. An advisory committee shall report its recommendations to the commission in writing. The presiding officer of an advisory committee or designee may appear before the commission to present the committee's recommendations.

(k) Reimbursement. Members of an advisory committee shall not be reimbursed for expenses unless reimbursement is authorized by law and approved by the director and librarian.

(l) Review of advisory committees. The commission shall monitor the composition and activities of advisory committees. To enable the commission to evaluate the continuing need for an advisory committee, an advisory committee shall report in writing to the commission a minimum of once per year. The report provided by the advisory committee shall be sufficient to allow the commission to properly evaluate the committee's work and usefulness.

(m) Compliance with the Open Meetings Act. An advisory committee shall comply with the Open Meetings Act, Government Code, Chapter 551.

(n) Rules. For each advisory committee appointed, the commission shall adopt rules that address the purpose of the advisory committee. The rules may address additional items, including membership qualifications, terms of service, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this subchapter.

§2.7. Library Systems Act Advisory Board (LSA Board).

(a) The LSA Board is created to advise the commission on matters relating to the Library Systems Act. The LSA Board's tasks include reviewing and making recommendations regarding the minimum standards for accreditation of libraries in the state library system, reviewing and making recommendations regarding the application of the standards to local libraries, reviewing and making recommendations regarding the future development of the Library Systems Act, reviewing and making recommendations regarding grant programs for local libraries, and reviewing and making recommendations regarding agency programs that affect local libraries.

(b) The LSA Board reports to the commission through its meetings and meeting minutes, and/or reports or letters to the Director and Librarian.

(c) The LSA Board membership consists of five librarians qualified by training, experience, and interest to advise the commission on the policy to be followed in applying Government Code, Chapter 441, Subchapter I, Library Systems. The term of office for each LSA Board member is three years.

(d) The LSA Board shall expire on February 20, 2024.

§2.8. Texas Historical Records Advisory Board (THRAB).

(a) The THRAB is created to serve as the central advisory body for historical records planning and projects funded by the National Historical Publications and Records Commission that are developed and implemented in this state and advise the Texas State Library and Archives Commission on matters related to historical records in the state. The advisory board's tasks include those enumerated in Government Code §441.242.

(b) The advisory board reports to the commission through its meetings and meeting minutes, and/or reports or letters to the Director and Librarian.

(c) The THRAB is composed of:

(1) the state archivist, who shall be appointed as the historical records coordinator by the governor and who serves as presiding officer of the THRAB;

(2) two public members, appointed by the governor; and

(3) six members, appointed by the director and librarian, who must have recognized experience in the administration of government records, historical records, or archives.

(d) The terms of office for the members of the THRAB are as follows:

(1) The historical records coordinator serves a four year term;

(2) The two public members appointed by the governor serve staggered terms of three years with the terms of the members expiring on February 1 of different years; and

(3) The six members appointed by the director and librarian serve staggered terms of three years with the terms of one-third of the members expiring on February 1 of each year.

(e) The THRAB shall expire on February 20, 2024.

§2.9. TexShare Library Consortium Advisory Board (TexShare Advisory Board).

(a) The TexShare Advisory Board is created to advise the commission on matters relating to the consortium.

(b) The TexShare Advisory Board membership shall represent the various types of libraries comprising the membership of the consortium, with at least two members representing the general public. Members must be qualified by training and experience to advise the commission on policy to be followed in applying Government Code, Chapter 441, Subchapter M, TexShare Library Consortium. TexShare Advisory Board members serve three-year terms beginning September 1.

(c) The TexShare Advisory Board shall expire on February 20, 2024.

§2.46. Negotiated Rulemaking.

(a) It is the commission's policy to engage in negotiated rulemaking procedures under Government Code, Chapter 2008, when appropriate. When the commission finds that proposed rules are likely to be complex or controversial, or to affect disparate groups, negotiated rulemaking may be proposed.

(b) When negotiated rulemaking is proposed, the director and librarian will appoint a convenor to assist in determining whether it is advisable to proceed. The convenor shall perform the duties and responsibilities contained in Government Code, Chapter 2008.

(c) If the convenor recommends proceeding with negotiated rulemaking and the commission adopts the recommendation, the commission shall initiate negotiated rulemaking according to the provisions of Government Code, Chapter 2008.

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-202002334

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Effective date: July 1, 2020

Proposal publication date: March 13, 2020

For further information, please call: (512) 463-5591

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13 TAC §2.6, §2.57

The Texas State Library and Archives Commission (commission) adopts the repeal of §2.6, Sunset Dates for Advisory Committees; and §2.57, Petition for Adoption of a Rule. The repeals of these sections are adopted with no changes to the proposal as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1785). The rules will not be republished.

In conjunction with the adoption of these repeals, the commission is also adopting amendments to each of its existing advisory committee rules and adopting a new rule applicable to advisory committees generally. These amended and new rules establish each specific advisory committee's expiration date. The commission is also adopting amendments to §2.48, Petition for Adoption of Rules, to clarify the language and ensure consistency with the statutory language for petitions for the adoption of rules in Government Code, §2001.021.

Based on the adoption of these amendments and new rule, §2.6 and §2.57 are unnecessary and should be repealed.

No comments were received regarding adoption of the repeal.

STATUTORY AUTHORITY. The repeals are adopted under Government Code, §441.0065, which authorizes the commission to establish advisory committees by rule; Government Code, §2110.008, which authorizes a state agency to designate the date on which an advisory committee will automatically be abolished by rule; Government Code, §2001.021, which requires a state agency to prescribe the form for a petition for the adoption of rules and the procedure for its submission, consideration, and disposition; and Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. Government Code, Chapters 441, 2001, 2008, 2110.

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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Sarah Swanson

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) repeals existing 16 TAC §24.245, relating to revocation of a certificate of convenience and necessity, and adopts new 16 TAC §24.245, relating to revocation of a certificate of convenience and necessity or amendment of a certificate of convenience and necessity by decertification, expedited release, or streamlined expedited release, with changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1787). The new rule will implement Senate Bill 2272, enacted by the 86th Texas Legislature, and clarify processes for revocation or amendment of certificates of convenience and necessity (CCN) by decertification, expedited release, and streamlined expedited release. This repeal and new rule are adopted under Project Number 50028.

No public hearing was requested so no public hearing was held.

The Texas Association of Water Companies (TAWC) submitted comments on the proposed new rule. No reply comments were received.

Unless otherwise specified, all references to subsections, paragraphs, and subparagraphs relate to §24.245.

General Comments on §24.245

TAWC would like the commission to adopt CCN policies that provide the best opportunity possible for CCN holders to retain their lawfully obtained CCNs and receive just and adequate compensation under the applicable statutory framework.

Commission Response

The new rule is intended to implement Texas Water Code requirements and the policies established by the Legislature.

§24.245(c)(1)

Proposed paragraph (c)(1) states "An order of the commission in any proceeding under this section does not create a vested property right." TAWC requested that the commission not adopt this proposed provision because the language is not statutorily required, suggests the commission can determine by rule what is or is not a vested property right in Texas, and is unnecessary in the context of a CCN decertification proceeding.

Commission Response

The commission agrees that the provision is unnecessary and removes it from the rule.

§24.245(d)(2)(F)

Proposed subsection (d) applies to CCN revocations or amendments initiated by the commission or the CCN holder. TAWC stated that the proposed language for §24.245(d)(2)(F) should be modified to clarify that it applies only to decertification amendments or revocations by consent ordered under subsection (d) and not to other CCN application matters filed under other commission rules or pursuant to agreements.

Commission Response

The commission modifies §24.245(d)(2)(F) to clarify that it applies only to CCN revocations and decertifications ordered under §24.245(d)(2).

§24.245(e)(2) and (5)

Proposed subsection (e) implements TWC §13.2451 which provides for decertification of a municipality's service area under certain circumstances. TAWC requested that the rule permit any retail public utility, not just retail public utilities with "adjacent" service areas, to file a petition to remove certificated areas under this subsection. TAWC stated that it is not clear whether "adjacent" means directly abutting the area to be removed or further away. TAWC suggested that for purposes of both paragraph (e)(2) and notice under paragraph (e)(5), it might be appropriate to define the appropriate distance as up to two miles away in line with CCN application notice requirements.

Commission Response

The commission deletes paragraph (e)(2) and modifies paragraph (e)(5) of the proposed rule to provide flexibility concerning who may file a petition under this subsection and will determine eligibility to submit a petition and appropriate notice on a case by case basis.

§24.245(f)(4)

Proposed paragraph (f)(4) provides that the fact that a CCN holder is a borrower under a federal loan program is not a bar to a request for expedited release and provision of services by an alternate retail public utility. TAWC questioned the legality of the federal debt language in light of recent federal court decisions and stated that the commission should consider removing this language.

Commission Response

The commission declines to modify the rule as suggested by TAWC. The proposed rule is based on clear requirements in TWC §13.254(a-1). The court challenges to which TAWC refers are not yet finally decided. If a change in law occurs, the commission will implement the new law at that time.

§24.245(f)(14)

Proposed paragraph (f)(14) relates to compensation to a former CCN holder after expedited release has been granted. TAWC commented that a CCN holder should not be required to file a response to a petition under subsection (f) concerning release or face a requirement to overcome a "rebuttable presumption" that no compensation should be paid. TAWC stated that the propriety of CCN release and compensation are two different issues and should be handled separately and the following language, which is not statutorily required, should be removed: "If the current CCN holder did not timely file a response to the landowner's petition, there is a rebuttable presumption that the amount of compensation to be paid is zero."

Commission Response

The commission modifies the rule as proposed by TAWC.

§24.245(g)

Proposed subsection (g) provides that the commission will determine the compensation to be paid to the CCN holder at the time another retail public utility seeks to provide service in the removed area and before service is actually provided. TAWC requested the commission to manage the award of compensation for a TWC §13.254(a-1) expedited release in the same proceeding as the CCN release to make the process more like the streamlined expedited release process and provide better assurance to Texas utilities that compensation will in fact be addressed. TAWC stated that leaving compensation to a future potential proceeding does not guarantee CCN holders will be com-

pensated because there is no requirement for the alternate retail public utility used as the basis for an (a-1) expedited release to actually provide notice of intent to serve the released area. A petitioning landowner and the alternate retail public utility contemplated could potentially fail to come to terms on a non-standard service agreement and leave the area unserved, which could also leave the CCN holder that lost service territory uncompensated.

Commission Response

The commission declines to modify the rule as requested by TAWC. TWC §13.254(e) provides that after expedited release under §13.254(a-1), the amount of compensation, if any, must be determined at the time another retail public utility seeks to provide service. The utility that ultimately seeks to serve the area, which may or may not be the alternate retail public utility identified by the petitioning landowner, is not required to be a party to the expedited release proceeding. Therefore, it may not be possible to decide the amount of compensation in the proceeding on the petition for expedited release. In streamlined expedited release proceedings, no consideration is required to be given to future service to the removed area, although under TWC §13.2541(a), which incorporates TWC §13.254(d), no utility may serve the removed area until compensation has been paid. The compensation to the CCN holder is paid by the petitioning landowner and there is a statutory deadline for payment.

§24.245(g)(3)

Proposed paragraph (g)(3) provides that if a former CCN holder and prospective retail public utility have agreed on the amount of compensation to be paid, they must make a joint filing stating the amount of compensation to be paid. TAWC questioned the requirement to file a statement about the amount of agreed compensation in a TWC §13.254(a-1) expedited release matter. TAWC stated that this requirement could be viewed as violative of settlement privileges and chill negotiation efforts, and that at a minimum, the rule should clarify that the statement may be filed confidentially.

Commission Response

The commission declines to modify the proposed rule. The commission is required to find that the compensation amount is just and adequate and cannot make such a finding without knowing the amount. The commission's procedural rules provide for filing of information claimed to be confidential, subject to the commission's authority to declassify information later determined not to be confidential.

§24.245(h)(1)(C)

Proposed subparagraph (h)(1)(C) provides that the owner of a tract of land may petition for streamlined expedited release of all or a portion of the tract of land if at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county. TAWC commented that the rule should require that the entire 25 acres should be required to be in a targeted CCN and qualifying county to be eligible for removal. TAWC stated that the proposed requirement expands the types of tracts eligible for removal from a CCN holder's certificated service area to the detriment of Texas utilities.

Commission Response

The commission declines to modify the rule as proposed by TAWC. The provision to which TAWC objects is in the current commission rule and reflects the commission's interpretation of the TWC §13.2541 requirements.

§24.245(h)(8)

Proposed paragraph (h)(8) provides that the fact that a CCN holder is a borrower under a federal loan program is not a bar to the release of land under §24.245(h) and the CCN holder must not initiate an application to borrow money under a federal loan program after the date the petition is filed until the commission issues a final decision on the petition. TAWC questioned the legality of the federal debt language in light of recent federal court decisions and stated that the commission should consider removing this language.

Commission Response

The commission declines to modify the rule as suggested by TAWC. The proposed rule is based on clear requirements in TWC §13.2541(d) and (e). The court challenges to which TAWC refers are not yet finally decided. If a change in law occurs, the commission will implement the new law at that time.

§24.245(i)

Proposed subsection (i) applies to determination of compensation to the former CCN holder after streamlined expedited release. TAWC would like 16 TAC §24.245(i) clarified to state that compensation will be determined in the same proceeding as the streamlined expedited release.

Commission Response

The commission's current practice is to address release and compensation in the same proceeding and modifies the rule to expressly provide that the amount of compensation will be decided in the same proceeding as the petition for streamlined expedited release.

§24.245(i)(1)

Proposed paragraph (i)(1) provides that if a former CCN holder and landowner have agreed on the amount of compensation to be paid, they must make a joint filing stating the amount of compensation to be paid. TAWC questioned the requirement to file a statement about the amount of agreed compensation in a §13.2541 streamlined expedited release matter. TAWC commented that this type of statement could be viewed as violative of settlement privileges and chill negotiation efforts and that at a minimum the rule should clarify that the statement may be filed confidentially.

Commission Response

The commission declines to modify the proposed rule. The commission is required to find that the compensation amount is just and adequate and cannot make such a finding without knowing the amount. The commission's procedural rules provide for filing of information claimed to be confidential, subject to the commission's authority to declassify information later determined not to be confidential.

§24.245(i)(4)

TAWC disagreed with the inclusion of proposed paragraph (i)(4) which provides that if the former CCN holder fails to make a filing about the amount of agreed compensation or to engage

an appraiser or file an appraisal within the timeframes required, the amount of compensation to be paid will be deemed to be zero. TAWC stated that CCN holders targeted by streamlined expedited release petitions should never receive zero dollars as compensation because TWC §13.254(d) and (g) as incorporated by reference in TWC §13.2541 collectively mandate a requirement for "just and adequate compensation" which should be required whether a targeted CCN holder makes a filing regarding compensation or not. TAWC further stated that the petitioner and the commission should be required to figure out the appropriate amount owed with or without a filing by the targeted CCN holder. TAWC stated that the PUC continues to order CCN holders who lose service territory through the streamlined expedited release process to make a county recording with a map and boundary description of the changed CCN area pursuant to TWC §13.257(r) for which there is typically a filing fee and time involved. Further, some amount of time and expense is always required for a CCN holder's attorney or other representative to review and determine an appropriate response to each streamlined expedited release petition filed against it. TAWC stated that these minimum expenses exist regardless of whether a targeted CCN holder makes a filing so there should be some "just and adequate" amount awarded.

Commission Response

The commission declines to modify the rule because TWC §13.2541 requires the former CCN holder to reach an agreement with the landowner or engage an appraiser. The proposed rule is intended to provide an incentive for the former CCN holder to comply with the statutory requirements so that the proceeding can be concluded within the required time periods.

§24.245(i)(5)

TAWC noted that this paragraph includes a typographical error. "CNN" should be changed to "CCN."

Commission Response

The commission corrects the typographical error.

§24.245(j)

TWC §13.254(g) and proposed 16 TAC §24.245(j)(2)(H) allow consideration of "other relevant factors" in compensation determinations. TAWC commented that proposed §24.245(j) should specifically permit consideration of expenses required to comply with TWC §13.257(r). TAWC stated that the rule should also recognize that the revenue stream lost from anticipated future customers in growth areas, not just existing customers which typically do not exist in expedited release and streamlined expedited release situations, is a "relevant" compensation consideration even though not specifically stated in TWC §13.254(g).

Commission Response

The commission modifies the rule to expressly provide for expenses incurred under TWC §13.257(r) as necessary and reasonable legal expenses under §24.245(j)(2)(G). The commission declines to modify the rule to expressly allow recovery of the revenue stream from future customers because it is not included in TWC §13.254(g). However, the former CCN holder is able to request recovery under §24.245(j)(2)(H).

Appraiser Qualifications

TAWC stated that the proposed rule does not establish qualifications or a procedure for maintaining a list of qualified individuals for appraisal preparation under the TWC §§13.254 and 13.2541 compensation procedures and suggested that the commission establish ground rules for who can perform this work.

Commission Response

The commission does not adopt requirements for appraisers in this project because it is outside the scope of the notice of the proposed rule.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other modifications for the purpose of clarifying its intent.

SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §24.245

This repeal is adopted under the Texas Water Code §13.041, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; Texas Water Code §13.254, which authorizes decertification and expedited release; Texas Water Code §13.2541, which authorizes streamlined expedited release; and Texas Water Code §13.2551, which authorizes the commission to place conditions on decertification.

Cross reference to statutes: Texas Water Code §§13.041, 13.254, 13.2541 and 13.2551.

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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Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: March 13, 2020
For further information, please call: (512) 936-7244

♦ ♦ ♦

16 TAC §24.245

Statutory Authority

The new rule is adopted under Texas Water Code §13.041, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and Texas Water Code §13.2551, which authorizes the commission to place conditions on decertification.

Cross reference to statutes: Texas Water Code §§13.041 and 13.2551.

§24.245. Revocation of a Certificate of Convenience and Necessity or Amendment of a Certificate of Convenience and Necessity by Decertification, Expedited Release, or Streamlined Expedited Release.

(a) Applicability. This section applies to proceedings for revocation or amendment by decertification, expedited release, or streamlined expedited release of a certificate of convenience and necessity (CCN).

(b) Definitions. The following terms, when used in this section, have the following meanings unless the context indicates otherwise:

(1) Alternate retail public utility -- The retail public utility from which a landowner plans to receive service after the landowner obtains expedited release under subsection (f) of this section.

(2) Amendment -- The change of a CCN to remove a portion of a service area by decertification amendment, expedited release, or streamlined expedited release.

(3) Current CCN holder -- An entity that currently holds a CCN to provide service to an area for which revocation or amendment is sought.

(4) Decertification amendment -- A process by which a portion of a certificated service area is removed from a CCN, other than expedited release or streamlined expedited release.

(5) Expedited Release -- Removal of a tract of land from a CCN area under Texas Water Code (TWC) §13.254(a-1).

(6) Former CCN holder -- An entity that formerly held a CCN to provide service to an area that was removed from the entity's service area by revocation or amendment.

(7) Landowner -- The owner of a tract of land who files a petition for expedited release or streamlined expedited release.

(8) Prospective retail public utility -- A retail public utility seeking to provide service to a removed area.

(9) Removed area -- Area that will be or has been removed under this section from a CCN.

(10) Streamlined Expedited Release -- Removal of a tract of land from a CCN area under TWC §13.2541.

(c) Provisions applicable to all proceedings for revocation, decertification amendment, expedited release, or streamlined expedited release.

(1) An order of the commission issued under this section does not transfer any property, except as provided under subsection (l) of this section.

(2) A former CCN holder is not required to provide service within a removed area.

(3) If the CCN of any retail public utility is revoked or amended by decertification, expedited release, or streamlined expedited release, the commission may by order require one or more other retail public utilities to provide service to the removed area, but only with the consent of each retail public utility that is to provide service.

(4) A retail public utility, including an alternate retail public utility, may not in any way render retail water or sewer service directly or indirectly to the public in a removed area unless any compensation due has been paid to the former CCN holder and a CCN to serve the area has been obtained, if one is required.

(d) Revocation or amendment by decertification.

(1) At any time after notice and opportunity for hearing, the commission may revoke any CCN or amend any CCN by decertifying a portion of the service area if the commission finds that any of the circumstances identified in this paragraph exist.

(A) The current CCN holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in all or part of the certificated service area. If the current CCN holder opposes revocation or decertification amendment on one of these bases, it has the burden of proving that it is, or is capable of, providing continuous and adequate service.

(B) The current CCN holder is in an affected county as defined in TWC §16.341, and the cost of providing service by the current CCN holder is so prohibitively expensive as to constitute denial of service. Absent other relevant factors, for commercial developments or residential developments started after September 1, 1997, the fact that the cost of obtaining service from the current CCN holder makes the development economically unfeasible does not render such cost prohibitively expensive.

(C) The current CCN holder has agreed in writing to allow another retail public utility to provide service within its certificated service area or a portion of its service area, except for an interim period, without amending its CCN.

(D) The current CCN holder failed to apply for a cease-and-desist order under TWC §13.252 and §24.255 of this title (relating to content of request for cease and desist order by the commission under TWC §13.252) within 180 days of the date that the current CCN holder became aware that another retail public utility was providing service within the current CCN holder's certificated service area, unless the current CCN holder proves that good cause exists for its failure to timely apply for a cease-and-desist order.

(E) The current CCN holder has consented in writing to the revocation or amendment.

(2) A retail public utility may file a written request with the commission to revoke its CCN or to amend its CCN by decertifying a portion of the service area.

(A) The retail public utility must provide, at the time its request is filed, notice of its request to each customer and landowner within the affected service area of the utility.

(B) The request must specify the area that is requested to be revoked or removed from the CCN area.

(C) The request must address the effect of the revocation or decertification amendment on the current CCN holder, any existing customers, and landowners in the affected service area.

(D) The request must include the mapping information required by §24.257 of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications).

(E) The commission may deny the request to revoke or amend a CCN if existing customers or landowners will be adversely affected.

(F) If a retail public utility's request for decertification amendment or revocation by consent under this paragraph is granted, the retail public utility is not entitled to compensation from a prospective retail public utility.

(3) The commission may initiate a proceeding to revoke a CCN or decertify a portion of a service area on its own motion or upon request of commission staff.

(4) The current CCN holder has the burden to establish that it is, or is capable of, providing continuous and adequate service and, if applicable, that there is good cause for failing to file a cease and desist action under TWC §13.252 and §24.255 of this title.

(e) Decertification amendment for a municipality's service area. After notice to a municipality and an opportunity for a hearing, the commission may decertify an area that is located outside the municipality's extraterritorial jurisdictional boundary if the municipality has not provided service to the area on or before the fifth anniversary

of the date the CCN was granted for the area. This subsection does not apply to an area that was transferred to a municipality's certificated service area by the commission and for which the municipality has spent public funds.

(1) A proceeding to remove an area from a municipality's service area may be initiated by the commission with or without a petition.

(2) A petition filed under this subsection must allege that a CCN was granted for the area more than five years before the petition was filed and the municipality has not provided service in the area.

(3) A petition filed under this subsection must include the mapping information required by §24.257 of this title.

(4) Notice of the proceeding to remove an area must be given to the municipality, landowners within the area to be removed, and other retail public utilities as determined by the presiding officer.

(5) If the municipality asserts that it is providing service to the area, the municipality has the burden to prove that assertion.

(f) Expedited release.

(1) An owner of a tract of land may petition the commission for expedited release of all or a portion of the tract of land from a current CCN holder's certificated service area so that the area may receive service from an alternate retail public utility if all the following circumstances exist:

(A) the tract of land is at least 50 acres in size;

(B) the tract of land is not located in a platted subdivision actually receiving service;

(C) the landowner has submitted a request for service to the current CCN holder at least 90 calendar days before filing the petition;

(D) the alternate retail public utility possesses the financial, managerial, and technical capability to provide service as identified in the request for service provided under paragraph (5) of this subsection on a continuous and adequate basis; and

(E) the current CCN holder:

(i) has refused to provide service;

(ii) cannot provide service as identified in the request for service provided under paragraph (5) of this subsection on a continuous and adequate basis; or

(iii) conditions the provision of service on the payment of costs not properly allocable directly to the landowner's service request, as determined by the commission.

(2) An owner of a tract of land may not file a petition under paragraph (1) of this subsection if the landowner's property is located in the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the current CCN holder.

(3) The landowner's desired alternate retail public utility must be:

(A) an existing retail public utility; or

(B) a district proposed to be created under article 16, §59 or article 3, §52 of the Texas Constitution.

(4) The fact that a current CCN holder is a borrower under a federal loan program does not prohibit the filing of a petition under this subsection or authorizing an alternate retail public utility to provide service to the removed area.

(5) The landowner must submit to the current CCN holder a written request for service. The request must be sent by certified mail, return receipt requested, or by hand delivery with written acknowledgement of receipt. For a request other than for standard residential or commercial service, the written request must identify the following:

(A) the tract of land or portion of the tract of land for which service is sought;

(B) the time frame within which service is needed for current and projected service demands in the tract of land;

(C) the reasonable level and manner of service needed for current and projected service demands in the area;

(D) the approximate cost for the alternate retail public utility to provide service at the same level, and in the same manner, that is requested from the current CCN holder;

(E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested, if any; and

(F) any additional information requested by the current CCN holder that is reasonably related to determining the capacity or cost of providing service at the level, in the manner, and in the time frame, requested.

(6) The landowner's petition for expedited release under this subsection must be verified by a notarized affidavit and demonstrate that the circumstances identified in paragraph (1) of this subsection exist. The petition must include the following:

(A) the name of the alternate retail public utility;

(B) a copy of the request for service submitted as required by paragraph (5) of this subsection;

(C) a copy of the current CCN holder's response to the request for service, if any;

(D) copies of deeds demonstrating ownership of the tract of land by the landowner; and

(E) the mapping information described in subsection (k) of this section.

(7) The landowner must mail a copy of the petition to the current CCN holder and the alternate retail public utility via certified mail on the day that the landowner files the petition with the commission.

(8) The presiding officer will determine whether the petition is administratively complete. If the petition is determined not to be administratively complete, the presiding officer will issue an order describing the deficiencies in the petition and setting a deadline for the petitioner to address the deficiencies. When the petition is determined to be administratively complete, the presiding officer will establish a procedural schedule that is consistent with paragraphs (9) and (10) of this subsection. The presiding officer may recommend dismissal of the petition under §22.181(d) of this title if the petitioner fails to supplement or amend the petition within the required timeframe after the presiding officer has determined that the petition is not administratively complete.

(9) The current CCN holder may file a response to the petition within a timeframe specified by the presiding officer, not to exceed 20 days from the date the petition is determined to be administratively complete. The response must be verified by a notarized affidavit.

(10) The commission will grant the petition within 60 calendar days from the date the petition was found to be administratively complete unless the commission makes an express finding that the landowner failed to satisfy all of the requirements of this subsection and makes separate findings of fact and conclusions of law for each requirement based solely on the information provided by the landowner and the current CCN holder. The commission may condition the granting or denial of a petition on terms and conditions specifically related to the landowner's service request and all relevant information submitted by the landowner, the current CCN holder, and commission staff.

(11) The commission will base its decision on the filings submitted by the current CCN holder, the landowner, and commission staff. Chapter 2001 of the Texas Government Code does not apply to any petition filed under this subsection. The current CCN holder or landowner may file a motion for rehearing of the commission's decision on the same timeline that applies to other final orders of the commission. The commission's order ruling on the petition may not be appealed.

(12) If the current CCN holder has never made service available through planning, design, construction of facilities, or contractual obligations to provide service to the tract of land, the commission is not required to find that the alternate retail public utility can provide better service than the current CCN holder, but only that the alternate retail public utility can provide the requested service. This paragraph does not apply to Cameron, Willacy, and Hidalgo Counties or to a county that meets any of the following criteria:

(A) the county has a population of more than 30,000 and less than 35,000 and borders the Red River;

(B) the county has a population of more than 100,000 and less than 200,000 and borders a county described by subparagraph (A) of this paragraph;

(C) the county has a population of 130,000 or more and is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

(D) the county has a population of more than 40,000 and less than 50,000 and contains a portion of the San Antonio River.

(13) If the alternate retail public utility is a proposed district, then the commission will condition the release of the tract of land and required CCN amendment or revocation on the final and unappealable creation of the district. The district must file a written notice with the commission when the creation is complete and provide a copy of the final order, judgment, or other document creating the district.

(14) The commission may require an award of compensation to the former CCN holder under subsection (g) of this section. The determination of the amount of compensation, if any, will be made according to the procedures in subsection (g) of this section.

(g) Determination of compensation to former CCN holder after revocation, decertification amendment or expedited release. The determination of the monetary amount of compensation to be paid to the former CCN holder, if any, will be determined at the time another retail public utility seeks to provide service in the removed area and before service is actually provided. This subsection does not apply to revocations or decertification amendments under paragraph (d)(2) of this section or to streamlined expedited release under subsection (h) of this section.

(1) After the commission has issued its order granting revocation, decertification, or expedited release, the prospective retail public utility must file a notice of intent to provide service. A notice of intent filed before the commission issues its order under subsection (d) or (f) of this section is deemed to be filed on the date the commission's order is signed.

(2) The notice of intent must include the following information:

(A) a statement that the filing is a notice of intent to provide service to an area that has been removed from a CCN under subsection (d) or (f) of this section;

(B) the name and CCN number of the former CCN holder; and

(C) whether the prospective retail public utility and former CCN holder have agreed on the amount of compensation to be paid to the former CCN holder.

(3) If the former CCN holder and prospective retail public utility have agreed on the amount of compensation to be paid to the former CCN holder, they must make a joint filing with the commission stating the amount of the compensation to be paid.

(4) If the former CCN holder and prospective retail public utility have not agreed on the compensation to be paid to the former CCN holder, the monetary amount of compensation must be determined by a qualified individual or firm serving as an independent appraiser as follows:

(A) If the former CCN holder and prospective retail public utility have agreed on an independent appraiser, they must make a joint filing with the commission identifying the individual or firm who will be the independent appraiser within ten days of the filing of the notice of intent under paragraph (1) of this subsection. The costs of the independent appraiser must be borne by the prospective retail public utility.

(B) If the former CCN holder and prospective retail public utility cannot agree on an independent appraiser within ten days of the filing of the notice of intent, the former CCN holder and prospective retail public utility must each engage its own appraiser at its own expense. Each appraiser must file its appraisal with the commission within 60 calendar days of the filing of the notice of intent. After receiving the appraisals, the commission will appoint a third appraiser who must make a determination of compensation within 30 days. The determination by the commission-appointed appraiser may not be less than the lower appraisal or more than the higher appraisal of the appraisers engaged by the former CCN holder and prospective retail public utility. The former CCN holder and prospective retail public utility must each pay half the cost of the commission-appointed appraisal directly to the commission-appointed appraiser.

(C) The appraisers must determine the amount of compensation in accordance with subsection (j) of this section.

(5) The determination of compensation by the agreed-upon appraiser under paragraph (4)(A) or the commission-appointed appraiser under paragraph (4)(B) of this subsection is binding on the commission, the landowner, the former CCN holder, and the prospective retail public utility.

(6) If the former CCN holder fails to make a filing with the commission about the amount of agreed compensation, or to engage an appraiser, or file an appraisal within the timeframes required by this subsection, the amount of compensation to be paid will be deemed to be zero. If the prospective retail public utility fails to make a filing with the commission about the amount of agreed compensation, or to engage an appraiser, or file an appraisal within the timeframes required by this subsection, the presiding officer may recommend dismissal of the notice of intent to provide service to the removed area.

(7) The commission will issue an order establishing the amount of compensation to be paid to the former CCN holder not later than 90 days after the date on which a retail public utility files its notice of intent to provide service to the decertified area.

(h) Streamlined expedited release.

(1) The owner of a tract of land may petition the commission for streamlined expedited release of all or a portion of the tract of land from the current CCN holder's certificated service area if all the following conditions are met:

(A) the tract of land is at least 25 acres in size;

(B) the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN; and

(C) at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county.

(2) A qualifying county under paragraph (1)(C) of this subsection:

(A) has a population of at least one million;

(B) is adjacent to a county with a population of at least one million, and does not have a population of more than 45,000 and less than 47,500; or

(C) has a population of more than 200,000 and less than 220,000 and does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more.

(3) A landowner seeking streamlined expedited release under this subsection must file with the commission a petition and supporting documentation containing the following information and verified by a notarized affidavit:

(A) a statement that the petition is being submitted under TWC §13.2541 and this subsection;

(B) proof that the tract of land is at least 25 acres in size;

(C) proof that at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county;

(D) a statement of facts that demonstrates that the tract of land is not currently receiving service;

(E) copies of deeds demonstrating ownership of the tract of land by the landowner;

(F) proof that a copy of the petition was mailed to the current CCN holder via certified mail on the day that the landowner filed the petition with the commission; and

(G) the mapping information described in subsection (k) of this section.

(5) The presiding officer will determine whether the petition is administratively complete. If the petition is determined not to be administratively complete, the presiding officer will issue an order describing the deficiencies in the petition and setting a deadline for the petitioner to address the deficiencies. When the petition is determined to be administratively complete, the presiding officer will establish a procedural schedule that is consistent with paragraphs (6) and (7) of this subsection. The presiding officer may recommend dismissal of the petition if the petitioner fails to supplement or amend the petition within the required timeframe after the presiding officer has determined that the petition is not administratively complete.

(6) The current CCN holder may file a response to the petition within a timeframe specified by the presiding officer, not to exceed 20 days from the date the petition is determined to be administratively complete. The response must be verified by a notarized affidavit.

(7) The commission will issue a decision on a petition filed under this subsection no later than 60 calendar days after the presiding officer by order determines that the petition is administratively complete. The commission will base its decision on the information filed by the landowner, the current CCN holder, and commission staff. No hearing will be held.

(8) The fact that a current CCN holder is a borrower under a federal loan program is not a bar to the release of a tract of land under this subsection. The CCN holder must not initiate an application to borrow money under a federal loan program after the date the petition is filed until the commission issues a final decision on the petition.

(9) The commission may require an award of compensation by the landowner to the former CCN holder as specified in subsection (i).

(i) Determination of compensation to former CCN holder after streamlined expedited release. The amount of compensation, if any, will be determined after the commission has granted a petition for streamlined expedited release filed under subsection (h) of this section. The amount of compensation, if any, will be decided in the same proceeding as the petition for streamlined expedited release.

(1) If the former CCN holder and landowner have agreed on the amount of compensation to be paid to the former CCN holder, they must make a joint filing with the commission stating the amount of the compensation to be paid.

(2) If the former CCN holder and landowner have not agreed on the compensation to be paid to the former CCN holder, the monetary amount of compensation must be determined by a qualified individual or firm serving as an independent appraiser under the following procedure.

(A) If the former CCN holder and landowner have agreed on an independent appraiser, the former CCN holder and landowner must make a joint filing with the commission identifying the individual or firm who will be the independent appraiser within ten days after the commission grants streamlined expedited release under subsection (h) of this section. The costs of the independent appraiser must be borne by the landowner. The appraiser must file its appraisal with the commission within 70 days after the commission grants streamlined expedited release.

(B) If the former CCN holder and landowner have not agreed on an independent appraiser within ten days after the commission grants streamlined expedited release under subsection (h) of this section, the former CCN holder and landowner must each engage its own appraiser at its own expense. Each appraiser must file its appraisal with the commission within 70 calendar days after the commission grants streamlined expedited release. After receiving the appraisals, the commission will appoint a third appraiser who must make a determination of compensation within 100 days after the date the commission grants streamlined expedited release. The determination by the commission-appointed appraiser may not be less than the lower appraisal or more than the higher appraisal made by the appraisers engaged by the former CCN holder and landowner. The former CCN holder and landowner must each pay half the cost of the commission-appointed appraisal directly to the commission-appointed appraiser.

(C) The appraisers must determine the amount of compensation in accordance with subsection (j) of this section.

(3) The determination of compensation by the agreed-upon appraiser under paragraph (2)(A) or the commission-appointed appraiser under paragraph (2)(B) of this subsection is binding on the commission, former CCN holder, and landowner.

(4) If the former CCN holder fails to make a filing with the commission about the amount of agreed compensation or engage an appraiser or file an appraisal within the timeframes required by this subsection, the amount of compensation to be paid will be deemed to be zero. If the landowner fails to make a filing with the commission about the amount of agreed compensation, or engage an appraiser, or file an appraisal within the timeframes required by this subsection, the commission will base the amount of compensation to be paid on the appraisal provided by the CCN holder.

(5) The commission will issue an order establishing the amount of compensation to be paid and directing the landowner to pay the compensation to the former CCN holder not later than 60 days after the commission receives the final appraisal.

(6) The landowner must pay the compensation to the former CCN holder not later than 90 days after the date the compensation amount is determined by the commission. The commission will not authorize a prospective retail public utility to serve the removed area until the landowner has paid to the former CCN holder any compensation that is required.

(j) Valuation of real and personal property of the former CCN holder.

(1) The value of real property must be determined according to the standards set forth in chapter 21 of the Texas Property Code governing actions in eminent domain.

(2) The value of personal property must be determined according to this paragraph. The following factors must be used in valuing personal property:

(A) the amount of the former CCN holder's debt allocable to service to the removed area;

(B) the value of the service facilities belonging to the former CCN holder that are located within the removed area;

(C) the amount of any expenditures for planning, design, or construction of the service facilities of the former CCN holder that are allocable to service to the removed area;

(D) the amount of the former CCN holder's contractual obligations allocable to the removed area;

(E) any demonstrated impairment of service or any increase of cost to consumers of the former CCN holder remaining after a CCN revocation or amendment under this section;

(F) the impact on future revenues lost from existing customers;

(G) necessary and reasonable legal expenses and professional fees, including costs incurred to comply with TWC §13.257(r); and

(H) any other relevant factors as determined by the commission.

(k) Mapping information.

(1) For proceedings under subsections (f) or (h) of this section, the following mapping information must be filed with the petition:

(A) a general-location map identifying the tract of land in reference to the nearest county boundary, city, or town;

(B) a detailed map identifying the tract of land in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads. If ownership of the tract of land is conveyed by multiple deeds, this map must also identify the location and acreage of land conveyed by each deed; and

(C) one of the following for the tract of land:

(i) a metes-and-bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor;

(ii) a recorded plat; or

(iii) digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US feet) or in NAD 83 Texas Statewide Mapping System (meters). The digital mapping data must include a single, continuous polygon record.

(2) Commission staff may request additional mapping information.

(3) All maps must be filed in accordance with §22.71 and §22.72 of this title.

(l) Additional conditions for decertification under subsection (d) of this section.

(1) If the current CCN holder did not agree in writing to a revocation or amendment by decertification under subsection (d) of this section, then an affected retail public utility may request that the revocation or amendment be conditioned on the following:

(A) ordering the prospective retail public utility to provide service to the entire service area of the current CCN holder; and

(B) transferring the entire CCN of the current CCN holder to the prospective retail public utility.

(2) If the commission finds that, as a result of revocation or amendment by decertification under subsection (d) of this section, the current CCN holder will be unable to provide continuous and adequate service at an affordable cost to the current CCN holder's remaining customers, then:

(A) the commission will order the prospective retail public utility to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to the prospective retail public utility's other customers and will establish the terms under which service must be provided; and

(B) the commission may order any of the following terms:

(i) transfer of debt and other contract obligations;

(ii) transfer of real and personal property;

(iii) establishment of interim rates for affected customers during specified times; and

(iv) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(3) The prospective retail public utility must not charge the affected customers any transfer fee or other fee to obtain service, except for the following:

(A) the prospective retail public utility's usual and customary rates for monthly service, or

(B) interim rates set by the commission, if applicable.

(4) If the commission orders the prospective retail public utility to provide service to the entire service area of the current CCN holder, the commission will not order compensation to the current CCN holder, the commission will not make a determination of the amount of compensation to be paid to the current CCN holder, and the prospective retail public utility must not file a notice of intent under subsection (g) of this 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 June 12, 2020.

TRD-202002364
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 2, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 936-7244

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 65. BOILERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 65, Subchapter A, §65.2; Subchapter C, §65.13; Subchapter N, §65.214; Subchapter O, §65.300; and Subchapter R, §65.603 and §65.607, regarding the Boilers program. The amendments are adopted without changes to the proposed text as published in the January 31, 2020, issue of the *Texas Register* (45 TexReg 683). These rules will not be republished.

The Commission also adopts amendments to 16 TAC, Chapter 65, Subchapter N, §65.206, regarding the Boilers program, with changes to the proposed text as published in the January 31, 2020, issue of the *Texas Register* (45 TexReg 683). This rule will be republished.

The adopted rule amendments are referred to as "adopted rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 65 implement Texas Health and Safety Code, Chapter 755, Boilers.

The adopted rules are the product of analysis and discussion among the staff and with the Board of Boiler Rules. The primary focus and goal are the protection of public health, safety, and welfare. All participants agreed that it is necessary to that protection to implement a simple method to prevent additional deaths and injuries to Texans. Other unrelated changes are included for administrative matters and overall clarity in the rules.

The adopted rules include three components. First, a carbon monoxide (CO) detector and interlock system is newly required for boilers installed in boiler rooms on or after September 1, 2020, which will significantly reduce deaths and injuries resulting from CO poisoning. This requirement is necessary to protect public health, safety, and welfare. Second, the adopted rules provide the Department the opportunity to address public comments received during the most recent four-year review of the Boilers rules. Finally, the adopted rules make edits and clarifications for consistency and understandability.

SECTION-BY-SECTION SUMMARY

The amendments to §65.2 update the Modular Boiler definition and clarify the Authorized Inspector definition.

The amendments to §65.13 add clarifying wording for temporary boiler operating permits.

The amendments to §65.206 update the name of the section to reflect its increased scope and add the requirement for a CO detector and interlock system to disable the burners of any CO-producing boiler if the concentration of CO in the boiler room reaches a dangerous level. The amendments also specify applicability and update citations. The section is renumbered accordingly. In response to a public comment the effective date of subsection (a) is modified from June 1, 2020, to September 1, 2020.

The amendments to §65.214 update wording for a modular boiler requirement consistent with the revised definition of Modular Boiler and update a citation.

Amendments to §65.300 make clarifying wording changes.

The amendments to §65.603 reword existing boiler room ventilation requirements to more clearly describe both applicability and the ventilation options.

The amendment to §65.607 corrects a citation.

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The Notice of Intent to Review the Boilers rules was published in the *Texas Register* on August 24, 2018 (43 TexReg 5545). During the subsequent public comment period two comments were submitted. The content of the comments and the conclusion of the review process appeared in the *Texas Register* on February 8, 2019 (44 TexReg 594). No changes to the Boilers rules were made during the rule review process and none are being adopted in this rulemaking that are related to the rule review. However, the Department is taking this opportunity to address those comments as part of the response to the comments received for this proposed rule.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the January 31, 2020, issue of the *Texas Register* (45 TexReg 683). The deadline for public comments was March 3, 2020. The Department received comments from two interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: One commenter supports the rule but describes concerns with immediate and unwarned disabling of the burners of one or more boilers in low-risk environments, including remote boilers in isolated buildings and boiler rooms with segregated combustion air and ventilation systems. The commenter expressed that the consequences could be costly, result in significant loss of product, and possibly endanger public health and welfare in some facilities. The commenter recommends that the carbon monoxide detector function as an audible and visual alarm without disabling the burners, or as a two-stage alarm system that provides time to address the problem before the burners are disabled, for certain categories of boiler users.

Department Response: The Department appreciates the support of the rules, and agrees that some facilities could face serious consequences if the interlock operates to disable the burners unexpectedly. The Department recommends that in such applications, the owner install an alarm that initiates before the trigger point of 50 ppm (at which concentration the burners must automatically be disabled). Such early warning could provide time to address an increased concentration of carbon monoxide before it reaches 50 ppm.

The Department is examining the feasibility of identifying types or categories of boilers or installations that may operate safely and maintain protectiveness with modification of the operation of the CO detector and interlock system. Rulemaking may be undertaken to address those applications. The existing variance procedure is available to request modification of the operation of the required CO detector and interlock system. The approval of variances is at the discretion of the Executive Director and the Authorized Inspection Agency. Variances will not be approved absent the demonstration of significant need for modification and reasonableness of any modification. No change has been made to the rule in response to this comment.

Comment: One commenter stated that reducing safety risks is of the highest priority and that he is in favor of the rule changes and appreciates the work of the Department.

The commenter inquires if the level of ppm at which the burners are disabled could be maintained at the existing level of 100 ppm in the vent that will be replaced instead of being lowered to the proposed 50 ppm, because the difference in amount of exposure time required for negative effects would be negligible.

Department Response: The Department appreciates the expression of support for the rule amendments and the Department. The concentration at which the burners must be disabled was set at 50 ppm because this concentration is the Occupational Safety and Health Administration's (OSHA) Permissible Exposure Limit (PEL) for carbon monoxide. Disabling the burners only when the concentration of CO reaches 100 ppm would create the risk that the CO concentration would exceed the PEL, possibly for extended amounts of time. The Department disagrees with the recommendation and believes the current PEL is the safe and appropriate level at which the interlock must be triggered. No change has been made to the rule in response to this comment.

Comment: The commenter explains that the proposed effective date of the CO detector and interlock requirement of June 1, 2020, would follow the effective date of the rule by about one month. The commenter expressed that this is a significant rule change and this time frame for implementation does not provide adequate planning time when designing new boiler rooms or installations. The commenter recommends that the CO detector and interlock requirement become effective on September 1, 2020.

Department Response: The Department agrees that the June 1, 2020, effective date in §65.206 of the rule must be extended to September 1, 2020, due to a later than anticipated schedule for adoption of the rule amendments and to provide an adequate period of time for owners and operators to prepare to implement this new requirement. The Department has made the change to the effective date of §65.206(a) of the adopted rule in response to this comment.

The Department received two public comments in response to the Notice of Intent to Review the Boilers rules published in the *Texas Register* on August 24, 2018 (43 TexReg 5545). The public comments are summarized below.

Comment: One commenter recommended that the membership of the Board of Boiler Rules be changed from including three members who represent companies that insure boilers in Texas to instead include three members representing authorized inspection agencies, because the majority of authorized inspection agencies are not insurance companies and therefore cannot have representatives on the Board.

Department Response: The Department understands the comment and concerns, but the composition of the board is specified by Texas Boiler law, Health and Safety Code §755.011(b)(2). A statute revision during the legislative session would need to occur to address this specific concern. The rule, Texas Administrative Code §65.101(a)(2), merely echoes the statute and will be amended only if the statutory requirement is revised. No change has been made to the rules in response to this comment.

Comment: The second comment on the Notice of Intent to Review references Texas Administrative Code §65.213, which prohibits HLW boilers (potable water heaters) from being incorporated into a hot water heating system as a hot water heating boiler. The commenter asked if these boilers could be grandfathered until replacement is necessary.

Department Response: The prohibition on using HLW boilers in a hot water heating system as hot water heating boilers was first incorporated into the Texas Administrative Code on December 8, 2005. The present rule, however; indicates that it was adopted on June 15, 2015, because the Boilers rules were readopted at that time and this rule changed from its former number, Texas Administrative Code §65.70(j), to the present number, §65.213. The text of the rule, and thus the substantive requirement, remained unchanged since 2005. Therefore, the rules have prohibited HLW water heaters from being incorporated into water heating systems as hot water heating boilers from 2005 forward. At the time the rule first became effective in 2005 such an existing system would have been "grandfathered" and could continue to operate, but no new use of an HLW boiler in this way would have been approved after 2005. No changes have been made to the Boilers rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Board of Boiler Rules (Advisory Board) met on February 26, 2020, to discuss the proposed rules and the single public comment received to that date. The Board agreed to allow the Department to respond to any additional comments that the Department might receive in the days remaining before the end of the comment period provided that the response would not necessitate Board action. The Advisory Board recommended adopting the proposed rules with any permissible changes. Following the Board meeting the Department received an additional public comment. In response to that comment the Department modified the effective date in §65.206 from June 1, 2020 to September 1, 2020. This change does not require Board action. At its meeting on May 19, 2020, the Commission adopted the proposed rules with changes as recommended by the Board.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §65.2

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on June 11, 2020.

TRD-202002340
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671

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SUBCHAPTER C. BOILER REGISTRATION AND CERTIFICATE OF OPERATION--REQUIREMENTS

16 TAC §65.13

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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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Brad Bowman
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SUBCHAPTER N. RESPONSIBILITIES OF THE OWNER AND OPERATOR

16 TAC §65.206, §65.214

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

§65.206. Boiler Room.

(a) Each boiler room containing one or more boilers from which carbon monoxide can be produced shall be equipped with a carbon monoxide detector with a manual reset.

(1) The carbon monoxide detector and boiler(s) shall be interlocked to disable the burners when the measured level of CO rises above 50 ppm.

(2) The carbon monoxide detector shall disable the burners upon loss of power to the detector.

(3) The carbon monoxide detector shall be calibrated in accordance with the manufacturer's recommendations or every eighteen months after installation of the detector. A record of calibration shall be posted at or near the boiler, or be readily accessible to an inspector.

(4) The requirements in this subsection apply to boiler rooms in which new installations or reinstallations of one or more boilers are completed on or after September 1, 2020.

(b) The boiler room shall be free from accumulation of rubbish and materials that obstruct access to the boiler, its setting, or firing equipment.

(c) The storage of flammable material or gasoline-powered equipment in the boiler room is prohibited.

(d) The roof over boilers designed for indoor installations, shall be free from leaks and maintained in good condition.

(e) Adequate drainage shall be provided.

(f) All exit doors shall open outward.

(g) It is recommended that the ASME Code, Section VI, Care and Operation of Heating Boilers, be used as a guide for proper and safe operating practices.

(h) It is recommended that the ASME Code, Section VII, Care and Operation of Power Boilers, be used as a guide for proper and safe operating practices.

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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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671

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SUBCHAPTER O. FEES

16 TAC §65.300

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER R. TECHNICAL REQUIREMENTS

16 TAC §65.603, §65.607

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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 130. PODIATRIC MEDICINE PROGRAM

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 130, Subchapter D, §130.42, and §130.45; Subchapter E, §§130.53, 130.56, and 130.58; Subchapter F, §130.60; and Subchapter G, §130.72, regarding the Podiatry Program, without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 50). These rules will not be republished.

The Commission also adopts amendments to Subchapter D, §130.44 and new rule Subchapter E, §130.59 regarding the Podiatry Program with changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 50). These rules will be republished.

The adopted rule amendments and new rule are referred to as "adopted rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules require practitioners to complete a human trafficking training course as required by House Bill (HB) 2059 and the newly-created Chapter 116 of the Occupations Code.

The adopted rules establish limits on prescribing opioids for acute pain, address electronic prescribing, and require continuing education on prescribing and monitoring controlled substances. These rules implement HB 2174, HB 3284, and HB 3285, which revised the Texas Controlled Substances Act in Chapter 481 of the Health and Safety Code.

The adopted rules also clarify the scope of delegation permitted and allow for a podiatrist to delegate to a qualified and properly trained podiatric medical assistant as outlined in HB 2847. Implementing a transfer from the Texas Medical Board to the Department's regulatory authority in HB 2847, the adopted rules provide for the regulation of podiatric medical radiological technicians and establish a fee for this license.

The adopted rules update the administrative penalties and sanctions for podiatrists, implementing HB 1899 and Occupations Code, Chapter 108, as well as penalties for improperly accessing the Texas Prescription Monitoring Program provided for in HB 3284 and the Texas Controlled Substances Act.

Finally, the adopted rules provide for the orderly transition of assessing continuing medical education hours as the Department transitions to biennial podiatric license terms. Biennial license terms were adopted in a previous rulemaking and made effective September 1, 2019 (44 TexReg 4725).

SECTION-BY-SECTION SUMMARY

The adopted rules amend §130.42 to require the completion of human trafficking prevention training for each renewal on or after September 1, 2020. This training is required by Texas Occupations Code §116.003.

The adopted rules amend §130.44 to require two hours of continuing medical education (CME) related to prescribing and monitoring controlled substances prior to the first anniversary of podiatric medical licensure. The amendment requires one hour of CME covering best practices, alternative treatment options, and multimodal approaches to pain management for podiatrists whose practice involves the prescription and dispensation of opi-

oids. Additionally, the amendment revises the CME due date requirements and provides a guide to transition for CME requirements as the Department moves podiatric license renewal to biennial periods. After publication of the proposed rule text, the Department made changes to subsection (o) to consistently use the word "licensee."

The adopted rules amend §130.45, by deleting subsection (f), which was duplicative of a similar subsection in §130.44.

The adopted rules amend §130.53, by establishing regulatory authority over podiatric medical radiological technicians as created by HB 2847. The amendment also specifies a requirement of 60 x-rays for student training and requires completion of human trafficking prevention training for each renewal on or after September 1, 2020. The amendment deletes a reference to an act of moral turpitude as grounds for the Department to refuse renewal of a podiatric medical radiology technician license.

The adopted rules amend §130.56 to clarify the scope of delegated authority from a podiatrist to a podiatric medical assistant.

The adopted rules amend §130.58 to permit a podiatrist to designate an agent to communicate prescriptions to a pharmacist. Additionally, the amendment specifies that unauthorized access of the Texas Prescription Monitoring Program (PMP) is grounds for disciplinary action by the Department.

The adopted rules create new §130.59 that outlines the limits on the prescription of opioids to treat acute pain. The new section also requires the electronic prescription of all controlled substance prescriptions after September 1, 2021, and provides a list of exceptions for this requirement. Additionally, in response to a public comment submitted by the Texas Medical Association, the Department removed published subsection (c) from Subchapter E, §130.59 and the rest of the subsections were re-lettered.

The adopted rules amend §130.60 to provide the fees applicable for Active Duty Military Members ($0), and Podiatric Medical Radiological Technicians ($25).

The adopted rules amend §130.72 to establish grounds for disciplinary actions and sanctions based upon improper access and dissemination of information obtained from the PMP. Additionally, the amendment incorporates denial of licensure, and suspension or revocation of licenses, for offenses identified in Chapter 108, Subchapter B, of the Occupations Code.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 50). The deadline for public comments was February 4, 2020. The Department received five comments from four interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: One individual commenter would like more specification of what "improper access to the PMP" means.

Department Response: The Department disagrees with this comment. Section 481.071 of the Texas Health and Safety Code states that a practitioner may not access the Prescription Monitoring Program (PMP) database except for a valid medical purpose and in the course of medical practice. In accordance with the Health and Safety Code provisions, §130.72 of the proposed rules provide that a practitioner may not disclose or use information from the PMP in a manner not authorized by law. The rules also provide that a person authorized to receive information from the PMP may not make a material misrepresentation or fail to disclose a material fact in the request for information. No change has been made to the proposed rules in response to this comment.

Comment: One individual commenter is not sure what "human sex trafficking" has to do with podiatry and does not see the benefit of a podiatrist learning about this issue.

Department Response: The Department disagrees with this comment. The proposed rules implement HB 2059, 86th Legislature Regular Session (2019). HB 2059 requires practitioners complete human trafficking training as a condition of license renewal. No change has been made to the proposed rules in response to this comment.

Comment: One individual commenter believes that the human trafficking course is burdensome and believes resources need to be better used to combat this issue. The commenter also believes there needs to be an exception to e-prescribing for small practices that write less than twenty-five prescriptions for controlled substances a year. This same commenter provided a second comment containing a link to an article on "how wasteful of a burden" the proposal to have human trafficking training is for a podiatrist.

Department Response: The Department disagrees with this comment. The proposed rules implement HB 2059 and HB 2174, 86th Legislature Regular Session (2019). HB 2059 requires practitioners complete human trafficking training as a condition of license renewal.

HB 2174 requires electronic prescriptions for controlled substances and authorizes written or telephonic communication of prescriptions in certain circumstances. HB 2174 also requires the Texas State Board of Pharmacy to convene a workgroup to implement a waiver process for e-prescribing. This portion of the comment is beyond the scope of this rulemaking. However, this comment has been referred to the appropriate division for review. No change has been made to the proposed rules in response to this comment.

*Comment:*The Texas Medical Association submitted comment on §130.59(c). Subsection (c) of this section of the rule states "the 10-day limit does not apply to a prescription for an opioid approved by the United States Food and Drug Administration for the treatment of substance addiction that is issued by a practitioner for the treatment of substance addiction." The Texas Medical Association is concerned that the inclusion of subsection (c) may cause confusion among podiatrists, who may question their authorized scope of practice. As a result, the Texas Medical Association recommends the proposed new subsection (c) be deleted.

Department Response: The Department agrees with this comment. The proposed rules implement HB 2174, 86th Legislature Regular Session (2019). Chapter 202 of the Texas Occupations Code defines "podiatry" as "the treatment of or offer to treat any disease, disorder, physical injury, deformity, or ailment of the human foot by any system or method." The practice of podiatry does not include the treatment for substance abuse or addiction. Deleting proposed rule §130.59(c) does not affect the current law, removes an unnecessary pr,ovision from the podiatry rules, and does not change the scope of practice for podiatrists. The Department has deleted subsection (c) of §130.59 as published in the *Texas Register* and re-lettered the subsection accordingly.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTIONS

On March 9, 2020, the Podiatric Medical Examiners Advisory Board recommended adopting the proposed rules with the Department recommended changes. The Department recommended changes are to Subchapter D, §130.44(o), to consistently use the word "licensee." Additionally, in response to the Texas Medical Association comment, the published subsection (c) was removed from Subchapter E, §130.59 and the rest of the subsections were re-lettered. At its meeting on May 19, 2020, the Commission adopted the proposed rules as recommended by the Advisory Board.

SUBCHAPTER D. DOCTOR OF PODIATRIC MEDICINE

16 TAC §§130.42, 130.44, 130.45

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 108, which establishes the Department's authority to deny, suspend or revoke podiatrists for certain criminal convictions; Texas Occupations Code, Chapter 116, which requires the completion of human trafficking prevention training for health professions licensees; and Texas Health and Safety Code Chapter 481, which mandates certain continuing education for controlled substance prescribers, places limits on the prescription of opioids for acute pain, requires the submission of electronic prescriptions for controlled substances, and forbids unauthorized access to the PMP.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 108, 116, and 202; and Texas Health and Safety Code, Chapter 481. No other statutes, articles, or codes are affected by the adopted rules.

§130.44. Continuing Medical Education--General Requirements.

(a) Each person licensed to practice podiatric medicine in the State of Texas is required to have 50 hours of continuing medical education (CME) every two years for the renewal of the license to practice podiatric medicine. One hour of training is equal to one hour of CME.

(b) Two hours of the required 50 hours of department approved CME shall be a course, class, seminar, or workshop in: Ethics in the Delivery of Health Care Services and/or Rules and Regulations pertaining to Podiatric Medicine in Texas. Topics on Human Trafficking Prevention, Healthcare Fraud, Professional Boundaries, Practice Risk Management or Podiatric Medicine related Ethics or Jurisprudence courses, Abuse and Misuse of Controlled Substances, Opioid Prescription Practices, and/or Pharmacology, including those sponsored by an entity approved by CPME, APMA, APMA affiliated organizations, AMA, AMA affiliated organizations, or governmental entities, or the entities described in subsections (e) and (f) are acceptable.

(c) Each person initially licensed to practice podiatric medicine in the State of Texas is required to complete two hours of continuing medical education related to approved procedures of prescribing and monitoring controlled substances prior to the first anniversary of date the license was originally issued.

(d) For each person licensed to practice podiatric medicine in the State of Texas whose practice includes prescription or dispensation of opioids shall annually attend at least one hour of continuing medical education covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments.

(e) A licensee shall receive credit for each hour of podiatric medical meetings and training sponsored by APMA, APMA affiliated organizations, TPMA, state, county or regional podiatric medical association podiatric medical meetings, university sponsored podiatric medical meetings, hospital podiatric medical meetings or hospital podiatric medical grand rounds, medical meetings sponsored by the Foot & Ankle Society or the orthopedic community relating to foot care, and others at the discretion of the Board. A practitioner may receive credit for giving a lecture, equal to the credit that a podiatrist attending the lecture obtains.

(f) A licensee shall receive credit for each hour of training for non-podiatric medical sponsored meetings that are relative to podiatric medicine and department approved. The department may assign credit for hospital grand rounds, hospital CME programs, corporate sponsored meetings, and meetings sponsored by the American Medical Association, the orthopedic community, the American Diabetes Association, the Nursing Association, the Physical Therapy Association, and others if approved.

(g) It shall be the responsibility of the licensee to ensure that all CME hours being claimed meet the standards for CME as set by the commission. Practice management, home study and self-study programs will be accepted for CME credit hours only if the provider is approved by the Council on Podiatric Medical Education. The licensee may obtain up to, but not exceed twenty (20) hours of the aforementioned hours per biennium.

(h) Cardiopulmonary Resuscitation (CPR) certification is eligible for up to three (3) hours of CME credit and Advanced Cardiac Life Support (ACLS) certification for up to six (6) hours of CME credit. Practitioners may only receive credit for one, not both. No on-line CPR certification will be accepted for CME credit.

(i) If a practitioner has an article published in a peer review journal, the practitioner may receive one (1) hour of CME credit for the article, with credit for the article being provided only once, regardless of the number of times or the number of journals in which the article is published.

(j) With the exception of the allowed hours carried forward, the required 50 hours of continuing medical education must be obtained in a 24-month period immediately preceding the date in which the license is to be renewed. The 24-month period will begin on the first full day of the month after the practitioner's date of renewal and end two years later. A licensee who completes more than the required 50 hours during the preceding CME period may carry forward a maximum of ten (10) hours for the next renewal CME period.

(k) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(l) The audit process shall be as follows:

(1) The department shall select for audit a random sample of license holders to ensure compliance with CME hours.

(2) If selected for an audit, the license holder shall submit copies of certificates, transcripts or other documentation satisfactory to

the department, verifying the license holder's attendance, participation and completion of the continuing education.

(3) Failure to timely furnish this information within thirty (30) calendar days or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(4) If selected for continuing education audit during the renewal period, the license holder may renew and pay renewal fees.

(m) Licensees that are deficient in CME hours must complete all deficient CME hours and current biennium CME requirement in order to maintain licensure.

(n) Continuing education obtained as a part of a disciplinary action is not acceptable credit towards the total of fifty (50) hours required every two years.

(o) The 85th Texas Legislature enacted changes to Chapter 202, Occupations Code, providing the commission with authority to establish a one or two-year license term for licensees. See H.B. 3078, 85th Legislature, Regular Session (2017). The purpose of this transition rule is to provide guidance on how continuing medical education will be assessed when transitioning from a one to two-year license term. This rule applies only to licensees renewing on or after September 1, 2019. Beginning September 1, 2019, the department shall stagger the continuing medical education biennium of licenses as follows. Licensees renewing in an odd numbered year are to obtain 50 hours of CME for a 24-month period between 2019 and 2021; and for every 2-years thereafter in between renewal dates. Licensees renewing in an even numbered year are to obtain 50 hours of CME for a 24-month period between 2020 and 2022; and for every 2-years thereafter in between renewal dates. This rule expires on August 31, 2022.

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

Filed with the Office of the Secretary of State on June 11, 2020.

TRD-202002348
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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Proposal publication date: January 3, 2020
For further information, please call: (512) 463-3671

SUBCHAPTER E. PRACTITIONER RESPONSIBILITIES AND CODE OF ETHICS

16 TAC §§130.53, 130.56, 130.58, 130.59

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 108, which establishes the Department's authority to deny, suspend or revoke podiatrists for certain criminal convictions; Texas Occupations Code, Chapter 116, which requires the completion of human trafficking prevention training for health professions licensees; and Texas Health and Safety Code Chapter 481, which mandates certain continuing education for controlled substance prescribers, places limits on the prescription of opioids for acute pain, requires the submission of electronic prescriptions for controlled substances, and forbids unauthorized access to the PMP.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 108, 116, and 202; and Texas Health and Safety Code, Chapter 481. No other statutes, articles, or codes are affected by the adopted rules.

§130.59. Opioid Prescription Limits and Required Electronic Prescribing.

(a) In this section, "acute pain" means the normal, predicted, physiological response to a stimulus such as trauma, disease, and operative procedures. Acute pain is time limited and the term does not include:

(1) chronic pain;

(2) pain being treated as part of cancer care;

(3) pain being treated as part of hospice or other end-of-life care; or

(4) pain being treated as part of palliative care.

(b) For the treatment of acute pain, a podiatrist may not:

(1) issue a prescription for an opioid in an amount that exceeds a 10-day supply; or

(2) provide for a refill of an opioid.

(c) After January 1, 2021 all controlled substances must be prescribed electronically except:

(1) in an emergency or in circumstances in which electronic prescribing is not available due to temporary technological or electronic failure, in a manner provided for by the Texas State Board of Pharmacy rules;

(2) by a practitioner to be dispensed by a pharmacy located outside this state, in a manner provided for by the Texas State Board of Pharmacy rules;

(3) when the prescriber and dispenser are in the same location or under the same license;

(4) in circumstances in which necessary elements are not supported by the most recently implemented national data standard that facilitates electronic prescribing;

(5) for a drug for which the United States Food and Drug Administration requires additional information in the prescription that is not possible with electronic prescribing;

(6) for a non-patient-specific prescription pursuant to a standing order, approved protocol for drug therapy, collaborative drug management, or comprehensive medication management, in response to a public health emergency or in other circumstances in which the practitioner may issue a non-patient-specific prescription;

(7) for a drug under a research protocol;

(8) by a practitioner who has received a waiver under Section 481.0756 of the Texas Health and Safety Code from the requirement to use electronic prescribing; or

(9) under circumstances in which the practitioner has the present ability to submit an electronic prescription but reasonably determines that it would be impractical for the patient to obtain the drugs prescribed under the electronic prescription in a timely manner and that a delay would adversely impact the patient's medical condition.

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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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671

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SUBCHAPTER F. FEES

16 TAC §130.60

The rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 108, which establishes the Department's authority to deny, suspend or revoke podiatrists for certain criminal convictions; Texas Occupations Code, Chapter 116, which requires the completion of human trafficking prevention training for health professions licensees; and Texas Health and Safety Code Chapter 481, which mandates certain continuing education for controlled substance prescribers, places limits on the prescription of opioids for acute pain, requires the submission of electronic prescriptions for controlled substances, and forbids unauthorized access to the PMP.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 108, 116, and 202; and Texas Health and Safety Code, Chapter 481. No other statutes, articles, or codes are affected by the adopted rules

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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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671

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SUBCHAPTER G. ENFORCEMENT

16 TAC §130.72

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 108, which establishes the Department's authority to deny, suspend or revoke podiatrists for certain criminal convictions; Texas Occupations Code, Chapter 116, which requires the completion of human trafficking prevention training for health professions licensees; and Texas Health and Safety Code Chapter 481, which mandates certain continuing education for controlled substance prescribers, places limits on the prescription of opioids for acute pain, requires the submission of electronic prescriptions for controlled substances, and forbids unauthorized access to the PMP.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 108, 116, and 202; and Texas Health and Safety Code, Chapter 481. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on June 11, 2020.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 175. FEES AND PENALTIES

22 TAC §175.1, §175.2

The Texas Medical Board (Board) adopts amendments to 22 TAC 175, §175.1, concerning Application and Administrative Fees and §175.2, concerning Registration and Renewal Fees, without changes to the proposed text as published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1935). The adopted rules will not be republished.

Sections 175.1 and 175.2 were amended to add application, registration and renewal fees for Radiology Assistance, a new certificate type mandated by and in accordance with House Bill 1504 (86th Regular Session).

Section 175.1, relating to Application and Administrative Fees, regarding fees for processing an application for a certificate, added an application and certificate fee for a Radiologist Assistant Certificate in the amount of $140.00, and also to add a fee for an application for a temporary certificate in the amount of $140.00 amendments to add a new definition for "personnel", distinguishing personnel from physicians.

Section 175.2, relating to Registration and Renewal Fees, was amended to provide the fee amount for biennial renewal of a Radiologist Assistant Certificate, in the amount of $100.00.

No written comments were received and no one appeared to testify regarding the amendments to Sections 175.1 and 175.2 at the public hearing on June 12, 2020.

The amendments are adopted in accordance with House Bill 1504 (86th Regular Session) and under the authority of the Texas Occupations Code Annotated, §601.057, which allow the board to set and collect fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing Chapter 601.

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

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

Filed with the Office of the Secretary of State on June 12, 2020.

TRD-202002371
Scott Freshour
General Counsel
Texas Medical Board
Effective date: July 2, 2020
Proposal publication date: March 20, 2020
For further information, please call: (512) 305-7016

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CHAPTER 178. COMPLAINTS

22 TAC §178.8

The Texas Medical Board (Board) adopts amendments to Title 22, Part 9, §178.8, concerning Appeals, without changes to the proposed text as published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2126). The adopted rule will not be republished.

Section 178.8, relating to Appeals, was amended to add language requiring that the board receive a complainant's appeal no later than 90 days after the complainant's receipt of notice of the board's dismissal of the complaint.

No written comments were received and no one appeared to testify regarding the amendment to Section 178.8 at the public hearing on June 12, 2020.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The amendments are also adopted under the authority of the Texas Occupations Code annotated, Chapter 154.

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

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

Filed with the Office of the Secretary of State on June 12, 2020.

TRD-202002373
Scott Freshour
General Counsel
Texas Medical Board
Effective date: July 2, 2020
Proposal publication date: March 27, 2020
For further information, please call: (512) 305-7016

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CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM

The Texas Medical Board (Board) adopts amendments to the Title of Chapter 180 to change the name to Texas Physician Health Program, §180.1, concerning Purpose, §180.2, concerning Definitions, §180.3, concerning Texas Physician Health Program, §180.4, concerning Operation of Program and the repeal of §180.7, without changes to the proposed text as published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2127). The adopted rules will not be republished.

Amendment to Title 180, amendments to §§180.1, 180.2, 180.3, 180.4 and repeal of §180.7 are adopted as follows:

Section 180.1, relating to Purpose, was amended to describe the authority for rulemaking and the purpose of the Texas Physician Health Program under Chapter 167 of the Texas Occupations Code.

Section 180.2, relating to Definitions, was amended to update existing definitions and add new definitions in order to maintain consistency within this chapter.

Section 180.3, relating to Texas Physician Health Program, was amended to clarify and update existing language to ensure consistency with current program processes and TXPHP Governing Board directives.

Section 180.4, relating to Operation of Program, was amended to clarify and update existing language to ensure consistency with current program processes and TXPHP Governing Board directives.

Section 180.7, relating to Rehabilitation Orders, was repealed.

The Board sought stakeholder input through the Texas Medical Board and Texas Physicians Health Program PHP Rules Stakeholder Group which made comments on the proposed changes to the rules that were incorporated in the proposed text.

The Board received no comments. No one appeared to testify regarding the amendments to the rule and the repeal of §180.7, relating to Rehabilitation Orders at the public hearing on June 12, 2020.

22 TAC §§180.1 - 180.4

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

The amendments are also adopted under the authority of the Texas Occupations Code annotated, Chapter 167.

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

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

Filed with the Office of the Secretary of State on June 15, 2020.

TRD-202002378

Scott Freshour
General Counsel
Texas Medical Board
Effective date: July 5, 2020
Proposal publication date: March 27, 2020
For further information, please call: (512) 305-7016

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22 TAC §180.7

The repeal is adopted under the authority of the Texas Occupations Code Annotated, §§153.001, 204.101, 205.101, and 206.101 which provide 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.

The repeal is also authorized by §153.001, Texas Occupations Code.

Sections 167.001 - 167.011, Texas Occupations Code, are affected by this adoption.

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

Filed with the Office of the Secretary of State on June 15, 2020.

TRD-202002379
Scott Freshour
General Counsel
Texas Medical Board
Effective date: July 5, 2020
Proposal publication date: March 27, 2020
For further information, please call: (512) 305-7016

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CHAPTER 195. PAIN MANAGEMENT CLINICS

22 TAC §195.1, §195.4

The Texas Medical Board (Board) adopts amendments to 22 TAC 195, §195.1, concerning Definitions and §195.4, concerning Operation of Pain Management Clinics, without changes to the proposed text as published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2131). The adopted rules will not be republished.

The amendments were necessitated by House Bill 2454 (86th Legislature, R.S.), which set forth new continuing education requirements in the topic of opioid prescribing and provided that the new hours may not be credited toward hours required under board rule for pain clinic personnel.

Section 195.1, relating to Definitions, was amended to add a new definition for "personnel", distinguishing personnel from physicians.

Section 195.4, relating to Operation of Pain Management Clinics, was amended to add language distinguishing personnel from physicians who may be employed or contracted to provide medical services at a pain clinic.

No written comments were received and no one appeared to testify regarding the amendments to §§195.1 and 195.4 at the public hearing on June 12, 2020.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The amendments are further adopted under the authority of House Bills 2059, 2174, 2454, and 3285 (86th Texas Legislature, R.S.).

No other statures, articles, or codes are affected by this adoption.

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

Filed with the Office of the Secretary of State on June 12, 2020.

TRD-202002374
Scott Freshour
General Counsel
Texas Medical Board
Effective date: July 2, 2020
Proposal publication date: March 27, 2020
For further information, please call: (512) 305-7016

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 49. ORAL HEALTH IMPROVEMENT PROGRAM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the repeal of §§49.1 - 49.10, 49.13 - 49.18, concerning the Oral Health Program; and new §§49.1 - 49.6, concerning the Oral Health Improvement Program.

The repeal of §§49.1 - 49.10, 49.13 - 49.18 and new §§49.1 - 49.6 are adopted without changes to the proposed text as published in the March 6, 2020, issue of the *Texas Register* (45 TexReg 1598), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The new rules repeal and replace rules in Chapter 49, in accordance with Texas Government Code, §2001.039, regarding Agency Review of Existing Rules. The repeal and new rules are necessary to accurately reflect program activities and functions of the Oral Health Improvement Program, due to changes implemented by Senate Bill 200 and Senate Bill 219, 84th Legislature, Regular Session, 2015.

The repealed rules included direct client services, which were transferred to HHSC post transformation. The Oral Health Improvement Program remains at DSHS as a public health program that promotes oral health and reduces the burden of dental disease through evidence-based public health initiatives including oral health education and preventive interventions. The program also conducts oral health surveillance activities, analyzes

data from multiple sources, and disseminates findings to stakeholders.

COMMENTS

The 31-day comment period ended on April 6, 2020.

During this period, DSHS did not receive any comments regarding the proposed rules.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §§49.1 - 49.4

STATUTORY AUTHORITY

The repeals are authorized under Texas Health and Safety Code, Texas Oral Health Improvement Act, Chapter 43; Texas Education Code, §22.0834; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which provides for the Executive Commissioner of HHSC to 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 June 9, 2020.

TRD-202002320
Barbara Klein
General Counsel
Department of State Health Services
Effective date: June 29, 2020
Proposal publication date: March 6, 2020
For further information, please call: (512) 776-2008

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25 TAC §§49.1 - 49.6

STATUTORY AUTHORITY

The new sections are authorized under Texas Health and Safety Code, Texas Oral Health Improvement Act, Chapter 43; Texas Education Code, §22.0834; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which provides for the Executive Commissioner of HHSC to 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.

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TRD-202002324
Barbara Klein
General Counsel
Department of State Health Services
Effective date: June 29, 2020
Proposal publication date: March 6, 2020
For further information, please call: (512) 776-2008

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SUBCHAPTER B. RECIPIENT PARTICIPATION IN FFS ORAL HEALTH TREATMENT BENEFITS

25 TAC §§49.5 - 49.9

STATUTORY AUTHORITY

The repeals are authorized under Texas Health and Safety Code, Texas Oral Health Improvement Act, Chapter 43; Texas Education Code, §22.0834; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which provides for the Executive Commissioner of HHSC to 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 June 9, 2020.

TRD-202002321
Barbara Klein
General Counsel
Department of State Health Services
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Proposal publication date: March 6, 2020
For further information, please call: (512) 776-2008

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SUBCHAPTER C. PROVIDER PARTICIPATION IN FFS ORAL HEALTH TREATMENT BENEFITS

25 TAC §§49.10, 49.13 - 49.15

STATUTORY AUTHORITY

The repeals are authorized under Texas Health and Safety Code, Texas Oral Health Improvement Act, Chapter 43; Texas Education Code, §22.0834; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which provides for the Executive Commissioner of HHSC to 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.

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Barbara Klein
General Counsel
Department of State Health Services
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Proposal publication date: March 6, 2020
For further information, please call: (512) 776-2008

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SUBCHAPTER D. APPEALS PROCESS FOR FFS ORAL HEALTH TREATMENT BENEFITS AND SERVICES

25 TAC §§49.16 - 49.18

STATUTORY AUTHORITY

The repeals are authorized under Texas Health and Safety Code, Texas Oral Health Improvement Act, Chapter 43; Texas Education Code, §22.0834; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which provides for the Executive Commissioner of HHSC to 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.

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TRD-202002323
Barbara Klein
General Counsel
Department of State Health Services
Effective date: June 29, 2020
Proposal publication date: March 6, 2020
For further information, please call: (512) 776-2008

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 7. MEMORANDA OF UNDERSTANDING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §7.117 and simultaneously adopts new §7.117.

The repeal of §7.117 is adopted *without changes* to the proposal as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1302) and, therefore, will not be republished. New §7.117 is adopted *with changes* to the proposed text as published and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking implements House Bill (HB) 2230 (84th Texas Legislature, 2015) which enacted Texas Water Code (TWC), §27.026, and HB 2771 (86th Texas Legislature, 2019) which amended TWC, §26.131.

This rulemaking adopts the repeal of §7.117, which adopts by reference the Memorandum of Understanding (MOU) between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ) as codified in the RRC Oil and Gas Division rules at 16 TAC §3.30. This rulemaking also adopts the current text of the MOU under new §7.117 and amends the text of the current MOU (in 16 TAC §3.30) to implement HB 2230 and HB 2771.

Historically, the text of the MOU has been codified in the RRC Oil and Gas Division rules at 16 TAC §3.30 and the TCEQ has adopted the MOU by reference at §7.117. The TCEQ and the RRC have collaborated on changes to the current MOU which are required by HB 2230 and HB 2771. The RRC proposed similar changes to its rule in 16 TAC §3.30 (February 28, 2020, issue of the *Texas Register* (45 TexReg 1290)).

The RRC and the TCEQ agree that both agencies intend that the MOU at 16 TAC §3.30, once amended, and the MOU adopted at §7.117 will include the same substantive explanations of jurisdiction and requirements. The TCEQ acknowledges that there will be some minor stylistic differences. The RRC did not receive any comments on its rule proposal. The TCEQ received comments from the Sierra Club, Lone Star Chapter. As discussed in the Public Comment section of this preamble, the TCEQ did not make any changes to the MOU in response to the comments.

The MOU is the result of collaboration between the TCEQ and the RRC. The current MOU described in 16 TAC §3.30 has been in effect since 1982 and has been amended several times. The current MOU describes the general jurisdiction of the TCEQ and the RRC regarding water quality and waste. Several statutes cover persons and activities where respective jurisdiction of the RRC and the TCEQ may intersect. The current MOU is a statement of how the TCEQ and the RRC implement the division of jurisdiction. The MOU delineates general agency jurisdictions regarding: solid waste; water quality; oil and gas waste; injection wells; hazardous waste; interagency activities; and radioactive material. Additionally, the current MOU describes coordination of actions and cooperative sharing of information between the two agencies under the subsection entitled Interagency activities.

In addition to current language, as required by HB 2771, the amended MOU describes the transfer of the RRC's responsibilities to the TCEQ relating to regulation of discharges into surface water in the state of produced water (as defined in 30 TAC §305.541), hydrostatic test water, and gas plant effluent resulting from the exploration, production, and development of oil, natural gas, or geothermal resources. This transfer of responsibilities will occur upon the United States Environmental Protection Agency's (EPA) approval of the TCEQ's request to amend or supplement its Texas Pollutant Discharge Elimination System (TPDES) program.

Upon EPA's approval of the TCEQ's request to amend or supplement its TPDES program, the TCEQ shall assume authority over the final orders at the RRC that are within the scope of the functions, programs, powers, duties, or activities transferred to the TCEQ. The RRC shall retain any enforcement actions pending at the time the TCEQ receives delegation from EPA that are within the scope of the functions, programs, powers, duties, or activities transferred to the TCEQ until final resolution of any such enforcement action is reached. An enforcement action considered pending at the time the TCEQ receives delegation from EPA includes any violation within the scope of the functions, programs, powers, duties, or activities transferred to the TCEQ cited by the RRC in a Notice of Violation that has not resulted in a final order from the RRC. Compliance monitoring for enforcement actions pending at the time the TCEQ receives delegation from EPA shall transfer to the TCEQ when the administrative order of the RRC becomes final. The RRC will provide the TCEQ any relevant information in its possession regarding the final enforcement orders that are transferred to the TCEQ. The TCEQ shall assume authority for tracking compliance with any other final RRC order that is within the scope of the functions, programs, powers, duties, or activities transferred to the TCEQ that have not been resolved at the time the TCEQ receives delegation from EPA.

The TCEQ and the RRC agree that all pending lawsuits at the Office of the Attorney General (OAG), except for collections-only

actions, within the scope of the functions, programs, powers, duties, or activities transferred to the TCEQ are the responsibility of the TCEQ after the transfer. The TCEQ and the RRC will coordinate with the OAG as needed to ensure that these lawsuits are transferred to the TCEQ. The RRC agrees to cooperate with and assist, as necessary, the TCEQ and the OAG with RRC enforcement actions and appeals of RRC decisions.

HB 2230 allows the TCEQ to authorize by individual permit, by general permit, or by rule, a Class V injection well for the disposal of nonhazardous brine or drinking water residuals in a Class II well permitted by the RRC. The adopted MOU implements the dual authority granted by HB 2230. The adopted MOU also allows the TCEQ to authorize by individual permit, general permit, or rule, a Class V injection well for the disposal of nonhazardous brine from a desalination operation, or nonhazardous drinking water treatment residuals (DWTR), under the jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC.

Section Discussion

§7.117, Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality

The commission repeals §7.117 and simultaneously adopts new §7.117 to incorporate MOU language regarding the division of jurisdiction between the RRC and the TCEQ. The adopted rulemaking incorporates the MOU as it currently exists in 16 TAC §3.30, with the amendments required by HB 2771 and HB 2230. The TCEQ repeals and adopts new §7.117 to ensure the TCEQ has completed all necessary requirements for the delegation package before requesting approval from EPA for delegation of National Pollutant Discharge Elimination System (NPDES) permitting authority for discharges of produced water, hydrostatic test water, and gas plant effluent.

Throughout this rule the reference to Small Business and Environmental Assistance (SBEA) has been replaced with TCEQ External Relations Division.

Adopted new §7.117(a) provides the reason the MOU is needed. Additionally, subsection (a)(4) provides the reference to effective dates of the MOU and subsection (a)(5) provides the reference to the current MOU.

Adopted new §7.117(b) provides the general agency jurisdictions. Additionally, adopted new subsection (b)(1)(B)(i) - (iii) and (2)(B)(i) provides language to reflect the transfer of the RRC's responsibilities to the TCEQ relating to regulation of discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production, and development of oil, natural gas, or geothermal resources. This transfer of responsibilities will occur upon EPA's approval of the TCEQ's request to amend or supplement its TPDES program.

Adopted new §7.117(c) provides the definition of hazardous waste and identifies exemptions from classifications as hazardous waste for certain oil and gas waste.

Adopted new §7.117(d) describes the jurisdiction over waste from specific activities including: drilling, operation, and plugging of wells associated with the exploration, development, or production of oil, gas, or geothermal resources; field treatment of produced fluids; storage of oil; underground hydrocarbon storage; underground natural gas storage; transportation of crude oil or natural gas; reclamation plants; refining of oil; natural gas or natural gas liquids processing plants (including gas fractionation facilities) and pressure maintenance or repressurizing plants; manufacturing processes; commercial service company facilities and training facilities; and mobile offshore drilling units.

Additionally, adopted new subsection (d)(12)(A) and (C) provides language to reflect the transfer of the RRC's responsibilities to the TCEQ relating to regulation of discharges into surface water in the state of produced water resulting from the exploration, production, and development of oil, natural gas, or geothermal resources. This transfer of responsibilities will occur upon EPA's approval of the TCEQ's request to amend or supplement its TPDES program.

Adopted new §7.117(e) describes interagency activities including: recycling and pollution prevention; treatment of waste under RRC jurisdiction at facilities authorized by the TCEQ under 30 TAC Chapter 334, Subchapter K; processing, treatment, and disposal of wastes under RRC jurisdiction at facilities authorized by the TCEQ; management of nonhazardous waste under TCEQ jurisdiction at facilities regulated by the RRC; drilling at landfills; coordination of actions and cooperative sharing of information; groundwater; emergency and spill response; and anthropogenic carbon dioxide storage.

Adopted new subsection (e)(1)(A) amends current MOU language to delete the term "solid" as a modifier of the term "waste" to clarify that generators of solid waste and oil and gas waste are encouraged to recycle whenever possible to avoid disposal. Additionally, adopted new subsection (e)(4)(E) amends current MOU language to reflect the TCEQ's authority to authorize by individual permit, general permit, or rule, a Class V injection well for the disposal of nonhazardous brine from a desalination operation, or nonhazardous DWTR, under the jurisdiction of the TCEQ, by injection in a Class II injection well permitted by the RRC. Additionally, subsection (e)(7)(B)(ii) includes the citation to the Code of Federal Regulations (CFR) for the definition of "underground source of drinking water."

Adopted new §7.117(f) describes the jurisdiction of the TCEQ and the RRC to regulate and license various types of radioactive materials.

Adopted new §7.117(g) reflects the effective date of the MOU and amends current MOU language to reflect the new effective date of July 15, 2020.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. "Major environmental rule" is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The adopted MOU is the result of collaboration between the TCEQ and the RRC. The current MOU described in 16 TAC §3.30 has been in effect since 1982 and has been amended

several times. The current MOU also describes the general jurisdiction of the TCEQ and the RRC regarding water quality and waste.

This rulemaking implements HB 2230 which enacted TWC, §27.026, and HB 2771 which amended TWC, §26.131.

The adopted MOU also describes the transfer of the RRC's responsibilities to the TCEQ relating to regulation of discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production, and development of oil, natural gas, or geothermal resources. This transfer of responsibilities will occur upon EPA's approval of the TCEQ's request to amend or supplement its TPDES program. The adopted MOU also reflects the TCEQ's authority to authorize by individual permit, general permit, or rule, a Class V injection well for the disposal of nonhazardous brine from a desalination operation, or nonhazardous DWTR, under the jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC.

Therefore, the commission finds that this rulemaking is not a "Major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the rulemaking does not exceed a standard set by federal law, rather it implements state law. Also, the rulemaking does not exceed an express requirement of state law nor a requirement of a delegation agreement. Finally, the rulemaking was not developed solely under the general powers of the agency; but under HB 2230, which enacted TWC, §27.026, and HB 2771, which amended TWC, §26.131. Under Texas Government Code, §2001.0225, only a "Major environmental rule" requires a regulatory impact analysis. Because the adopted rulemaking does not constitute a "Major environmental rule," a regulatory impact analysis is not required.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission performed an assessment of this rule in accordance with Texas Government Code, §2007.043. The adopted MOU is the result of collaboration between the TCEQ and the RRC. The current MOU described in 16 TAC §3.30 has been in effect since 1982 and has been amended several times. The current MOU also describes the general jurisdiction of the TCEQ and the RRC regarding water quality and waste.

This rulemaking implements HB 2230 which enacted TWC, §27.026, and HB 2771 which amended TWC, §26.131.

The specific purpose of this rulemaking is to repeal §7.117 and adopt new §7.117 to incorporate the current MOU codified in 16 TAC §3.30 and the changes required by HB 2771 and HB 2230. HB 2771 relates to regulation of discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production, and development of oil, natural gas, or geothermal resources. This transfer of responsibility will occur upon EPA's approval of the TCEQ's request to amend or supplement its TPDES program.

HB 2230 describes how the TCEQ may authorize by individual permit, general permit, or rule, a Class V injection well for the disposal of nonhazardous brine from a desalination operation, or nonhazardous drinking water residuals, under the jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC.

This rulemaking imposes no burdens on private real property because the adopted rulemaking neither relates to nor has any impact on the use or enjoyment of private real property, and there is no reduction in the value of private real property as a result of this rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the rulemaking is neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The comment period closed on March 30, 2020. Comments were received from Sierra Club, Lone Star Chapter (Sierra Club).

Comment

Sierra Club stated general support for the MOU.

Response

The TCEQ acknowledges the comment.

§7.117(b)(2)(B)

Comment

Sierra Club commented that the RRC should require that the entities regulated by the RRC comply with the TCEQ's regulations.

Response

The TCEQ did not make any changes in response to this comment. The RRC does not have authority to require an entity to comply with the TCEQ's rules.

§7.117(b)(2)(B)

Comment

Sierra Club recommended that "The TCEQ and the RRC *may consult* as necessary regarding application and interpretation of Texas Surface Water Quality Standards" be replaced with "The TCEQ and the RRC *will consult* as necessary regarding application and interpretation of Texas Surface Water Quality Standards."

Response

The TCEQ did not make any changes in response to this comment. The MOU describes how the RRC and the TCEQ imple-

ment the jurisdiction granted to each agency; the MOU does not impose requirements on the RRC or the TCEQ that are not reflective of each agency's statutory jurisdiction. The TCEQ and the RRC work collaboratively on environmental issues, therefore the TCEQ respectfully disagrees with the recommendation to change the existing MOU language.

§7.117(e)(3)(G)

Comment

Sierra Club commented that the type and volume of waste under the RRC's jurisdiction that is disposed of at a TCEQ-regulated facility should be reported to the TCEQ-regulated facility, then the TCEQ-regulated facility should be required to report the type and volume of waste to the TCEQ.

Response

The TCEQ did not make any changes in response to this comment. Generally, the existing regulations achieve the purposes set out in this comment. Transporters of oil and gas waste under the jurisdiction of the RRC notify operators of waste management facilities under the jurisdiction of the TCEQ that waste presented for management or final disposition is oil and gas waste. Additionally, operators of waste management facilities under the jurisdiction of the TCEQ are required to make and maintain records of the types and volumes of waste received and make those records available to the TCEQ upon request and/or report the information to the TCEQ. Because TCEQ-authorized waste management facilities may only accept waste that is authorized for acceptance by the facility permit or other authorization, before waste is accepted, a facility operator must ensure that acceptance of the waste is authorized. As such, transporters delivering waste to TCEQ-authorized waste management facilities for management or final disposition are required to provide documentation, such as bills of lading or manifests, regarding the characteristics and volumes of waste that include identifying waste under the jurisdiction of the RRC as oil and gas waste.

§7.117(e)(6)(B)

Comment

Sierra Club suggested language be added to the MOU requiring: 1) the TCEQ notify the RRC if it receives a complaint or information regarding a violation at a facility regulated by the RRC; and 2) the RRC notify the TCEQ if it receives a complaint or information regarding a violation at a facility regulated by the TCEQ.

Response

The TCEQ did not make any changes in response to this comment. The RRC and the TCEQ have long-standing established protocols and practices regarding the coordination of actions and the cooperative sharing of information between the two agencies. The RRC and the TCEQ have an existing and longstanding policy and practice of active interagency communication and coordination regarding complaints and enforcement. To specifically address the interagency policy following the delegation transfer, the TCEQ will continue to notify the RRC regarding any potential violations of RRC requirements identified by the TCEQ and will continue to provide available information as requested to assist with the RRC's enforcement actions. The RRC will continue to notify the TCEQ regarding any potential violations of the TCEQ requirements identified by the RRC and will continue to provide available information as requested to assist with the TCEQ's enforcement actions. The TCEQ will continue to refer to the RRC, as appropriate, those complaints under the jurisdiction of the RRC. The RRC will continue to refer to the TCEQ, as appropriate, those complaints under the jurisdiction of the TCEQ. Additionally, the TCEQ and the RRC will continue to coordinate investigations and responses to complaints and possible enforcement actions that may involve both agencies' jurisdictions.

Moreover, the MOU articulates in §7.117(e)(6)(B) a notification procedure when employees of either agency receive a complaint or discover a violation in the course of their official duties.

§7.117(e)(6)(B)

Comment

Sierra Club commented that further discussion about enforcement, including OAG enforcement, is warranted.

Response

The TCEQ did not make any changes in response to this comment. The Background and Summary of the Factual Basis for the Adopted Rules section of this preamble describes the coordination of action and sharing of information between the two agencies regarding enforcement actions that are within the scope of the functions, programs, powers, duties, or activities to be transferred to the TCEQ in accordance with HB 2771.

30 TAC §7.117

Statutory Authority

The repeal of this section is adopted under Texas Water Code (TWC), §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.104, which establishes the authority of the commission to enter the memoranda of understanding (MOU) with any other state agency and adopt by rule the MOU; TWC, §5.105, which establishes that the commission, by rule, shall establish and approve all general policy of the commission; TWC, §26.011, which establishes that the commission shall establish the level of quality to be maintained in and control the quality of the water in the state; TWC, §26.121, which establishes the authority of the commission to issue discharge permits; TWC, §26.131, which establishes the duties of the Railroad Commission of Texas (RRC); TWC, §27.011, which establishes the commission's authority to issue permits for injection wells; TWC, §27.019, which establishes the commission's authority to adopt rules under TWC, Chapter 27; TWC, §27.026, which establishes the authority of the RRC and the TCEQ to enter a memorandum of understanding by rule to implement House Bill (HB) 2230 (84th Texas Legislature, 2015); TWC, §27.049, which establishes the authority of the RRC and the TCEQ to comply with TWC, Chapter 27 to enter a memorandum of understanding by rule and amend or enter a new memorandum of understanding by rule; Texas Health and Safety Code (THSC), §361.011, which establishes the TCEQ's jurisdiction over municipal solid waste; THSC, §361.016, which establishes the authority of the commission to enter the MOU with any other state agency and adopt by rule the MOU; THSC, §361.017, which establishes the TCEQ's jurisdiction over industrial solid waste and municipal hazardous waste; THSC, §401.001, which establishes the TCEQ's jurisdiction over regulation and licensing of radioactive materials and substances; and THSC, §401.069, which establishes the authority for the TCEQ to enter the MOU with state agencies by rule.

The repeal of this section implements HB 2230, which enacted TWC, §27.026, and HB 2771 (86th Texas Legislature, 2019), which amended TWC, §26.131.

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

Filed with the Office of the Secretary of State on June 12, 2020.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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30 TAC §7.117

Statutory Authority

The new section is adopted under Texas Water Code (TWC), §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.104, which establishes the authority of the commission to enter a memoranda of understanding (MOU) with any other state agency and adopt by rule the MOU; TWC, §5.105, which establishes that the commission, by rule, shall establish and approve all general policy of the commission; TWC, §26.011, which establishes that the commission shall establish the level of quality to be maintained in and control the quality of the water in the state; TWC, §26.121, which establishes the authority of the commission to issue discharge permits; TWC, §26.131, which establishes the duties of the Railroad Commission of Texas (RRC); TWC, §27.011, which establishes the commission's authority to issue permits for injection wells; TWC, §27.019, which establishes the commission's authority to adopt rules under TWC, Chapter 27; TWC, §27.026, which establishes the authority of the RRC and the TCEQ to enter a memorandum of understanding by rule to implement House Bill (HB) 2230 (84th Texas Legislature, 2015); TWC, §27.049, which establishes the authority of the RRC and the TCEQ to comply with TWC, Chapter 27 to enter a memorandum of understanding by rule and to amend or enter a new memorandum of understanding by rule; Texas Health and Safety Code (THSC), §361.011, which establishes the TCEQ's jurisdiction over municipal solid waste; THSC, §361.016, which establishes the authority of the commission to enter the MOU with any other state agency and adopt by rule the MOU; THSC, §361.017, which establishes the TCEQ's jurisdiction over industrial solid waste and municipal hazardous waste; THSC, §401.001, which establishes the TCEQ's jurisdiction over regulation and licensing of radioactive materials and substances; and THSC, §401.069, which establishes the authority for the TCEQ to enter the MOU with state agencies by rule.

The new section implements HB 2230, which enacted TWC, §27.026, and HB 2771 (86th Texas Legislature, 2019), which amended TWC, §26.131.

§7.117. Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ).

(a) Need for agreement. Several statutes cover persons and activities where the respective jurisdictions of the RRC and the TCEQ may intersect. This rule is a statement of how the agencies implement the division of jurisdiction.

(1) Section 10 of House Bill 1407, 67th Legislature, 1981, which appeared as a footnote to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, provides as follows: On or before January 1, 1982, the Texas Department of Water Resources, the Texas Department of Health, and the Railroad Commission of Texas shall execute a memorandum of understanding that specifies in detail these agencies' interpretation of the division of jurisdiction among the agencies over waste materials that result from or are related to activities associated with the exploration for and the development, production, and refining of oil or gas. The agencies shall amend the memorandum of understanding at any time that the agencies find it to be necessary.

(2) Texas Health and Safety Code, §401.414, relating to Memoranda of Understanding, requires the Railroad Commission of Texas and the Texas Commission on Environmental Quality to adopt a memorandum of understanding (MOU) defining the agencies' respective duties under Texas Health and Safety Code, Chapter 401, relating to radioactive materials and other sources of radiation. Texas Health and Safety Code, §401.415, relating to oil and gas naturally occurring radioactive material (NORM) waste, provides that the Railroad Commission of Texas shall issue rules on the management of oil and gas NORM waste, and in so doing shall consult with the Texas Natural Resource Conservation Commission (now TCEQ) and the Department of Health (now Department of State Health Services) regarding protection of the public health and the environment.

(3) Texas Water Code, Chapters 26 and 27, provide that the Railroad Commission and TCEQ collaborate on matters related to discharges, surface water quality, groundwater protection, underground injection control and geologic storage of carbon dioxide. Texas Water Code, §27.049, relating to Memorandum of Understanding, requires the RRC and TCEQ to adopt a new MOU or amend the existing MOU to reflect the agencies' respective duties under Texas Water Code, Chapter 27, Subchapter C-1 (relating to Geologic Storage and Associated Injection of Anthropogenic Carbon Dioxide).

(4) The original MOU between the agencies adopted pursuant to HB 1407 (67th Legislature, 1981) became effective January 1, 1982. The MOU was revised effective December 1, 1987, May 31, 1998, August 30, 2010, and again on May 1, 2012, to reflect legislative clarification of the Railroad Commission's jurisdiction over oil and gas wastes and the Texas Natural Resource Conservation Commission's (the combination of the Texas Water Commission, the Texas Air Control Board, and portions of the Texas Department of Health) jurisdiction over industrial and hazardous wastes.

(5) The agencies have determined that the revised MOU that became effective on May 1, 2012, should again be revised to further clarify jurisdictional boundaries and to reflect legislative changes in agency responsibility.

(b) General agency jurisdictions.

(1) Texas Commission on Environmental Quality (TCEQ) (the successor agency to the Texas Natural Resource Conservation Commission).

(A) Solid waste. Under Texas Health and Safety Code, Chapter 361, §§361.001 - 361.754, the TCEQ has jurisdiction over solid waste. The TCEQ's jurisdiction encompasses hazardous and nonhazardous, industrial and municipal, solid wastes.

(B) Water quality.

(i) Discharges under Texas Water Code, Chapter 26. Under the Texas Water Code, Chapter 26, the TCEQ has jurisdiction over discharges into or adjacent to water in the state, except for discharges regulated by the RRC. Upon delegation from the United States Environmental Protection Agency to the TCEQ of authority to issue permits for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code, §26.131(a), the TCEQ has sole authority to issue permits for those discharges. For the purposes of TCEQ's implementation of Texas Water Code, §26.131, "produced water" is defined as all wastewater associated with oil and gas exploration, development, and production activities, except hydrostatic test water and gas plant effluent, that is discharged into water in the state, including waste streams regulated by 40 CFR Part 435.

(ii) Discharge permits existing on the effective date of EPA's delegation to TCEQ of NPDES permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent. RRC permits issued prior to TCEQ delegation of NPDES authority shall remain effective until revoked or expired. Amendment or renewal of such permits on or after the effective date of delegation shall be pursuant to TCEQ's TPDES authority. The TPDES permit will supersede and replace the RRC permit. For facilities that have both an RRC permit and an EPA permit, TCEQ will issue the TPDES permit upon amendment or renewal of the RRC or EPA permit, whichever occurs first.

(iii) Discharge applications pending on the effective date of EPA's delegation to TCEQ of NPDES permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent. TCEQ shall assume authority for discharge applications pending at the time TCEQ receives delegation from EPA. The RRC will provide TCEQ the permit application and any other relevant information necessary to administratively and technically review and process the applications. TCEQ will review and process these pending applications in accordance with TPDES requirements.

(iv) Storm water. TCEQ has jurisdiction over stormwater discharges that are required to be permitted pursuant to Title 40 Code of Federal Regulations (CFR) Part 122.26, except for discharges regulated by the RRC. Discharge of storm water regulated by TCEQ may be authorized by an individual Texas Pollutant Discharge Elimination System (TPDES) permit or by a general TPDES permit. These storm water permits may also include authorizations for certain minor types of non-storm water discharges.

(I) Storm water associated with industrial activities. The TCEQ regulates storm water discharges associated with certain industrial activities under individual TPDES permits and under the TPDES Multi-Sector General Permit, except for discharges associated with industrial activities under the jurisdiction of the RRC.

(II) Storm water associated with construction activities. The TCEQ regulates storm water discharges associated with construction activities, except for discharges from construction activities under the jurisdiction of the RRC.

(III) Municipal storm water discharges. The TCEQ has jurisdiction over discharges from regulated municipal storm sewer systems (MS4s).

(IV) Combined storm water. Except with regard to storage of oil, when a portion of a site is regulated by the TCEQ, and a portion of a site is regulated by the EPA and RRC, storm water authorization must be obtained from the TCEQ for the portion(s) of the site regulated by the TCEQ, and from the EPA and the RRC, as applicable, for the RRC regulated portion(s) of the site. Discharge of storm water from a facility that stores both refined products intended for off-site use and crude oil in aboveground tanks is regulated by the TCEQ.

(v) State water quality certification. Under the Clean Water Act (CWA) Section 401 (33 U.S.C. Section 1341), the TCEQ performs state water quality certifications for activities that require a federal license or permit and that may result in a discharge to waters of the United States, except for those activities regulated by the RRC.

(vi) Commercial brine extraction and evaporation. Under Texas Water Code, §26.132, the TCEQ has jurisdiction over evaporation pits operated for the commercial production of brine water, minerals, salts, or other substances that naturally occur in groundwater and that are not regulated by the RRC.

(C) Injection wells. Under the Texas Water Code, Chapter 27, the TCEQ has jurisdiction to regulate and authorize the drilling, construction, operation, and closure of injection wells unless the activity is subject to the jurisdiction of the RRC. Injection wells under TCEQ's jurisdiction are identified in §331.11 of this title (relating to Classification of Injection Wells) and include:

(i) Class I injection wells for the disposal of hazardous, radioactive, industrial or municipal waste that inject fluids below the lower-most formation which within 1/4 mile of the wellbore contains an underground source of drinking water;

(ii) Class III injection wells for the extraction of minerals including solution mining of sodium sulfate, sulfur, potash, phosphate, copper, uranium and the mining of sulfur by the Frasch process;

(iii) Class IV injection wells for the disposal of hazardous or radioactive waste which inject fluids into or above formations that contain an underground source of drinking water; and

(iv) Class V injection wells that are not under the jurisdiction of the RRC, such as aquifer remediation wells, aquifer recharge wells, aquifer storage wells, large capacity septic systems, storm water drainage wells, salt water intrusion barrier wells, and closed loop geothermal wells.

(2) Railroad Commission of Texas (RRC).

(A) Oil and gas waste.

(i) Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, wastes (both hazardous and nonhazardous) resulting from activities associated with the exploration, development, or production of oil or gas or geothermal resources, including storage, handling, reclamation, gathering, transportation, or distribution of crude oil or natural gas by pipeline, prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel, are under the jurisdiction of the RRC, except as noted in clause (ii) of this subparagraph. These wastes are termed "oil and gas wastes." In compliance with Texas Health and Safety Code, §361.025 (relating to exempt activities), a list of activities that generate wastes that are subject to the jurisdiction of the RRC is found at 16 TAC §3.8(a)(30) (relating to Water Protection) and at §335.1 of this title (relating to Definitions), which contains a definition of "activities associated with the exploration, development, and production of oil or gas or geothermal resources." Under Texas Health and Safety Code, §401.415, the RRC has jurisdiction over the disposal of oil and gas naturally occurring radioactive material (NORM) waste that constitutes, is contained in, or has contaminated oil and gas waste.

(ii) Hazardous wastes arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TCEQ until the RRC is

authorized by EPA to administer RCRA. When the RRC is authorized by EPA to administer RCRA, jurisdiction over such hazardous wastes will transfer from the TCEQ to the RRC.

(B) Water quality.

(i) Discharges. Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, the RRC regulates discharges from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including transportation of crude oil and natural gas by pipeline, and from solution brine mining activities, except that on delegation to the TCEQ of NPDES authority for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code, §26.131(a), the TCEQ has sole authority to issue permits for those discharges. Discharges regulated by the RRC into or adjacent to water in the state shall not cause a violation of the water quality standards. While water quality standards are established by the TCEQ, the RRC has the responsibility for enforcing any violation of such standards resulting from activities regulated by the RRC. Texas Water Code, Chapter 26, does not require that discharges regulated by the RRC comply with regulations of the TCEQ that are not water quality standards. The TCEQ and the RRC may consult as necessary regarding application and interpretation of Texas Surface Water Quality Standards.

(ii) Storm water. When required by federal law, authorization for storm water discharges that are under the jurisdiction of the RRC must be obtained through application for a National Pollutant Discharge Elimination System (NPDES) permit with the EPA and authorization from the RRC, as applicable.

(I) Storm water associated with industrial activities. Where required by federal law, discharges of storm water associated with facilities and activities under the RRC's jurisdiction must be authorized by the EPA and the RRC, as applicable. Under 33 U.S.C. §1342(l)(2) and §1362(24), EPA cannot require a permit for discharges of storm water from "field activities or operations associated with {oil and gas} exploration, production, processing, or treatment operations, or transmission facilities" unless the discharge is contaminated by contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the facility. Under 16 TAC §3.8 (relating to Water Protection), the RRC prohibits operators from causing or allowing pollution of surface or subsurface water. Operators are encouraged to implement and maintain Best Management Practices (BMPs) to minimize discharges of pollutants, including sediment, in storm water to help ensure protection of surface water quality during storm events.

(II) Storm water associated with construction activities. Where required by federal law, discharges of storm water associated with construction activities under the RRC's jurisdiction must be authorized by the EPA and the RRC, as applicable. Activities under RRC jurisdiction include construction of a facility that, when completed, would be associated with the exploration, development, or production of oil or gas or geothermal resources, such as a well site; treatment or storage facility; underground hydrocarbon or natural gas storage facility; reclamation plant; gas processing facility; compressor station; terminal facility where crude oil is stored prior to refining and at which refined products are stored solely for use at the facility; a carbon dioxide geologic storage facility under the jurisdiction of the RRC; and a gathering, transmission, or distribution pipeline that will transport crude oil or natural gas, including natural gas liquids, prior to refining of such oil or the use of the natural gas in any manufacturing process or as a residential or industrial fuel. The RRC also has jurisdiction over storm water from land disturbance associated with a site survey that is conducted prior to construction of a facility that would be regulated by the RRC. Under 33 U.S.C. §1342(l)(2) and §1362(24), EPA cannot require a permit for discharges of storm water from "field activities or operations associated with {oil and gas} exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities" unless the discharge is contaminated by contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the facility. Under 16 TAC §3.8 (relating to Water Protection), the RRC prohibits operators from causing or allowing pollution of surface or subsurface water. Operators are encouraged to implement and maintain BMPs to minimize discharges of pollutants, including sediment, in storm water during construction activities to help ensure protection of surface water quality during storm events.

(III) Municipal storm water discharges. Storm water discharges from facilities regulated by the RRC located within an MS4 are not regulated by the TCEQ. However, a municipality may regulate storm water discharges from RRC sites into their MS4.

(IV) Combined storm water. Except with regard to storage of oil, when a portion of a site is regulated by the RRC and the EPA, and a portion of a site is regulated by the TCEQ, storm water authorization must be obtained from the EPA and the RRC, as applicable, for the portion(s) of the site under RRC jurisdiction and from the TCEQ for the TCEQ regulated portion(s) of the site. Discharge of storm water from a terminal facility where crude oil is stored prior to refining and at which refined products are stored solely for use at the facility is under the jurisdiction of the RRC.

(iii) State water quality certification. The RRC performs state water quality certifications, as authorized by the Clean Water Act (CWA) Section 401 (33 U.S.C. Section 1341) for activities that require a federal license or permit and that may result in any discharge to waters of the United States for those activities regulated by the RRC.

(C) Injection wells. The RRC has jurisdiction over the drilling, construction, operation, and closure of the following injection wells.

(i) Disposal wells. The RRC has jurisdiction under Texas Water Code, Chapter 27, over injection wells used to dispose of oil and gas waste. Texas Water Code, Chapter 27, defines "oil and gas waste" to mean "waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources, waste arising out of or incidental to the underground storage of hydrocarbons other than storage in artificial tanks or containers, or waste arising out of or incidental to the operation of gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants. The term includes but is not limited to salt water, brine, sludge, drilling mud, and other liquid or semi-liquid waste material." The term "waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources" includes waste associated with transportation of crude oil or natural gas by pipeline pursuant to Texas Natural Resources Code, §91.101.

(ii) Enhanced recovery wells. The RRC has jurisdiction over wells into which fluids are injected for enhanced recovery of oil or natural gas.

(iii) Brine mining. Under Texas Water Code, §27.036, the RRC has jurisdiction over brine mining and may issue permits for injection wells.

(iv) Geologic storage of carbon dioxide. Under Texas Water Code, §27.011 and §27.041, and subject to the review of the legislature based on the recommendations made in the preliminary

report described by Section 10, Senate Bill No. 1387, Acts of the 81st Legislature, Regular Session (2009), the RRC has jurisdiction over geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir and over a well used for such injection purposes regardless of whether the well was initially completed for that purpose or was initially completed for another purpose and converted.

(v) Hydrocarbon storage. The RRC has jurisdiction over wells into which fluids are injected for storage of hydrocarbons that are liquid at standard temperature and pressure.

(vi) Geothermal energy. Under Texas Natural Resources Code, Chapter 141, the RRC has jurisdiction over injection wells for the exploration, development, and production of geothermal energy and associated resources.

(vii) In situ tar sands. Under Texas Water Code, §27.035, the RRC has jurisdiction over the in situ recovery of tar sands and may issue permits for injection wells used for the in situ recovery of tar sands.

(c) Definition of hazardous waste.

(1) Under the Texas Health and Safety Code, §361.003(12), a "hazardous waste" subject to the jurisdiction of the TCEQ is defined as "solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901, *et seq.*)." Similarly, under Texas Natural Resources Code, §91.601(1), "oil and gas hazardous waste" subject to the jurisdiction of the RRC is defined as an "oil and gas waste that is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901, *et seq.*)."

(2) Federal regulations adopted under authority of the federal Solid Waste Disposal Act, as amended by RCRA, exempt from regulation as hazardous waste certain oil and gas wastes. Under 40 Code of Federal Regulations (CFR) §261.4(b)(5), "drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy" are described as wastes that are exempt from federal hazardous waste regulations.

(3) A partial list of wastes associated with oil, gas, and geothermal exploration, development, and production that are considered exempt from hazardous waste regulation under RCRA can be found in EPA's "Regulatory Determination for Oil and Gas and Geothermal Exploration, Development and Production Wastes," 53 FedReg 25,446 (July 6, 1988). A further explanation of the exemption can be found in the "Clarification of the Regulatory Determination for Wastes from the Exploration, Development and Production of Crude Oil, Natural Gas and Geothermal Energy," 58 FedReg 15, 284 (March 22, 1993). The exemption codified at 40 CFR §261.4(b)(5) and discussed in the Regulatory Determination has been, and may continue to be, clarified in subsequent guidance issued by the EPA.

(d) Jurisdiction over waste from specific activities.

(1) Drilling, operation, and plugging of wells associated with the exploration, development, or production of oil, gas, or geothermal resources. Wells associated with the exploration, development, or production of oil, gas, or geothermal resources include exploratory wells, cathodic protection holes, core holes, oil wells, gas wells, geothermal resource wells, fluid injection wells used for secondary or enhanced recovery of oil or gas, oil and gas waste disposal wells, and injection water source wells. Several types of waste materials can be generated during the drilling, operation, and plugging of these wells. These waste materials include drilling fluids (including water-based and oil-based fluids), cuttings, produced water, produced sand, waste hydrocarbons (including used oil), fracturing fluids, spent acid, workover fluids, treating chemicals (including scale inhibitors, emulsion breakers, paraffin inhibitors, and surfactants), waste cement, filters (including used oil filters), domestic sewage (including waterborne human waste and waste from activities such as bathing and food preparation), and trash (including inert waste, barrels, dope cans, oily rags, mud sacks, and garbage). Generally, these wastes, whether disposed of by discharge, landfill, land farm, evaporation, or injection, are subject to the jurisdiction of the RRC. Wastes from oil, gas, and geothermal exploration activities subject to regulation by the RRC when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized by the TCEQ under Chapter 330 of this title (relating to Municipal Solid Waste) are, as defined in §330.3(148) of this title (relating to Definitions), "special wastes."

(2) Field treatment of produced fluids. Oil, gas, and water produced from oil, gas, or geothermal resource wells may be treated in the field in facilities such as separators, skimmers, heater treaters, dehydrators, and sweetening units. Waste that results from the field treatment of oil and gas include waste hydrocarbons (including used oil), produced water, hydrogen sulfide scavengers, dehydration wastes, treating and cleaning chemicals, filters (including used oil filters), asbestos insulation, domestic sewage, and trash are subject to the jurisdiction of the RRC.

(3) Storage of oil.

(A) Tank bottoms and other wastes from the storage of crude oil (whether foreign or domestic) before it enters the refinery are under the jurisdiction of the RRC. In addition, waste resulting from storage of crude oil at refineries is subject to the jurisdiction of the TCEQ.

(B) Wastes generated from storage tanks that are part of the refinery and wastes resulting from the wholesale and retail marketing of refined products are subject to the jurisdiction of the TCEQ.

(4) Underground hydrocarbon storage. The disposal of wastes, including saltwater, resulting from the construction, creation, operation, maintenance, closure, or abandonment of an "underground hydrocarbon storage facility" is subject to the jurisdiction of the RRC, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" have the meanings set out in Texas Natural Resources Code, §91.201.

(5) Underground natural gas storage. The disposal of wastes resulting from the construction, operation, or abandonment of an "underground natural gas storage facility" is subject to the jurisdiction of the RRC, provided that the terms "natural gas" and "storage facility" have the meanings set out in Texas Natural Resources Code, §91.173.

(6) Transportation of crude oil or natural gas.

(A) Jurisdiction over pipeline-related activities. The RRC has jurisdiction over matters related to pipeline safety for pipelines in Texas, as referenced in 16 TAC §8.1 (relating to General Applicability and Standards) pursuant to Chapter 121 of the Texas Utilities Code and Chapter 117 of the Texas Natural Resources Code. The RRC has jurisdiction over spill response and remediation of releases from pipelines transporting crude oil, natural gas, and condensate that originate from exploration and production facilities to the

refinery gate. The RRC has jurisdiction over waste generated by construction and operation of pipelines used to transport crude oil, natural gas, and condensate on an oil and gas lease, and from exploration and production facilities to the refinery gate. The RRC is responsible for water quality certification issues related to construction and operation of pipelines used to transport crude oil, natural gas, and condensate on an oil and gas lease, and from exploration and production facilities to the refinery gate. The RRC has jurisdiction over waste generated by construction and operation of pipelines transporting carbon dioxide.

(B) Crude oil and natural gas are transported by railcars, tank trucks, barges, tankers, and pipelines. The RRC has jurisdiction over waste from the transportation of crude oil by pipeline, regardless of the crude oil source (foreign or domestic) prior to arrival at a refinery. The RRC also has jurisdiction over waste from the transportation by pipeline of natural gas, including natural gas liquids, prior to the use of the natural gas in any manufacturing process or as a residential or industrial fuel. The transportation wastes subject to the jurisdiction of the RRC include wastes from pipeline compressor or pressure stations and wastes from pipeline hydrostatic pressure tests and other pipeline operations. These wastes include waste hydrocarbons (including used oil), treating and cleaning chemicals, filters (including used oil filters), scraper trap sludge, trash, domestic sewage, wastes contaminated with polychlorinated biphenyls (PCBs) (including transformers, capacitors, ballasts, and soils), soils contaminated with mercury from leaking mercury meters, asbestos insulation, transite pipe, and hydrostatic test waters.

(C) The TCEQ has jurisdiction over waste from transportation of refined products by pipeline.

(D) The TCEQ also has jurisdiction over wastes associated with transportation of crude oil and natural gas, including natural gas liquids, by railcar, tank truck, barge, or tanker.

(7) Reclamation plants.

(A) The RRC has jurisdiction over wastes from reclamation plants that process wastes from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, such as lease tank bottoms. Waste management activities of reclamation plants for other wastes are subject to the jurisdiction of the TCEQ.

(B) The RRC has jurisdiction over the conservation and prevention of waste of crude oil and therefore must approve all movements of crude oil-containing materials to reclamation plants. The applicable statute and regulations consist primarily of reporting requirements for accounting purposes.

(8) Refining of oil.

(A) The management of wastes resulting from oil refining operations, including spent caustics, spent catalysts, still bottoms or tars, and American Petroleum Institute (API) separator sludges, is subject to the jurisdiction of the TCEQ. The processing of light ends from the distillation and cracking of crude oil or crude oil products is considered to be a refining operation. The term "refining" does not include the processing of natural gas or natural gas liquids.

(B) The RRC has jurisdiction over refining activities for the conservation and the prevention of waste of crude oil. The RRC requires that all crude oil streams into or out of a refinery be reported for accounting purposes. In addition, the RRC requires that materials recycled and used as a fuel, such as still bottoms or waste crude oil, be reported.

(9) Natural gas or natural gas liquids processing plants (including gas fractionation facilities) and pressure maintenance or repressurizing plants. Wastes resulting from activities associated with these facilities include produced water, cooling tower water, sulfur bead, sulfides, spent caustics, sweetening agents, spent catalyst, waste hydrocarbons (including used oil), asbestos insulation, wastes contaminated with PCBs (including transformers, capacitors, ballasts, and soils), treating and cleaning chemicals, filters, trash, domestic sewage, and dehydration materials. These wastes are subject to the jurisdiction of the RRC under Texas Natural Resources Code, §1.101. Disposal of waste from activities associated with natural gas or natural gas liquids processing plants (including gas fractionation facilities), and pressure maintenance or repressurizing plants by injection is subject to the jurisdiction of the RRC under Texas Water Code, Chapter 27. However, until delegation of authority under RCRA to the RRC, the TCEQ shall have jurisdiction over wastes resulting from these activities that are not exempt from federal hazardous waste regulation under RCRA and that are considered hazardous under applicable federal rules.

(10) Manufacturing processes.

(A) Wastes that result from the use of natural gas, natural gas liquids, or products refined from crude oil in any manufacturing process, such as the production of petrochemicals or plastics, or from the manufacture of carbon black, are industrial wastes subject to the jurisdiction of the TCEQ. The term "manufacturing process" does not include the processing (including fractionation) of natural gas or natural gas liquids at natural gas or natural gas liquids processing plants.

(B) The RRC has jurisdiction under Texas Natural Resources Code, Chapter 87, to regulate the use of natural gas in the production of carbon black.

(C) Biofuels. The TCEQ has jurisdiction over wastes associated with the manufacturing of biofuels and biodiesel. TCEQ Regulatory Guidance Document RG-462 contains additional information regarding biodiesel manufacturing in the state of Texas.

(11) Commercial service company facilities and training facilities.

(A) The TCEQ has jurisdiction over wastes generated at facilities, other than actual exploration, development, or production sites (field sites), where oil and gas industry workers are trained. In addition, the TCEQ has jurisdiction over wastes generated at facilities where materials, processes, and equipment associated with oil and gas industry operations are researched, developed, designed, and manufactured. However, wastes generated from tests of materials, processes, and equipment at field sites are under the jurisdiction of the RRC.

(B) The TCEQ also has jurisdiction over waste generated at commercial service company facilities operated by persons providing equipment, materials, or services (such as drilling and work over rig rental and tank rental; equipment repair; drilling fluid supply; and acidizing, fracturing, and cementing services) to the oil and gas industry. These wastes include the following wastes when they are generated at commercial service company facilities: empty sacks, containers, and drums; drum, tank, and truck rinsate; sandblast media; painting wastes; spent solvents; spilled chemicals; waste motor oil; and unused fracturing and acidizing fluids.

(C) The term "commercial service company facility" does not include a station facility such as a warehouse, pipeyard, or equipment storage facility belonging to an oil and gas operator and used solely for the support of that operator's own activities associated with the exploration, development, or production activities.

(D) Notwithstanding subparagraphs (A) - (C) of this paragraph, the RRC has jurisdiction over disposal of oil and gas wastes, such as waste drilling fluids and NORM-contaminated pipe scale, in volumes greater than the incidental volumes usually received

at such facilities, that are managed at commercial service company facilities.

(E) The RRC also has jurisdiction over wastes such as vacuum truck rinsate and tank rinsate generated at facilities operated by oil and gas waste haulers permitted by the RRC pursuant to 16 TAC §3.8(f) (relating to Water Protection).

(12) Mobile offshore drilling units (MODUs). MODUs are vessels capable of engaging in drilling operations for exploring or exploiting subsea oil, gas, or mineral resources.

(A) The RRC and, where applicable, the EPA, the U.S. Coast Guard, or the Texas General Land Office (GLO), have jurisdiction over discharges from an MODU when the unit is being used in connection with activities associated with the exploration, development, or production of oil or gas or geothermal resources, except that upon delegation to the TCEQ of NPDES authority for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code, §26.131(a), the TCEQ shall assume RRC's authority under this subsection.

(B) The TCEQ and, where applicable, the EPA, the U.S. Coast Guard, or the GLO, have jurisdiction over discharges from an MODU when the unit is being serviced at a maintenance facility.

(C) Where applicable, the EPA, the U.S. Coast Guard, or the GLO has jurisdiction over discharges from an MODU during transportation from shore to exploration, development or production site, transportation between sites, and transportation to a maintenance facility.

(e) Interagency activities.

(1) Recycling and pollution prevention.

(A) The TCEQ and the RRC encourage generators to eliminate pollution at the source and recycle whenever possible to avoid disposal of wastes. Questions regarding source reduction and recycling may be directed to the TCEQ External Relations Division, or to the RRC. The TCEQ may require generators to explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the RRC at a facility regulated by the TCEQ; similarly, the RRC may explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the TCEQ at a facility regulated by the RRC.

(B) The TCEQ External Relations Division and the RRC will coordinate as necessary to maintain a working relationship to enhance the efforts to share information and use resources more efficiently. The TCEQ External Relations Division will make the proper TCEQ personnel aware of the services offered by the RRC, share information with the RRC to maximize services to oil and gas operators, and advise oil and gas operators of RRC services. The RRC will make the proper RRC personnel aware of the services offered by the TCEQ External Relations Division, share information with the TCEQ External Relations Division to maximize services to industrial operators, and advise industrial operators of the TCEQ External Relations Division services.

(2) Treatment of wastes under RRC jurisdiction at facilities authorized by the TCEQ under Chapter 334, Subchapter K of this title (relating to Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil).

(A) Soils contaminated with constituents that are physically and chemically similar to those normally found in soils at leaking underground petroleum storage tanks from generators under the jurisdiction of the RRC are eligible for treatment at TCEQ regulated soil treatment facilities once alternatives for recycling and source reduction have been explored. For the purpose of this provision, soils containing petroleum substance(s) as defined in §334.481 of this title (relating to Definitions) are considered to be similar, but drilling muds, acids, or other chemicals used in oil and gas activities are not considered similar. Generators under the jurisdiction of the RRC must meet the same requirements as generators under the jurisdiction of the TCEQ when sending their petroleum contaminated soils to soil treatment facilities under TCEQ jurisdiction. Those requirements are in §334.496 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste), except subsection (c) of this section which is not applicable, and §334.497 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators). RRC generators with questions on these requirements should contact the TCEQ.

(B) Generators under RRC jurisdiction should also be aware that TCEQ regulated soil treatment facilities are required by §334.499 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities) to maintain documentation on the soil sampling and analytical methods, chain-of-custody, and all analytical results for the soil received at the facility and transported off-site or reused on-site.

(C) The RRC must specifically authorize management of contaminated soils under its jurisdiction at facilities authorized by the TCEQ under Chapter 334, Subchapter K of this title (relating to Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil). The RRC may grant such authorizations by rule, or on an individual basis through permits or other written authorizations.

(D) All waste, including treated waste, subject to the jurisdiction of the RRC and managed at facilities authorized by the TCEQ under Chapter 334, Subchapter K of this title will remain subject to the jurisdiction of the RRC. Such materials will be subject to RRC regulations regarding final reuse, recycling, or disposal.

(E) TCEQ waste codes and registration numbers are not required for management of wastes under the jurisdiction of the RRC at facilities authorized by the TCEQ under Chapter 334, Subchapter K of this title.

(3) Processing, treatment, and disposal of wastes under RRC jurisdiction at facilities authorized by the TCEQ.

(A) As provided in this paragraph, waste materials subject to the jurisdiction of the RRC may be managed at solid waste facilities under the jurisdiction of the TCEQ once alternatives for recycling and source reduction have been explored. The RRC must specifically authorize management of wastes under its jurisdiction at facilities regulated by the TCEQ. The RRC may grant such authorizations by rule, or on an individual basis through permits or other written authorizations. In addition, except as provided in subparagraph (B) of this paragraph, the concurrence of the TCEQ is required to manage "special waste" under the jurisdiction of the RRC at a facility regulated by the TCEQ. The TCEQ's concurrence may be subject to specified conditions.

(B) A facility under the jurisdiction of the TCEQ may accept, without further individual concurrence, waste under the jurisdiction of the RRC if that facility is permitted or otherwise authorized to accept that particular type of waste. The phrase "that type of waste" does not specifically refer to waste under the jurisdiction of the RRC, but rather to the waste's physical and chemical characteristics. Management and disposal of waste under the jurisdiction of the RRC is subject to TCEQ's rules governing both special waste and industrial waste.

(C) If the TCEQ regulated facility receiving the waste does not have approval to accept the waste included in its permit or

other authorization, individual written concurrences from the TCEQ shall be required to manage wastes under the jurisdiction of the RRC at TCEQ regulated facilities. Recommendations for the management of special wastes associated with the exploration, development, or production of oil, gas, or geothermal resources are found in TCEQ Regulatory Guidance document RG-3. (This is required only if the TCEQ regulated facility receiving the waste does not have approval to accept the waste included in its permit or other authorization provided by the TCEQ.) To obtain an individual concurrence, the waste generator must provide to the TCEQ sufficient information to allow the concurrence determination to be made, including the identity of the proposed waste management facility, the process generating the waste, the quantity of waste, and the physical and chemical nature of the waste involved (using process knowledge and/or laboratory analysis as defined in Chapter 335, Subchapter R of this title (relating to Waste Classification)). In obtaining TCEQ approval, generators may use their existing knowledge about the process or materials entering it to characterize their wastes. Material Safety Data Sheets, manufacturer's literature, and other documentation generated in conjunction with a particular process may be used. Process knowledge must be documented and submitted with the request for approval.

(D) Domestic septage collected from portable toilets at facilities subject to RRC jurisdiction that is not mixed with other waste materials may be managed at a facility permitted by the TCEQ for disposal, incineration, or land application for beneficial use of such domestic septage waste without specific authorization from the TCEQ or the RRC. Waste sludge subject to the jurisdiction of the RRC may not be applied to the land at a facility permitted by the TCEQ for the beneficial use of sewage sludge or water treatment sludge.

(E) TCEQ waste codes and registration numbers are not required for management of wastes under the jurisdiction of the RRC at facilities under the jurisdiction of the TCEQ. If a receiving facility requires a TCEQ waste code for waste under the jurisdiction of the RRC, a code consisting of the following may be provided:

(i) the sequence number "RRCT";

(ii) the appropriate form code, as specified in Chapter 335, Subchapter R, §335.521, Appendix 3 of this title (relating to Appendices); and

(iii) the waste classification code "H" if the waste is a hazardous oil and gas waste, or "R" if the waste is a nonhazardous oil and gas waste.

(F) If a facility requests or requires a TCEQ waste generator registration number for wastes under the jurisdiction of the RRC, the registration number "XXXRC" may be provided.

(G) Wastes that are under the jurisdiction of the RRC need not be reported to the TCEQ.

(4) Management of nonhazardous wastes under TCEQ jurisdiction at facilities regulated by the RRC.

(A) Once alternatives for recycling and source reduction have been explored, and with prior authorization from the RRC, the following nonhazardous wastes subject to the jurisdiction of the TCEQ may be disposed of, other than by injection into a Class II well, at a facility regulated by the RRC; bioremediated at a facility regulated by the RRC (prior to reuse, recycling, or disposal); or reclaimed at a crude oil reclamation facility regulated by the RRC: nonhazardous wastes that are chemically and physically similar to oil and gas wastes, but excluding soils, media, debris, sorbent pads, and other clean-up materials that are contaminated with refined petroleum products.

(B) To obtain an individual authorization from the RRC, the waste generator must provide the following information, in writing, to the RRC: the identity of the proposed waste management facility, the quantity of waste involved, a hazardous waste determination that addresses the process generating the waste and the physical and chemical nature of the waste, and any other information that the RRC may require. As appropriate, the RRC shall reevaluate any authorization issued pursuant to this paragraph.

(C) Once alternatives for recycling and source reduction have been explored, and subject to the RRC's individual authorization, the following wastes under the jurisdiction of the TCEQ are authorized without further TCEQ approval to be disposed of at a facility regulated by the RRC, bioremediated at a facility regulated by the RRC, or reclaimed at a crude oil reclamation facility regulated by the RRC: nonhazardous bottoms from tanks used only for crude oil storage; unused and/or reconditioned drilling and completion/workover wastes from commercial service company facilities; used and/or unused drilling and completion/workover wastes generated at facilities where workers in the oil and gas exploration, development, and production industry are trained; used and/or unused drilling and completion/workover wastes generated at facilities where materials, processes, and equipment associated with oil and gas exploration, development, and production operations are researched, developed, designed, and manufactured; unless other provisions are made in the underground injection well permit used and/or unused drilling and completion wastes (but not workover wastes) generated in connection with the drilling and completion of Class I, III, and V injection wells; wastes (such as contaminated soils, media, debris, sorbent pads, and other cleanup materials) associated with spills of crude oil and natural gas liquids if such wastes are under the jurisdiction of the TCEQ; and sludges from washout pits at commercial service company facilities.

(D) Under Texas Water Code, §27.0511(g), a TCEQ permit is required for injection of industrial or municipal waste as an injection fluid for enhanced recovery purposes. However, under Texas Water Code, §27.0511(h), the RRC may authorize a person to use nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes without obtaining a permit from the TCEQ. The use or disposal of radioactive material under this subparagraph is subject to the applicable requirements of Texas Health and Safety Code, Chapter 401.

(E) Under Texas Water Code, §27.026, by individual permit, general permit, or rule, the TCEQ may designate a Class II disposal well that has an RRC permit as a Class V disposal well authorized to dispose by injection nonhazardous brine from a desalination operation and nonhazardous drinking water treatment residuals under the jurisdiction of the TCEQ. The operator of a permitted Class II disposal well seeking a Class V authorization must apply to TCEQ and obtain a Class V authorization prior to disposal of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals. A permitted Class II disposal well that has obtained a Class V authorization from TCEQ under Texas Water Code, §27.026, remains subject to the regulatory requirements of both the RRC and the TCEQ. Nonhazardous brine from a desalination operation and nonhazardous drinking water treatment residuals to be disposed by injection in a permitted Class II disposal well authorized by TCEQ as a Class V injection well remain subject to the requirements of the Texas Health and Safety Code, the Texas Water Code, and the TCEQ's rules. The RRC and the TCEQ may impose additional requirements or conditions to address the dual injection activity under Texas Water Code, §27.026.

(5) Drilling in landfills. The TCEQ will notify the Oil and Gas Division of the RRC and the landfill owner at the time a drilling

application is submitted if an operator proposes to drill a well through a landfill regulated by the TCEQ. The RRC and the TCEQ will cooperate and coordinate with one another in advising the appropriate parties of measures necessary to reduce the potential for the landfill contents to cause groundwater contamination as a result of landfill disturbance associated with drilling operations. The TCEQ requires prior written approval before drilling of any test borings through previously deposited municipal solid waste under §330.15 of this title (relating to General Prohibitions), and before borings or other penetration of the final cover of a closed municipal solid waste landfill under §330.955 of this title (relating to Miscellaneous). The installation of landfill gas recovery wells for the recovery and beneficial reuse of landfill gas is under the jurisdiction of the TCEQ in accordance with Chapter 330, Subchapter I of this title (relating to Landfill Gas Management). Modification of an active or a closed solid waste management unit, corrective action management unit, hazardous waste landfill cell, or industrial waste landfill cell by drilling or penetrating into or through deposited waste may require prior written approval from TCEQ. Such approval may require a new authorization from TCEQ or modification or amendment of an existing TCEQ authorization.

(6) Coordination of actions and cooperative sharing of information.

(A) In the event that a generator or transporter disposes, without proper authorization, of wastes regulated by the TCEQ at a facility permitted by the RRC, the TCEQ is responsible for enforcement actions against the generator or transporter, and the RRC is responsible for enforcement actions against the disposal facility. In the event that a generator or transporter disposes, without proper authorization, of wastes regulated by the RRC at a facility permitted by the TCEQ, the RRC is responsible for enforcement actions against the generator or transporter, and the TCEQ is responsible for enforcement actions against the disposal facility.

(B) The TCEQ and the RRC agree to cooperate with one another by sharing information. Employees of either agency who receive a complaint or discover, in the course of their official duties, information that indicates a violation of a statute, regulation, order, or permit pertaining to wastes under the jurisdiction of the other agency, will notify the other agency. In addition, to facilitate enforcement actions, each agency will share information in its possession with the other agency if requested by the other agency to do so.

(C) The TCEQ and the RRC agree to work together at allocating respective responsibilities. To the extent that jurisdiction is indeterminate or has yet to be determined, the TCEQ and the RRC agree to share information and take appropriate investigative steps to assess jurisdiction.

(D) For items not covered by statute or rule, the TCEQ and the RRC will collaborate to determine respective responsibilities for each issue, project, or project type.

(E) The staff of the RRC and the TCEQ shall coordinate as necessary to attempt to resolve any disputes regarding interpretation of this MOU and disputes regarding definitions and terms of art.

(7) Groundwater.

(A) Notice of groundwater contamination. Under Texas Water Code, §26.408, effective September 1, 2003, the RRC must submit a written notice to the TCEQ of any documented cases of groundwater contamination that may affect a drinking water well.

(B) Groundwater protection letters. The RRC provides letters of recommendation concerning groundwater protection.

(i) For recommendations related to normal drilling operations, shot holes for seismic surveys, and cathodic protection wells, the RRC provides geologic interpretation identifying fresh water zones, base of usable-quality water (generally less than 3,000 mg/L total dissolved solids, but may include higher levels of total dissolved solids if identified as currently being used or identified by the Texas Water Development Board as a source of water for desalination), and include protection depths recommended by the RRC. The geological interpretation may include groundwater protection based on potential hydrological connectivity to usable-quality water.

(ii) For recommendations related to injection, the RRC provides geologic interpretation of the base of the underground source of drinking water. The term "underground source of drinking water" is defined in 40 Code of Federal Regulations §146.3 (*Federal Register,* Volume 46, June 24, 1980).

(8) Emergency and spill response.

(A) The TCEQ and the RRC are members of the state's Emergency Management Council. The TCEQ is the state's primary agency for emergency support during response to hazardous materials and oil spill incidents. The TCEQ is responsible for state-level coordination of assets and services, and will identify and coordinate staffing requirements appropriate to the incident to include investigative assignments for the primary and support agencies.

(B) Contaminated soil and other wastes that result from a spill must be managed in accordance with the governing statutes and regulations adopted by the agency responsible for the activity that resulted in the spill. Coordination of issues of spill notification, prevention, and response shall be addressed in the State of Texas Oil and Hazardous Substance Spill Contingency Plan and may be addressed further in a separate Memorandum of Understanding among these agencies and other appropriate state agencies.

(C) The agency (TCEQ or RRC) that has jurisdiction over the activity that resulted in the spill incident will be responsible for measures necessary to monitor, document, and remediate the incident.

(i) The TCEQ has jurisdiction over certain inland oil spills, all hazardous-substance spills, and spills of other substances that may cause pollution.

(ii) The RRC has jurisdiction over spills or discharges from activities associated with the exploration, development, or production of crude oil, gas, and geothermal resources, and discharges from brine mining or surface mining.

(D) If TCEQ or RRC field personnel receive spill notifications or reports documenting improperly managed waste or contaminated environmental media resulting from a spill or discharge that is under the jurisdiction of the other agency, they shall refer the issue to the other agency. The agency that has jurisdiction over the activity that resulted in the improperly managed waste, spill, discharge, or contaminated environmental media will be responsible for measures necessary to monitor, document, and remediate the incident.

(9) Anthropogenic carbon dioxide storage. In determining the proper permitting agency in regard to a particular permit application for a carbon dioxide geologic storage project, the TCEQ and the RRC will coordinate by any appropriate means to review proposed locations, geologic settings, reservoir data, and other jurisdictional criteria specified in Texas Water Code, §27.041.

(f) Radioactive material.

(1) Radioactive substances. Under the Texas Health and Safety Code, §401.011, the TCEQ has jurisdiction to regulate and license:

(A) the disposal of radioactive substances;

(B) the processing or storage of low-level radioactive waste or NORM waste from other persons, except oil and gas NORM waste;

(C) the recovery or processing of source material;

(D) the processing of by-product material as defined by Texas Health and Safety Code, §401.003(3)(B); and

(E) sites for the disposal of low-level radioactive waste, by-product material, or NORM waste.

(2) NORM waste.

(A) Under Texas Health and Safety Code, §401.415, the RRC has jurisdiction over the disposal of NORM waste that constitutes, is contained in, or has contaminated oil and gas waste. This waste material is called "oil and gas NORM waste." Oil and gas NORM waste may be generated in connection with the exploration, development, or production of oil or gas.

(B) Under Texas Health and Safety Code, §401.412, the TCEQ has jurisdiction over the disposal of NORM that is not oil and gas NORM waste.

(C) The term "disposal" does not include receipt, possession, use, processing, transfer, transport, storage, or commercial distribution of radioactive materials, including NORM. These non-disposal activities are under the jurisdiction of the Texas Department of State Health Services under Texas Health and Safety Code, §401.011(a).

(3) Drinking water residuals. A person licensed for the commercial disposal of NORM waste from public water systems may dispose of NORM waste only by injection into a Class I injection well permitted under Chapter 331 of this title (relating to Underground Injection Control) that is specifically permitted for the disposal of NORM waste.

(4) Management of radioactive tracer material.

(A) Radioactive tracer material is subject to the definition of low-level radioactive waste under Texas Health and Safety Code, §401.004, and must be handled and disposed of in accordance with the rules of the TCEQ and the Department of State Health Services.

(B) Exemption. Under Texas Health and Safety Code, §401.106, the TCEQ may grant an exemption by rule from a licensing requirement if the TCEQ finds that the exemption will not constitute a significant risk to the public health and safety and the environment.

(5) Coordination with the Texas Radiation Advisory Board. The RRC and the TCEQ will consider recommendations and advice provided by the Texas Radiation Advisory Board that concern either agency's policies or programs related to the development, use, or regulation of a source of radiation. Both agencies will provide written response to the recommendations or advice provided by the advisory board.

(6) Uranium exploration and mining.

(A) Under Texas Natural Resources Code, Chapter 131, the RRC has jurisdiction over uranium exploration activities.

(B) Under Texas Natural Resources Code, Chapter 131, the RRC has jurisdiction over uranium mining, except for in situ recovery processes.

(C) Under Texas Water Code, §27.0513, the TCEQ has jurisdiction over injection wells used for uranium mining.

(D) Under Texas Health and Safety Code, §401.2625, the TCEQ has jurisdiction over the licensing of source material recovery and processing or for storage, processing, or disposal of by-product material.

(g) Effective date. This Memorandum of Understanding, as of its July 15, 2020, effective date, shall supersede the prior Memorandum of Understanding among the agencies, dated May 1, 2012.

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

Filed with the Office of the Secretary of State on June 12, 2020.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES
SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS
DIVISION 3. DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM FOR ONROAD AND NON-ROAD VEHICLES

30 TAC §114.622, §114.629

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amended §114.622 and §114.629.

The amendments to §114.622 and §114.629 are adopted without changes to the proposed text as published in the January 31, 2020, issue of the *Texas Register* (45 TexReg 688), and, therefore, will not be republished.

The adopted amendments to §114.622 and §114.629 will be submitted to the United States Environmental Protection Agency as revisions to the State Implementation Plan.

Background and Summary of the Factual Basis for the Adopted Rules

The Texas Emissions Reduction Plan (TERP) was established under Texas Health and Safety Code (THSC), Chapter 386, by Senate Bill 5, during the 77th Texas Legislature, 2001. The TERP was created to provide financial incentives for reducing emissions of on-road heavy-duty motor vehicles and non-road equipment, with the Diesel Emissions Reduction Incentive Program (DERIP) established under THSC, Chapter 386, Subchapter C as the primary incentive program. The DERIP includes the Emissions Reduction Incentive Grants Program, Rebate Grants Program, and third-party grants.

House Bill (HB) 1346, 86th Texas Legislature, 2019, amended THSC, Chapter 386, Subchapter C to provide that the commission may not set the minimum percentage of vehicle miles traveled or hours of operation required to take place in a nonattain-

ment area or affected county as less than 55%. HB 1627, 86th Texas Legislature, 2019 amended THSC, Chapter 386, Subchapter A to remove Victoria County from the list of affected counties eligible for grants under the TERP DERIP.

The adopted rulemaking revises §114.622 and §114.629 to implement HB 1346 and HB 1627.

Section by Section Discussion

The commission adopts non-substantive changes, such as grammatical corrections. These changes are non-substantive and are not specifically discussed in this preamble.

§114.622, Incentive Program Requirements

The commission adopts amended §114.622(b) and (c) to change the minimum percentage of usage in a nonattainment area or affected county from 75% to 55% to implement HB 1346.

§114.629, Affected Counties and Implementation Schedule

The commission adopts amended §114.629(a) to remove Victoria County from the list of affected counties eligible for grants under the TERP DERIP to implement HB 1627.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking is not subject to Texas Government Code, §2001.0225, because the rulemaking does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The amendments to §114.622 and §114.629 are adopted in accordance with HB 1346 and HB 1627, which amended THSC, Chapter 386, Subchapters A and C. The adopted rulemaking revises, eligibility criteria for a voluntary grant program. Because the adopted rules place no involuntary requirements on the regulated community, the adopted rules will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. In addition, none of these amendments place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the adopted rulemaking does not meet any of the applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general authority of the commission. This rulemaking does not exceed a standard set by federal law. Additionally, this rulemaking does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the THSC that are cited in the

Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007, does not apply.

Under Texas Government Code, §2007.002(5), taking means: A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the United States Constitution, Fifth and Fourteenth Amendments or Texas Constitution, Article I, Section 17 or 19; or B) a governmental action that: i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Promulgation and enforcement of the adopted rulemaking will be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with the amendments to THSC, Chapter 386 as a result of HB 1346 and HB 1627. The adopted rules revise a voluntary program and only affect motor vehicles that are not considered to be private real property. The adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency with the CMP.

Public Comment

The commission offered a public hearing on February 25, 2020. The comment period closed on March 3, 2020. No comments were received regarding this rulemaking.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan.

The amendments are adopted as part of the implementation of THSC, Chapter 386, Subchapters A and C, as amended by House Bill (HB) 1346 and HB 1627, 86th Texas Legislature, 2019.

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

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Robert Martinez
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CHAPTER 328. WASTE MINIMIZATION AND RECYCLING

SUBCHAPTER K. GOVERNMENTAL ENTITY RECYCLING AND PURCHASING OF RECYCLED MATERIALS

30 TAC §§328.200 - 328.204

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§328.200 - 328.204.

Sections 328.200 - 328.203 are adopted *without changes* to the proposed text as published in the January 31, 2020, issue of the *Texas Register* (45 TexReg 691) and will not be republished. Section 328.204 is adopted *with change* to the proposed text as published in the same issue of the *Texas Register* and will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking adds rules that apply to certain governmental entities to establish recycling programs and purchasing preferences for products made of recycled materials.

Senate Bill (SB) 1376, 86th Texas Legislature, 2019, amended Texas Health and Safety Code (THSC), §361.425 and §361.426 to exempt certain governmental entities from compliance with recycling requirements, if the commission finds that compliance will create a hardship on the governmental entity. SB 1376 also requires the commission to exempt certain governmental entities from compliance with purchasing preferences for recycled materials, if the commission finds that compliance will create a hardship on the governmental entity.

The commission adopts new Chapter 328, Subchapter K, Governmental Entity Recycling and Purchasing of Recycled Materials, to establish requirements for a governmental entity to create a recycling program, to give preference in purchasing to products made of recycled materials, and to create an exemption that will apply to certain governmental entities, if compliance with Chapter 328, Subchapter K will create a hardship.

Section by Section Discussion

§328.200, Purpose

The commission adopts new §328.200 which pertains to governmental entities and establishes a standard to implement a recycling program.

§328.201, Definitions

The commission adopts new §328.201 to define "Governmental entity," "Hardship," and "Recyclable materials" within the context of the requirements.

§328.202, General Requirements

The commission adopts new §328.202 to describe the responsibilities for governmental entities to establish a recycling program. Overall, the entity must consider how to collect and store recyclable materials, maintain containers for recyclable materials, create procedures with buyers of recyclable materials, evaluate and modify the recycling program, and create measures to encourage employee participation.

§328.203, Exemptions

The commission adopts new §328.203, which provides for specific exemptions that are allowed under the rule as well as opportunities for an exemption request due to a hardship.

§328.204, Purchasing Preference for Recycled Materials

The commission adopts new §328.204, which requires certain governmental entities to give preference to purchase products made of recycled materials. At adoption, the commission revises §328.204 to provide consistency with Texas Government Code, §2155.445, which states that preference for the purchasing of products made of recycled materials will be given if the product meets applicable specifications as to quantity and quality, and the average price of the product is not more than 10% greater than the price of comparable nonrecycled products.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the Regulatory Impact Analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. New §§328.200 - 328.204 are adopted in accordance with SB 1376 which amended THSC, Chapter 361, Subchapter N. The adopted rules establish requirements for a governmental entity to create a recycling program and to give preference in purchasing to products made of recycled materials. The adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or sector of the state. In addition, the adopted rules provide an exemption for the regulated community if compliance with the adopted rules will create a hardship on the regulated entity.

In addition to the fact that the adopted rules do not meet the definition of a "Major environmental rule," the adopted rules are not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. Adopted new §§328.200 - 328.204 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the THSC that are cited in the Statutory Authority portion of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission received no comments on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007, does not apply.

Under Texas Government Code, §2007.002(5), a taking means: A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the United States Constitution, Fifth and Fourteenth Amendments or Texas Constitution, Article I, Section 17 or 19; or B) a governmental action that: i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Promulgation and enforcement of the adopted rulemaking will be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to amend Chapter 328 in accordance with the amendments to THSC, Chapter 361 as a result of SB 1376. The adopted rules will establish requirements for a governmental entity to create a recycling program and require certain governmental entities to give preference to purchase products made of recycled materials. The adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the sections adopted are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the sections affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency of the rules with the CMP.

Public Comment

The commission offered a public hearing on February 27, 2020. The comment period closed on March 3, 2020. The commission received written comments from the State of Texas Alliance for Recycling (STAR) and the Texas Lone Star Chapter, Solid Waste Association of North America, Inc (TxSWANA). All commenters were in support of the rulemaking. Specific changes to the rules were suggested in TxSWANA's comments.

Response to Comments

Comment

STAR stated that it supports the rulemaking and the Texas Legislature's vision of reducing hardship for Texas schools serving populations less than 5,000 individuals. TxSWANA commented that they support the goal to promote overall recycling within the state.

Response

The commission acknowledges the comments.

Comment

TxSWANA requested that the commission provide clarity on what constitutes a hardship for the purposes of the exemption in proposed §328.203. TxSWANA elaborated that the only guidance in the legislation and proposed rulemaking on what constitutes a hardship appears to be the rulemaking's fiscal note, which implies that if the requirements fiscally impact a governmental entity, then the governmental entity qualifies for a hardship exemption. TxSWANA added that if this is

the standard, the rule should explicitly define hardship and/or unreasonable burden. TXSWANA also requested clarification on whether a governmental entity may request a full or partial hardship exemption.

Response

The commission's goal is to promote continued recycling efforts by governmental entities where feasible. The commission highly encourages entities to continue recycling efforts for materials that are viable in their market conditions. The commission will evaluate hardship on a case-by-case basis as needed. Determinations of whether a governmental entity would qualify for a partial exemption from Chapter 328, Subchapter K will be made on a case-by-case basis. THSC, §361.425 specifies certain commodities that should be recycled. The commission recognizes that not all communities have access to recycling some or all commodities. Therefore, entities without viable access to recycling may remove items from a program that would cause a hardship. The commission understands that each entity is unique and not all recycling programs are able to recycle one or multiple recyclable materials defined in §328.201. The commission will allow entities to exempt one, multiple, or all recyclable materials and suggests that entities document the reason(s) for excluding one or multiple recyclable materials. For example, if aluminum and steel containers are not recycled by the entity, it should be documented with reason. Some examples to consider when documenting a hardship may include but are not limited to: fiscal limitations, viability of a solid waste provider or third party to recycle a given material, and whether an entity is or is not serviced by a solid waste provider or third party recycler. No changes were made to the rules as a result of this comment.

Comment

TxSWANA requested clarity on whether exemptions would apply to all of the requirements of Chapter 328, Subchapter K or whether they would only apply to the portions for which the entity shows a specific hardship.

Response

The exemptions found in §328.203 apply to Chapter 328, Subchapter K. No changes were made to the rules as a result of this comment.

Comment

TxSWANA commented it has a concern of a potential conflict between the requirement to include a preference for recycled materials in bidding policies and existing requirements to accept low bids. TxSWANA requested that TCEQ provide clarification that it is sufficient to give preference to recycled materials when the costs are otherwise the same.

Response

In order to provide additional clarity, the commission revises §328.204 to specify that preference for the purchasing of products made of recycled materials will be given if the product meets applicable specifications as to quantity and quality, and the average price of the product is not more than 10% greater than the price of comparable nonrecycled products. This language is consistent with Texas Government Code, §2155.445. The commission does not foresee any conflicts with existing agency guidance. Section 328.204 is to be applied in accordance with state procurement statutes and rules and is not intended to conflict with any other state requirements. The commission understands that materials with a dissimilar cost may not always be given preference and entities should continue to use best judgement in bidding policy decisions.

Statutory Authority

The new rules are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The new rules are also adopted under Texas Health and Safety Code (THSC), §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.425, which provides that the commission shall adopt rules for administering governmental entity recycling programs; and THSC, §361.426, which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products.

The new rules are adopted to implement THSC, Chapter 361, Subchapter N, as amended by Senate Bill 1376, 86th Texas Legislature, 2019.

§328.204. Purchasing Preference for Recycled Materials.

A state agency, state court, or judicial agency not subject to Texas Government Code, Title 10, Subtitle D, and a county, municipality, school district, junior or community college, or special district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality and the average price of the product is not more than 10% greater than the price of comparable nonrecycled products. Preferences will be applied in accordance with state procurement statutes and rules.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.11

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to Title 43 of the Texas Administrative Code (TAC) §217.11 concerning rescission, cancellation, or revocation of an existing title or application by affidavit. The department adopts the amendments to §217.11 without changes

to the proposed text as published in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2519). The rule will not be republished.

REASONED JUSTIFICATION. The amendments help remove barriers to Texas businesses, streamlines administrative processes for efficiency, and protects consumers from fraud. The amendment to §217.11(a) extends the deadline to submit to the department an affidavit asking the department to rescind, cancel, or revoke an existing title or application for a title for a vehicle involved in the process of a first sale. The deadline is extended from within 21 days of initial sale to within 90 days of initial sale. By extending the deadline, the department is giving motor vehicle dealers and their customers more time to ask the department to rescind, cancel, or revoke a title to a new motor vehicle in cases where title was applied for in the customer's name, but the dealer, customer, and any lienholder have all agreed to cancel the sale. The amendment does not change any existing sales or contracting requirements under the Transportation Code or Finance Code, but merely extends the deadline to submit an affidavit to the department.

The rescission of title related to a cancelled sale on a new motor vehicle involved in a first sale results in the title record being deleted from the department's title records. This allows a motor vehicle dealer to obtain a duplicate Manufacturer's Certificate of Origin (MCO). Once a dealer has obtained a duplicate MCO, the dealer may treat a subsequent sale to another buyer as a first sale of a new motor vehicle rather than a used car sale, provided the vehicle never left the dealer's possession. Extending of the deadline for title rescission requests eliminates confusion for subsequent purchasers as to whether they purchased a new motor vehicle or a used motor vehicle, while maintaining the true value of a vehicle that has never really been the subject of a first sale.

Transportation Code §501.051 provides the department authority to rescind, cancel, or revoke an application for a title if a notarized or county-stamped affidavit is presented, but does not state a deadline for the affidavit to be presented to the department. By extending the deadline to 90 days, the department is balancing the needs of businesses and consumers. The new deadline provides ample time for businesses to recognize that an affidavit needs to be submitted, while protecting consumers and preventing fraud by not allowing for sale recessions, cancellations, and revocations to take place indefinitely and having the transactions take place within the administrative process.

SUMMARY OF COMMENTS.

The department received written comments from the Denton County Tax Assessor-Collector and the Texas Automobile Dealers Association:

Comment.

A commenter asks for text in the rule to clarify if the title process will include Manufacturer's Certificate of Origin (MCO) and/or used vehicles and notes that the rule assumes inferred knowledge of the MCO process when a buyer doesn't complete a first sale.

Response.

The commenter is correct that the MCO is discussed in the preamble as background information. The purpose of this is to provide context to the process that results in applying the rule. Once the affidavit process described in the rule is followed, additional statutes and rules apply to the transaction, not §217.11. As a result, no changes were made to the rule text. The affidavit process outlined in §217.11 is available only for vehicles that were in the process of a new sale. Any vehicle that has been subject to a prior sale, a used vehicle, is not eligible for a sale rescind under Transportation Code §501.051(b) and is not subject to the extended timeline in §217.11.

Comment.

A commenter endorses the addition of time from 21 to 90 days and notes that while Transportation Code §501.051 does not state a deadline for the affidavit to be presented to the department, it concurs with the TxDMV that the extended deadline balances the needs of businesses and consumers.

Response. The department appreciates the supportive comment and understands the importance of balancing the needs of businesses and consumers.

STATUTORY AUTHORITY. The department adopts amended §211.17 under Transportation Code §1002.001 which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code §501.051 which provides the department authority to rescind, cancel, or revoke an application for a title if a notarized or county-stamped affidavit is presented.

CROSS REFERENCE TO STATUTE. Transportation Code, §503.051 and §1002.001.

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

Filed with the Office of the Secretary of State on June 11, 2020.

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.22, 217.27, 217.32, 217.38, 217.41, 217.55, 217.58 - 217.64

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §§217.22, 217.27, 217.32, 217.38, 217.41, 217.55 and new 43 TAC §§217.58 - 217.64. The department adopts §§217.22, 217.27, 217.32, 217.38, 217.41, 217.55, 217.60, 217.61, 217.63, and 217.64 without changes to the proposed text as published in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2521). The department adopts §§217.58, 217.59 and 217.62 with changes to the proposed text as published in the April 17, 2020 issue of the *Texas Register* (45 TexReg 2521).

REASONED JUSTIFICATION. These new and amended sections are necessary to implement Senate Bill 604, 86th Legislature, Regular Session (2019), which amended Transportation

Code Chapter 504 by adding Subchapter B-1 to allow certain vehicles to be equipped with digital license plates.

The adopted amendments to §217.22 are necessary to add definitions that relate to digital license plates.

Amended §217.22(11) defines "digital license plate" to create a conforming reference to Transportation Code §504.151.

Amended §217.22(12) defines "digital license plate owner" to create a conforming reference to Transportation Code §504.151.

Amended §217.22(21) defines "GPS" as a global positioning system (GPS) tracking device to address the collection of information by a receiver in a digital license plate that can determine the location of the digital license plate. GPS features are not expressly addressed in Transportation Code Chapter 504 Subchapter B-1.

Amended §217.22(25) defines "legend" to clarify the meaning of the term as it is used in the definition of the phrase "required digital license plate information" in these adopted rules. The term "legend" is defined as a name, motto, slogan, or registration expiration notification appearing on and centered horizontally at the bottom of the license plate. The definition is also necessary to clarify that a digital license plate must display a registration expiration notification.

Amended §217.22(27) defines "metal license plate" to differentiate between a metal license plate and a digital license plate.

Amended §217.22(30) defines "optional digital license plate information" as any information authorized to be displayed on a digital license plate in addition to required digital license plate information. Amended §217.22(30)(A) - (D) list examples of optional digital license plate information.

Amended §217.22(31) defines "park" to conform with the statutory meaning in Transportation Code §541.401.

Amended §217.22(33) defines "primary region of interest" to describe the size requirements of the alphanumeric characters representing the plate number.

Amended §217.22(35) defines "required digital license plate information" to clarify the minimum information that must be displayed on a digital license plate. This definition is necessary to clarify that the same information required to be displayed on a metal license plate must also be displayed on a digital license plate: alphanumeric characters representing the plate number, the word "Texas," the legend, and the registration expiration month and year, if applicable. The definition also clarifies that digital license plates must also display the registration expiration notification if the vehicle's registration is expired. The department has sole control over the design, typeface, color, and alphanumeric pattern for all license plates under Transportation Code §504.005.

Amended §217.22(36) defines "secondary region of interest" to describe the size requirements for the field with the word "Texas" centered on the top of the plate.

The amendments to §217.27 are necessary to clarify the exclusions for digital license plates from the existing paragraph, and clarify existing requirements for metal license plates. Amended §217.27(a)(2) exempts digital license plates from existing requirements for displaying vehicle registration insignia for certain vehicles without a windshield. Amended §217.27(a)(3) clarifies that if a vehicle has a digital license plate, then the expiration month and year will appear digitally on the electronic visual display, and any registration insignia issued by the department must be retained in the vehicle. Vehicles with a digital license plate will be issued a voided registration sticker that will not to be affixed to the windshield. Vehicles with metal license plates that do not have a windshield are issued registration stickers that must be adhered to the rear metal license plate. This amendment provides consistency for law enforcement for metal license plates and digital license plates. The amendment also helps the digital license plate owner because they will have the metal license plate in their vehicle and their registration receipt in the event their digital license plate becomes inoperable or unreadable.

Amendments to §217.27(b)(1) add language clarifying that license plates must be clearly visible, readable, and legible and that the rear license plate must be in an upright horizontal position. These amendments are necessary to assist law enforcement by facilitating a quicker replacement of license plates that have become unreadable or illegible due to age or wear and to facilitate enforcement when a license plate is not placed on the vehicle in an upright position. These amendments also help ensure that license plates are readable and legible as required by §217.32, as well as Transportation Code §§502.475, 504.155(b)(2), and 504.945.

The amendments to §217.32 are necessary to differentiate between metal license plates and digital license plates. Amended §217.32(a) - (b) add "metal" and "metal license plate" to differentiate between metal license plates and digital license plates. A replacement digital license plate will be obtained from a digital license plate provider, rather than from a county tax assessor-collector

The amendment to §217.38 is necessary to differentiate between metal license plates and digital license plates. Amended §217.38(1) adds "metal" to differentiate between metal license plates and digital license plates. The customer is not required to return the digital license plate to the county tax assessor-collector when applying for a registration fee credit.

The amendments to §217.41 are necessary to differentiate between metal plates and digital license plates. A replacement digital license plate will be obtained from a digital license plate provider, rather than from a county tax assessor-collector.

The amendments to §217.55 are necessary to differentiate between metal license plates and digital license plates. Amended §217.55(c)(1) and (2) add "metal license" to differentiate between metal license plates and digital license plates. A replacement digital license plate will be obtained from a digital license plate provider, rather than from a county tax assessor-collector.

New §217.58 lists the types of vehicles that are eligible and ineligible for a digital license plate and the requirements for eligibility verification and issuance of digital plates. New §217.58(a) lists the statutorily-eligible vehicles as any vehicle owned or operated by a governmental entity, any commercial fleet vehicle, or a truck, motorcycle, moped, trailer, semitrailer, or sport utility vehicle or other vehicle that is required to be registered under Transportation Code Chapter 502. Changes were made to the proposed language in amended §217.58 to clarify the reference to fleet vehicle and to ensure that the previously listed vehicles included all possible eligible vehicles under Transportation Code Chapter 502. These amendments to the rule text do not alter the eligibility requirements for a digital license plate outlined in statute, do not put additional stakeholders on notice, and add no additional costs.

New §217.58(b) lists which vehicles are ineligible for a digital license plate. The proposed language in §217.58(b) was amended for clarity. Section §217.58(b) was amended after proposal to clarify that any vehicle registered as a passenger vehicle, that is not part of a commercial fleet or owned or operated by a governmental entity, is ineligible for a digital license plate. These amendments to the rule text do not alter the eligibility requirements for a digital license plate outlined in statute, do not put additional stakeholders on notice, and add no additional costs.

New §217.58(c) is necessary to ensure that digital license plate providers and applicants are aware that registration is completed separately from digital license plate issuance and that all digital license plate owners are issued their metal license plates to attach to the vehicle in case of digital license plate removal or malfunction. The proposed rule text in Section 217. 58(c)(5) has been deleted because it was unnecessary and may cause confusion as to whether a digital license plate could be replaced if it was lost or malfunctioned. The original purpose of the requirement, to prevent one vehicle from being linked to two or more different digital license plates, will be achieved through department programming controls.

New §217.59 outlines the requirements for digital license plate testing. New §217.59 requires a digital plate provider to provide the department with documentation demonstrating that testing was completed on a digital license plate model before the approval and initial deployment of that digital license plate model, and for each subsequent hardware upgrade. A hardware upgrade is any upgrade to any physical aspects of the digital license plate except for the mounting bracket. The documentation demonstrating that testing was completed must be sufficient for the department to be assured that the digital license plate approved for use was tested in a manner set forth by the department. The documentation must include a description of the testing protocols and methods and must be conducted by governmental entities, universities, or independent nonprofit research and development organizations. New §217.59 is necessary to ensure that digital license plates meet the statutory requirements for license plates and that the testing is conducted by the types of organizations with which the department has established relationships. The department works with these types of entities on a regular basis for different projects and requiring these types of entities to perform testing will ensure consistency and independence in testing. The testing must be conducted for four separate issues: reflectivity, legibility, readability, and network and data security. As discussed in the response to comments, the proposed rule text has been changed to require reflectivity testing with results demonstrating that the digital license plates are manufactured utilizing reflectorized material as required by Transportation Code §504.005, and are reflective in daytime, as defined in Transportation Code §541.401 and nighttime, as defined in Transportation Code §541.401 with the use of low beam headlights, at a distance of no less than 75 feet. Reflectivity testing with results demonstrating that the digital license plates perform consistently with the International Organization for Standardization ISO 7591, clauses 6 and 7 is preferred. This change is necessary to provide an incentive for digital license plate providers to achieve retroreflectivity as the technology develops, while not creating a barrier to enter the market if the standard is not currently possible. The digital license plate provider must comply with the requirement in Transportation Code §504.005(d), which promotes highway safety by requiring that each license plate is made with a reflectorized material that provides effective and dependable brightness for the period for which the plate is issued. New §217.59(2) requires legibility testing with results demonstrating that digital license plates are legible during daytime and also during nighttime using low beam headlights, under optimal conditions, at a distance of no less than 75 feet. New §217.59(2) also requires readability testing with results demonstrating that digital license plates are readable with commercially-available automated license plate readers, and in a variety of weather conditions. This is necessary to comply with the industry standard and to comply with the requirement that the digital license plate display be legible under Transportation Code §504.155(b)(2); to ensure that law enforcement can read the digital license plate to determine compliance with Transportation Code §504.945; and to ensure that law enforcement and toll entities can read the digital license plates with commercially-available automated license plate readers. New §217.59(3) requires commercially-available penetration testing for protection of the digital license plate, the electronic display information, and the digital license plate provider's systems. The penetration testing will be decided by the department and the provider in the contracting process. New §217.59(3) is necessary to ensure the safety and security of the digital license plates for the benefit of the digital license plate owner, law enforcement, and the public. If the digital license plate or the provider's system are vulnerable to penetration, this could enable fraud and jeopardize public safety. In addition to testing before initial approval and each subsequent hardware upgrade, penetration testing must be completed for each software or firmware upgrade. This requirement is necessary to ensure that new vulnerabilities are not instituted in subsequent updates.

New §217.60 outlines the specifications and requirements for digital license plates. New §217.60(a) requires digital license plate providers to ensure that the digital license plate meets or exceeds the benefits to law enforcement provided by metal license plates. This requirement is necessary to conform to the statutory requirement in Transportation Code §504.155(b)(4). New §217.60(a) paragraphs §217.60(a)(1) - (4) provide further requirements for the digital license plate. Paragraph §217.60(a)(1) outlines the physical requirements for a digital license plate. Paragraph §217.60(a)(2) requires that the digital license plate include one or more security features that verify the plate was issued by an approved digital license plate provider. Paragraph §217.60(a)(2) is necessary to provide benefits to law enforcement by allowing them to visually ensure that a digital license plate is not a counterfeit. Metal license plates have two security features that law enforcement can visually check to see if the metal license plate is counterfeit. Paragraphs §217.60(a)(3) - (4) require a digital license plate to display the same information as a metal license plates while not in park. This includes displaying required digital license plate information and the registration expiration month and year in the same font size and location as the information displayed on the corresponding metal license plate; as well as ensuring that the required information continues to display when the digital license plate is not connected to a wireless network. These requirements are necessary to fulfill the requirement under Transportation Code §504.155 for the board of the Texas Department of Motor Vehicles (board) to set the specifications and requirements for digital license plates. By setting consistent standards and features, the department is aiding law enforcement by preventing fraud and aiding consumers by ensuring their digital license plate displays the information required by law.

New §217.60(b) outlines the requirements for placement of a digital license plate and the vehicle registration insignia for a vehicle displaying a digital license plate. New §217.60(b)(1) requires that the digital license plate must be attached to the exterior rear of the vehicle. This requirement is necessary to comply with the definition of digital license plate defined in Transportation Code §504.151, which states that a digital license plate is designed to be placed on the rear of a vehicle in lieu of a physical, metal license plate. This requirement is also necessary to comply with Transportation Code §504.154(a), which states a digital license plate is placed on the rear of the vehicle in lieu of a physical, metal license plate. New §217.60(b)(2) requires a metal license plate to be attached to the exterior front of the vehicle, unless the vehicle is not required to display a plate on the front of the vehicle under this chapter. This requirement is necessary to comply with the requirements in Transportation Code §504.943 and 43 TAC §§217.27(b), 217.46(b)(3), and 217.56(c)(2)(E). New §217.60(b)(3) requires that the vehicle's registration insignia for validation of registration must be displayed in accordance with 43 TAC §217.27. Owners of vehicles with digital license plates will keep their registration receipt in or on the vehicle, and their registration month and year will be displayed on the electronic visual display of the digital license plate. New §217.60(b)(3) is necessary to provide consistency for law enforcement and limit fraud.

New §217.61 outlines the prohibitions and requirements for digital plate designs and display. New§217.61(a)(1) prohibits digital license plate providers from creating or designing a specialty license plate under Transportation Code Chapter 504 unless they have a contract with the department under Transportation Code §504.851. This is necessary to ensure that the department is aware of and approves all specialty license plates in the state of Texas. If specialty plates were created without the department's knowledge and approval it would be difficult to verify the legitimacy of the license plates. New §217.61(a)(2) requires the digital license plate provider to enter into a licensing agreement, with standard language as approved by the department, for the display of any third party's intellectual property on a digital license plate. New §217.61(a)(2) is necessary to protect third-party intellectual property.

New §217.61(b) outlines the requirements for the display of information on a digital license plate. New §217.61(b)(1) requires that the display of electronic information on a digital license plate be approved by the department. New §217.61(b)(1) provides that the digital license plate may not be personalized under any region of interest except under current rules governing specialty license plates. New §217.61(b)(1) is necessary to maintain consistency between digital license plates and metal license plates which assists law enforcement by ensuring that the digital license plate information is readable and legible. New §217.61(b)(2) - (4) describe the requirements for the display of optional digital license plate information while the vehicle is in park. These requirements are necessary to permit digital license plates to display an emergency alert, public safety alert, manufacturer or safety recalls, advertising or parking permits, while ensuring that the required digital license plate information remains legible and readable for law enforcement when the vehicle is in park. New §217.61(b)(5) permits the digital license plate provider to electronically collect tolls with approval by and agreement with the appropriate toll entity. New §217.61(b)(5) provides a possible benefit to digital license plate owners.

New §217.61(c) requires that digital license plate providers display an expiration message on the digital license plate if registration has not been renewed at the time of registration expiration, and that the expiration message may not be removed until after the department confirms renewal of expired registration and clarifies that optional digital license plate information may not encroach on the primary and secondary regions of interest. New §217.61(c) is necessary because Transportation Code §504.155(b)(4) requires a digital license plate to provide benefits to law enforcement that meet or exceed the benefits provided by a metal license plate.

New §217.61(d) prohibits digital license plate providers from displaying an emergency alert or other public safety alert, vehicle manufacturer safety recall notices, advertising, or a parking permit on a digital license plate without authorization from the digital license plate owner. This is necessary to ensure that the digital license plate does not display this optional digital license plate information without the owner's approval. For example, a person who graduated from a university might not like it if they were required to display the logo of a rival university on their license plate. New §217.61(d)(2) - (3) discuss the disclosure of GPS data. Unless the disclosure of the GPS data is required by law, the digital license plate provider may not disclose GPS data to any person unless it explains to the digital license plate owner how the GPS data will be used and to whom it will be disclosed, and the digital license plate owner consents to its disclosure. This is necessary to protect the privacy and safety of digital license plate owners. Additionally, the department's Vehicle Titles and Registration Advisory Committee recommended these disclosure requirements and their recommendation was adopted by the board at its February 6, 2020 board meeting. New §217.61(d)(4) prohibits the digital license plate provider from requiring the owner to authorize the display of optional digital plate information or the disclosure of GPS data as a condition of purchase of lease of a digital license plate. This is necessary to protect the digital license plate owner's right to decide whether to opt in. New §217.61(d)(5) and (d)(6) require the digital license plate provider to immediately discontinue the display of optional digital license plate information at the digital license plate owner's request and to have the same mechanism for opting in and out of the display of the optional digital license plate information. This requirement is necessary to allow the digital license plate owner a consistent way to opt out of the display of optional digital license plate information on their digital license plate after they have opted in.

New §217.62 outlines the requirements for a digital license plate provider if a digital license plate is removed or malfunctions. New §217.62(a) requires that the digital license plate provider have a mechanism to prevent theft and tampering with the digital license plate. New §217.62(a)(1) and (a)(2) require the digital license plate provider to ensure that the digital license plate ceases the display of required digital license plate information in case of malfunction, if service is terminated, or if it determines that the digital license plate has been compromised, tampered with, or fails to maintain the integrity of registration data. The proposed rule text in 217.62 (a)(1) has been new to add a missing word. New §217.62(a) is necessary to help prevent fraud and protect consumers if their digital license plate is stolen.

New §217.62(b) outlines when the digital license plate provider must notify the department. New §217.62(b)(1) - (4) require digital license plate providers to immediately notify the department in case of digital license plate commencement of service, termination of service, determination that the digital license plate has been compromised, or the transfer of a digital plate to a new owner. These requirements are necessary to ensure that the

department has accurate and current data on the digital license plates.

New §216.62(c) permits a digital license plate provider to disable the display of a digital license plate if the digital license plate owner fails to pay the provider's fees. This is necessary to allow a digital license plate provider to discontinue service when the digital license plate owner is not paying the fees required by their contract.

New §217.63 outlines the digital plate fees and payment. New §217.63(a) requires that a person applying for a digital license plate must pay an administrative fee of $95.00 upon application for a digital license plate and annually on renewal of registration for a vehicle with a digital license plate. The fee will be aligned with the registration period and adjusted to yield the appropriate fee. The administrative fee is necessary to recoup the department's costs to implement and then administer the digital license plate program for the first five years. The implementation and administration cost is estimated to be $1.8 million. The breakdown of this estimate is as follows:

Programming- Information Technology - $1,036,550

Program Specialists (two FTEs) - $815,625

IMPLEMENTATION COST - $1,852,175 Total

To determine an administrative fee, the total estimated implementation cost was divided by the number of digital license plates issued in California (1,300 plates total), since that is the only jurisdiction with a digital plate program that has been operational for several years. That amount was divided by fifteen with the goal of recouping the implementation and administration cost in approximately fifteen years. The amount of the fee and the time of its collection were recommendations from the department's Vehicle Titles and Registration Advisory Committee, and the recommendations were adopted by the board at its February 6, 2020 board meeting. New §217.63(a)(3) clarifies that a digital license plate administrative fee will be refunded only when registration fees are overcharged under Transportation Code §502.195. This is necessary to inform consumers of when a refund will be issued.

New §217.63(b) clarifies that the $95 administrative fee is due upon receipt of an application for a digital license plate and annually on renewal of registration for a vehicle with a digital license plate. This is necessary to ensure that the fees for digital license plates are being paid and timely deposited into the state treasury under Government Code §404.094. It also clarifies that a digital license plate provider that collects the administrative fee must submit payment of the fee to the department in full on behalf of the digital license plate owner.

New §217.64 outlines the services that a digital license plate provider is required to provide, including digital license plate replacement when necessary. New §217.64(a)(1) requires a digital license plate provider to provide customer support for customers during standard business hours, Central Time. This requirement is necessary to ensure that customers can access support if they have issues with their digital plate and it corresponds to the hours that customer service is available for a metal license plate. New §217.64(a)(2) clarifies that a customer must go to the digital plate provider for repair, service, and replacement of a digital license plate. This clarification is necessary so that customers are aware of who to contact in case an issue arises with their digital license plate.

New §217.64(b) informs the customer where they can obtain a replacement license plate. New §217.64(b)(1) clarifies that if a customer wants a replacement digital license plate they can obtain one from the provider. New §217.64(b)(2) permits the customer to install the rear metal license plate issued for the vehicle in lieu of the digital license plate. New §217.64(c) explains how to obtain a replacement metal license plate. New §217.64(b) and (c) are necessary because customers need to know where to obtain replacement plates if their digital license plate malfunctions or is destroyed, or if their metal license plate is lost, stolen, mutilated, or needs to be replaced for cosmetic or readability reasons. Digital plate owners cannot operate their vehicle until the digital license plate is repaired or replaced, or until they remove the digital license plate and replace it with a metal license plate.

REGULATORY COMPLIANCE DIVISION

The new and amended sections were reviewed by the Governor's Division of Regulatory Compliance (Division). The Division gave the Board permission to adopt the new and amended sections on June 9, 2020.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

The department received written comments requesting clarifications or changes in the proposed text from: Collin County Sheriff Office, Central Texas Regional Mobility Authority, North Texas Tollway Authority, The Tax Assessor-Collectors Association of Texas, Lubbock County Tax Assessor-Collector, Harris County Toll Road Authority, 3M, and Denton County Tax Assessor-Collector.

General Comment.

A commenter requests that the initial registration and the renewal process should remain the same, as with any other vehicle, through the county tax assessor's office and suggests that if the digital license plate provider would like the county to collect and remit the digital license plate fees this can be accomplished, however, should the provider prefer to collect the fees independently for their digital plates they can bill separately.

Agency Response.

The department disagrees with the comment because there is no change to how a vehicle is initially registered or renewed.

§217.22(27)

Comment.

A commenter requests that the county should be the responsible entity to issue non-digital plates and not the department.

Agency Response.

The department disagrees with the comment because there is no change to the current process on issuing metal license plates.

§217.27(b)

Comment.

A commenter notes that §217.27(b) and §217.60(b) appear to contemplate that most registered vehicles that are eligible for a digital license plate will still display two plates and notes that this is consistent Transportation Code 504.154(a), which generally requires preservation of the two-plate rule for vehicles using a digital license plate.

Agency Response.

The department agrees with the comment and confirms that all vehicles that are required to have two license plates will continue to be required to display two license plates.

§217.27(a)

Comment.

A commenter requests that the department clarify the difference between references to the department, TxDMV, and the county tax accessor's office in §217.27(a).

Agency Response.

The department disagrees with the comment and declines to amend the rule to clarify the definitions. The proposed rule is consistent with statutory language in Transportation Code §502.059(b).

§217.58

Comment.

A commenter supports the following proposed rules relevant to tolling operations in their current form:

(a) 217.58 - Digital License Plate Eligibility

(b) 217.61 - Digital License Plate Designs and Displays

Agency Response.

The department appreciates the supportive comment.

§217.58(a)(2)(b)

Comment.

A commenter requests a clarification between the definition of passenger and non-passenger vehicles.

Agency Response.

The department disagrees with the comment and declines to make the clarification in §217.58(a)(2)(B) because the term passenger car and other vehicle classifications are currently defined in Transportation Code, Chapter 502.

§217.59

Comment.

A commenter believes that the testing requirements in §217.59 should be more robust and should be confirmed to work properly based on real world tests utilizing toll cameras, automatic license plate readers and other equipment actually in use in the major metro areas of Texas, including Harris County and the surrounding counties. Furthermore, the rules should require at least six (6) months of legibility and readability testing with results demonstrating that the digital license plate technology works properly, without adverse impacts from strobing or glaring effects, for toll projects in Harris County and the surrounding area and the county constables and other law enforcement agencies patrolling those projects, whether in daytime or nighttime and during varying weather conditions, including specifically during peak periods of heat in the summer months and peak periods of cold during the winter months.

Response.

The department disagrees with the comment and declines to make the requested change. The department agrees that accurately assigning tolls to the registered vehicle owner is important. The department intends to include toll entities in testing their license plate readers and will require that digital plate providers supply digital plates to toll entities for testing, under the department's contract with any digital plate provider.

§217.59(1)

Comment.

A commenter discussed the importance of retroreflective license plate specifications and encourages the department to retain the requirements in §217.59, which call for testing of the license plate retroreflectivity according to IS0 7591 clauses 6 and 7, to ensure a method of fail-safe functionality for the safety of Texas motorists.

Agency Response.

The department disagrees with the comment and declines to retain the proposed requirement in §217.59(1). Upon further research and discussion with the American Association of Motor Vehicle Administrators, the department has determined that current digital license plates do not have retroreflectivity capabilities. While the department prefers uniform standards for retroreflectivity for all license plates, it understands the importance of adopting safety standards that are achievable by a digital license plate while also ensuring that all license plates meet the reflectivity requirements under Transportation Code §504.005. In order to ensure that the requirements are achievable, the department is amending the language in §217.59(1) to read, "(1) reflectivity testing with results demonstrating that the digital license plates are manufactured utilizing reflectorized material as required by Transportation Code, §504.005, and are reflective in daytime, as defined in Transportation Code, §541.401 and nighttime, as defined in Transportation Code, §541.401 with the use of low beam headlights, at a distance of no less than 75 feet. Reflectivity testing with results demonstrating that the digital license plates perform consistently with the International Organization for Standardization ISO 7591, clauses 6 and 7 is preferred." Recognizing the importance of retroreflectivity for law enforcement, this updated language provides an incentive for digital license plate providers to achieve retroreflectivity as the technology develops, while not creating a barrier to enter the market if the standard is not currently possible. The change does not add a new requirement or cost for digital license plate providers.

§217.59(2)

Comment.

A commenter is supportive of the department's testing requirements under §217.59(2), but suggests the addition of additional language to preserve the value of existing inventories of automated license plate readers. The commenter suggests that §217.59(2) be amended to read, "demonstrating that digital license plates are ... readable with automated license plate readers that were commercially available as of September 1, 2019."

Agency Response.

The department disagrees with the comment and declines to make the requested change. The department appreciates the comment and understands the importance of preserving the value of automated license plate readers; however, declines to make the suggested change. If the date September 1, 2019, is inserted into the rule, it could subject digital license plate providers to a requirement they cannot meet as technology changes. The current language which specifies that commercially available automated license plate readers be used will allow the technologies to grow and shift together so that the standard can continue to be reached in years to come.

§217.59 and §217.60

Comment.

A commenter notes that if a vehicle does not have a toll transponder, tolling agencies rely on in-lane cameras and optical character recognition (OCR) to capture license plate images, correctly identify the alphanumeric digits on the plate, and accurately assign tolls to the registered vehicle owner. The commenter suggests that there be no fewer than six months of digital plate testing by tolling entities on their in-lane cameras and OCR systems evaluating certain criteria.

Agency Response.

The department agrees with the comment that accurately assigning tolls to the registered vehicle owner is important. The department intends to include toll entities in testing license plate readers and will require that digital plate providers supply digital license plates to toll entities for testing, under the department's contract with a digital plate provider.

Comment.

A commenter notes that tolling agencies, DMV, and law enforcement could encounter toll collection and other enforcement "gaps" as digital plate owners and digital plate providers settle billing disputes.

Agency Response.

The department agrees with the comment that a digital license plate that no longer displays registration information would cause enforcement issues; however, the digital license plate owner is required to replace the digital license plate with the metal license plate that they were provided at time of registration issuance or renewal. Vehicles required to have two license plates will continue to display a metal plate on the front of the vehicle.

§217.61

Comment.

A commenter believes that the DMV should decline to promulgate any rule allowing digital plate vendors to serve as toll account issuers. Should DMV opt for allowing digital plate vendors to process tolls, the commenter recommends the following:

Afford tolling entities full discretion to decline allowing digital plate providers to embed transponders in their service area or, at a minimum, the option to register plate transponder through a local toll authority;

require a digital plate-embedded transponder to be compatible with the protocols approved by the Central U.S. interoperability agreement already in effect (all Texas tolling entities plus Oklahoma and Kansas toll authorities participate in that agreement); and submit the digital plate vendor to the governing statutes and rules of the tolling provider, regional tollway authority, regional mobility authority, or county toll road authority where the vehicle with the digital plate is registered in addition to Transportation Code Chapter 372, the catch-all statute for Texas tolling agencies

Agency Response.

The department disagrees with the comment and declines to make a change. The proposed language in §217.61 only allows such agreement between any digital plate provider and a toll entity as an option. Any such agreement is not required. The department has no regulatory authority over the toll entities operating in Texas.

§217.61(b)(5)

Comment.

A commenter asks if the requirement in §217.61(b)(5) authorizing electronic toll collection with approval from, and agreement between, a digital license plate provider and the appropriate toll entity mean that a person with a digital plate would not need the toll tag sticker on their windshield? Or does it mean there would be a collection mechanism to allow the toll authority to collect tolls using the digital plate owner account?

Agency Response.

The department disagrees with the comment and declines to make a change. The department has no regulatory authority over the toll entities operating in Texas. This matter would be determined by agreement between the toll entity and the digital license plate provider.

Comment.

A commenter requests clarification on what "appropriate toll entity" must enter into an agreement with the digital license plate provider, as the rules are silent on which type of entity may be an appropriate toll entity. Additionally, it believes the term "appropriate toll entity" should be limited to public toll agencies in Texas.

Agency Response.

The department disagrees with the comment and declines to make a change. Section 217.61(b)(5) does not require any toll entity to enter into an agreement with any digital license plate provider, but merely permits them to. The proposed rules only apply to digital license plates and digital plate providers in Texas.

Comment.

A commenter requests that §217.61(b)(5) be withdrawn. The commenter thinks a better approach for toll collection purposes would be for the toll entities to work directly the vendor and the other toll agencies in Texas to ensure that, as this kind of technology is introduced into the tolling market place in Texas, it satisfies the requirements for interoperability and compatibility with the HCTRA system.

Agency Response.

The department disagrees with the comment and declines to withdraw §217.61(b)(5). The proposed language in §217.61(b)(5) only allows such agreement between a digital plate provider and a toll entity as an option. Any such agreement is not required. The department has no regulatory authority over the toll entities operating in Texas.

Comment.

A commenter requests that given increased frustration with toll billing errors, some consideration should be given to customer service experience and resources, including call center and customer account maintenance capabilities, with additional consideration given to the primary transponder used in a particular region of the State. EZ TAG, issued by HCTRA, is the primary transponder used in the Harris County region, while TollTAG, issued by the North Texas Tollway Authority ("NTTA") is the primary transponder used in North Texas. Other regions of the State use TxTAGs issued by the Texas Department of Transportation.

Agency Response.

The department disagrees with the comment and declines to make a change. The department has no regulatory authority over the toll entities operating in Texas. Appropriate handling of these concerns would be determined by agreement between the toll entity and any digital license plate provider.

Comment.

A commenter suggests that the proposed rules address compliance with interoperability protocols or requirements for maintaining valid electronic customer accounts such as, the Central United States interoperability hub for the processing of toll transactions from toll agencies in Texas, Oklahoma and Kansas based on specified interoperability protocols and requirements.

Agency Response.

The department disagrees with the comment and declines to make a change. The department has no regulatory authority over the toll entities operating in Texas. This matter would be determined by the agreement between the toll entity and any digital license plate provider.

Comment.

A commenter questions whether a proposed rule, at this time, is necessary to deal with advancements in toll collection technology, as technology develops, the commenter thinks a better approach would be for us to work directly with market innovators, including the digital license plate vendor, to ensure that the proposed technology satisfies the requirements for interoperability and compatibility with the HCTRA system.

Agency Response.

The department disagrees with the comment and declines to make a change. Because the department has no regulatory authority over the toll entities operating in Texas this matter would be determined by agreement between the toll entity and any digital license plate provider. Additionally, proposed §217.61(b)(5) only allows such agreement between a digital plate provider and a toll entity as an option. Any such agreement is not required. Under any agreement, specifics with regard to evolving technology may be required.

Comment.

A commenter notes that it is unclear whether the digital license plate would come with a separate transponder that would be affixed to the front windshield. If the digital license plate comes with a separate transponder to affix on the front windshield, then the commenter questions whether there really would be a public benefit or amenity that is not available with a metal plate.

Agency Response.

The department disagrees with the comment and declines to make a change. Transponder technology would be determined by any optional agreement between the toll entity and a digital plate provider.

Comment.

A commenter notes that it is unclear whether the digital license plate would be linked with an electronic customer account with a valid method of payment and questions whether a digital license plate provider would be able to satisfy the requirements of Senate Bill 198. Although Senate Bill 198 allows toll agencies to contract with each other to allocate responsibilities for sending notices and taking other actions required by the legislation, Senate Bill 198 does not authorize a toll agency to delegate responsibilities to a private vendor.

Agency Response.

The department disagrees with the comment and declines to make a change. Because the department has no regulatory authority over the toll entities operating in Texas, this matter would be determined by agreement between the toll entity and any digital license plate provider. Furthermore, the toll entity and digital license plate provider may work together to ensure that any agreement would comply with all relevant Texas law.

Comment.

A commenter is concerned that rather than providing a public benefit that is no cost to local government, digital license plates may make it easier for toll scofflaws to cheat the system resulting in an increase in lost toll revenue, as well as an increase in collection costs.

Agency Response.

The department disagrees with the comment and declines to make a change. It is the department's understanding that toll entities utilize front license plate readers in addition to rear license plate readers. Vehicles that currently display two license plates will continue to have two plates and those vehicles with a digital license plate will continue to display a metal plate on the front of the vehicle.

§217.62(c)

Comment.

A commenter notes that, specific to proposed §217.62(c), readability would be impossible if a digital plate owner fails to pay fees owed to a digital plate provider for service, resulting in the disabling of the digital plate.

Agency Response.

The department disagrees with the comment and declines to make a change. A digital license plate that no longer displays registration information would cause readability issues; however, the digital plate owner is required to replace the digital license plate with the metal license plate that they were provided at time of registration issuance or renewal. Vehicles required to have two plates will continue to display a metal plate on the front of the vehicle.

Comment.

A commenter requests that the following language be added as §217.62(c)(a)(2): "For each digital license plate fee that is collected by a county assessor-collector and for which the department is allocated a portion of the fee for administrative costs, the department shall credit $2.30 dollars from its administrative costs to the county treasurer of the applicable county, who shall credit the money to the general fund of the county to defray the costs to the county of administering this chapter."

Agency Response.

The department disagrees with the comment and declines to make the suggested addition. The $95 administrative fee is not a plate fee but is intended to recoup the department's cost in implementing the program. The $0.50 county compensation from metal specialty license plates is to defray the cost to the county of administering Transportation Code Chapter 504, and the county will not perform extra duties because the vehicle has a digital license plate. If the digital license plate provider has a licensing

agreement with a state specialty plate sponsor, then the county will retain the portion of the plate fee as they do today under Transportation Code §504.008 for a metal specialty plate. Digital license plate issuance will be handled by the department and any digital plate provider, and there will not be additional work associated with processing renewal transactions of vehicles with a digital license plate.

§217.63

Comment.

A commenter asks if the digital license plate owner would pay the administrative fee to the county tax accessor-collector when renewing their registration?

Agency Response.

The department agrees with the comment for any renewal done through the county tax assessor-collector's office.

Comment.

A commenter asked whether the administrative fee would be on the "renewal form," and how the county tax assessor-collector will be informed that the administrative fee needs to be collected apart from it appearing in the Registration & Title System (RTS). The commenter also asked for clarification regarding whether there will be an option to pay the administrative fee directly to the department and if so, would the county tax accessor- collector be required to verify if the administration fee has been paid timely?

Agency Response.

The department disagrees with the comment and declines to make a change. There is not a registration renewal form. The administrative fee for a digital license plate will be line itemed on the renewal notice if applicable. The county will know to collect the administrative fee for a digital plate through RTS. For vehicles for which the department processes the registration or renewal, the customer must pay the fee to the department. At the county, the fee will be collected through RTS so there will be no need to verify collection of the administrative fee.

§217.63(b)(1)

Comment.

A commenter requests that the current county registration renewal fees be collected and credited by each county and the current registration process remain the same for state, county and local fees while the digital license plate provider collects their fees separately.

Response.

The department agrees with the comment. There is no change to how registration renewal fees, including county and local fees, are collected and credited to each county. There is no change to the registration renewal process under the proposed rules. The digital license plate provider(s) will collect the fee for the digital license plate.

§217.64

Comment.

A commenter requests that the following language be added as §217.64(e) to align the process with the metal specialty license plate process: (e) If the digital license plate is lost, stolen, mutilated, or needs to be replaced, replacement plate may be obtained as indicated:

- The owner submits a written request to the county tax assessor-collector for replacement digital license plate accompanied by a copy of the registration receipt.

The county tax assessor-collector will:

- order the replacement plates through the system,

- collect the $6 replacement fee and the automation fee.

- After manufacture, the replacement digital plate is mailed directly to the customer.

Agency Response.

The department disagrees with the comment and declines to make the requested change because the digital license plate provider will replace the digital license plate as appropriate for the customer. Replacement of a digital license plate will be handled under contract between the department and any digital license plate provider.

STATUTORY AUTHORITY. The amendments and new sections are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §§504.151-504.157 which authorize digital license plates while giving the department rulemaking authority to implement the statutory provisions including setting specifications and requirements for digital plates and establishing a fee.

CROSS REFERENCE TO STATUTE. Transportation Code, §§504.151- 504.157 and §1002.001.

§217.58. Digital License Plate Eligibility.

(a) Vehicles eligible for a digital license plate. The following vehicles are eligible for a digital license plate, subject to the exceptions in subsection (b) of this section:

(1) any vehicle owned or operated by a governmental entity; or

(2) a vehicle owned or operated by a person other than a governmental entity if the vehicle is:

(A) part of a commercial fleet, as defined by Transportation Code, §502.001; or

(B) a truck, motorcycle, moped, trailer, semitrailer, sport utility vehicle, or other vehicle that is required to be registered under Transportation Code, Chapter 502.

(b) Vehicles not eligible for a digital license plate.

(1) Notwithstanding subsection (a) of this section, a vehicle is not eligible for a digital license plate if the vehicle is not required to display a license plate on the rear of the vehicle, including:

(A) truck-tractors; or

(B) trucks with combination registration under Transportation Code, §502.255.

(2) Notwithstanding subsection (a)(2)(B) of this section, a vehicle registered as a passenger vehicle is not eligible for a digital license plate.

(c) Requirements for Eligibility Verification and Issuance of Digital Plates.

(1) An applicant for a digital license plate may not obtain a digital license plate from a digital license plate provider if the vehi-

cle for which a digital license plate is being sought is not registered. The individual must first submit a complete initial application for registration and the accompanying documents and fees at the county tax assessor-collector's office, or at the department for vehicles that must be registered directly through the department under this chapter. After receipt of the necessary documentation and fees, the department will issue one or two metal license plates, in accordance with this chapter, to the applicant for the digital license plate, depending on the type of vehicle. After the department issues the metal license plate or plates to the applicant, the applicant may then proceed with obtaining a digital license plate from a digital license plate provider.

(2) A digital license plate provider must obtain the following information from a digital license plate applicant before it verifies the vehicle's eligibility for a digital license plate:

(A) the last four digits of the vehicle identification number; and

(B) the existing metal license plate number.

(3) A digital license plate provider may not issue a digital license plate for a vehicle that has not been issued Texas registration in the name of the applicant for the digital license plate.

(4) Any metal license plate issued for the rear of the vehicle and any associated plate sticker issued for a rear metal license plate must be carried in or on the vehicle at all times when using a digital license plate.

§217.59. Digital License Plate Testing.

Before the initial deployment of a digital license plate model and for each subsequent hardware upgrade, which includes all physical aspects of the digital license plate except for the mounting bracket, a digital license plate provider must provide the department with documentation sufficient for the department to be assured that the digital license plate model for which approval is sought was tested in a manner set forth by the department. The documentation must include a description of the testing protocols and methods. Digital license plate testing must be conducted by governmental entities, universities, or independent nonprofit research and development organizations. Testing must include:

(1) reflectivity testing with results demonstrating that the digital license plates are manufactured utilizing reflectorized material as required by Transportation Code, §504.005, and are reflective in daytime, as defined in Transportation Code, §541.401 and nighttime, as defined in Transportation Code, §541.401 with the use of low beam headlights, at a distance of no less than 75 feet. Reflectivity testing with results demonstrating that the digital license plates perform consistently with the International Organization for Standardization ISO 7591, clauses 6 and 7 is preferred;

(2) legibility and readability testing with results demonstrating that digital license plates are legible in daytime, as defined in Transportation Code, §541.401 and nighttime, as defined in Transportation Code, §541.401, using low beam headlights, under optimal conditions at a distance of no less than 75 feet; and are readable with commercially-available automated license plate readers and in a variety of weather conditions; and

(3) commercially-available penetration testing, as approved by the department, for the protection of the digital license plate, the electronic display information, and the digital license plate provider's systems. In addition to testing before initial approval and each subsequent hardware upgrade, testing described in this paragraph must be completed for each software or firmware upgrade.

§217.62. Digital license plate removal and malfunction.

(a) A digital license plate provider must have a mechanism to prevent potential theft of and tampering with the digital license plate. At a minimum, a digital license plate provider must ensure the digital license plate ceases the display of digital license plate information:

(1) when a digital license plate malfunctions or upon termination of services between a digital license plate provider and owner; or

(2) if a digital license plate provider determines that the digital license plate has been compromised, tampered with, or fails to maintain integrity of registration data.

(b) Digital license plate providers must immediately notify the department in the following circumstances:

(1) commencement of services by the digital license plate provider;

(2) termination of services by the digital license plate provider;

(3) determination that the digital license plate has been compromised; or

(4) the transfer of a digital license plate to a different owner.

(c) The digital license plate provider is authorized to disable the display of a digital license plate for failure of the digital license plate owner to pay the fees due to the digital license plate provider.

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

Filed with the Office of the Secretary of State on June 11, 2020.

TRD-202002357
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Effective date: July 12, 2020
Proposal publication date: April 17, 2020
For further information, please call: (512) 465-5665


Texas

TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Texas Board of Chiropractic Examiners

Rule Transfer

Under Texas Occupations Code §§201.152 and 201.1525, the Texas Board of Chiropractic Examiners (Board) is authorized to promulgate necessary rules to regulate the practice of chiropractic. As part of its ongoing rule review process, the Board has determined that two of its current rules are ill-placed within 22 Texas Administrative Code Part 3, Chapters 71 to 82, and that a transfer is needed to improve their accessibility.

The transfer is effective July 15, 2020.

The following conversion chart outlines the rule transfer:

Figure: 22 TAC Part 3

Current Rule: **Title 22. Examining Boards** **Part 3. Texas Board of Chiropractic Examiners**	**Move to:** **Title 22. Examining Boards** **Part 3. Texas Board of Chiropractic Examiners**
Chapter 72. Fees, License Applications, and Renewals 22 TAC §72.19. Fees.	**Chapter 72. Fees, License Applications, and Renewals** 22 TAC §72.1. Fees.
Chapter 77. Advertising and Public Communications 22 TAC §77.3. Patient's Rights to Disclosure of Charges.	**Chapter 75. Business Practices** 22 TAC §75.4. Patient's Rights to Disclosure of Charges.

TRD-202002384

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Houston Carnivore
The Rio Grande
The Alamo
Republic of TEXAS

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

Office of the Attorney General

Title 1, Part 3

The Office of the Attorney General (OAG) has completed its rule review of 1 TAC Chapter 59, Collections. The proposed notice of intent to review rules was published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2897).

The OAG has assessed whether the reasons for adopting the rules continue to exist. The OAG received no comments regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rule in Chapter 59, §59.2 continue to exist, and this section is readopted in accordance with the requirements of Texas Government Code §2001.039. The OAG finds that the reasons for adopting the rule in §59.1, relating to Lawsuit Authorization for Local Taxing Authorities, no longer exist. Therefore, the OAG will subsequently be repealing §59.1 in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

TRD-202002418
Lesley French
General Counsel
Office of the Attorney General
Filed: June 16, 2020

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Texas Lottery Commission

Title 16, Part 9

The Texas Lottery Commission (Commission) has reviewed the Commission's rules at 16 TAC Chapter 401 (Administration of State Lottery Act) in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules), and hereby readopts the rules in Chapter 401. As a result of this review, and as discussed below, the Commission has determined that some of the rules in Chapter 401 need to be amended and one lottery game rule should be repealed, actions which will be proposed in separate rulemaking proceedings.

The Chapter 401 rules consist of seven (7) subchapters with a total of sixty-eight (68) rules. Subchapter A (Procurement) includes the following rules:

§401.101 - Lottery Procurement Procedures

§401.102 - Protests of the Terms of a Formal Competitive Solicitation

§401.103 - Protests of Contract Award

§401.104 - Contract Monitoring Roles and Responsibilities

§401.105 - Major Procurement Approval Authority, Responsibilities and Reporting

Because the Commission contracts for certain lottery-related goods and services, the Subchapter A procurement rules are necessary for the administration and operation of the lottery; thus, the reasons for these rules continue to exist. No substantive amendment or repeal of these rules is recommended at this time.

Subchapter B (Licensing of Sales Agents) includes the following rules:

§401.152 - Application for License

§401.153 - Qualifications for License

§401.155 - Expiration of License

§401.156 - Renewal of License

§401.157 - Provisional License

§401.158 - Suspension or Revocation of License

§401.159 - Summary Suspension of License

§401.160 - Standard Penalty Chart

The Commission licenses approximately 20,000 lottery ticket sales agents in Texas. The Subchapter B rules set forth the license application and renewal process, qualification requirements, license terms, and disciplinary process applicable to lottery ticket sales agents. These rules are necessary for the administration of the Commission's lottery licensing program; thus, the reasons for adopting them continue to exist. The Commission, however, has determined that amendments to §§401.158 and 401.160 are needed to make corrections to the text and to conform rule language to industry best practices.

Subchapter C (Practice and Procedure) includes the following rules:

§401.201 - Intent and Scope of Rules

§401.202 - Construction of Rules

§401.203 - Contested Cases

§401.205 - Initiation of a Hearing

§401.207 - Written Answer; Default Proceedings

§401.211 - Law Governing Contested Cases

§401.216 - Subpoenas, Depositions, and Orders to Allow Entry

§401.220 - Motion for Rehearing

§401.227 - Definitions

Subchapter C includes rules applicable to enforcement matters and other contested proceedings involving a lottery or bingo licensee or

applicant under the State Lottery Act or the Bingo Enabling Act, respectively. In addition, the Texas Administrative Procedure Act at §2001.004 requires state agencies to adopt such rules of practice. Thus, the reasons for adopting the Subchapter C rules continue to exist. No substantive amendment or repeal of these rules is recommended at this time.

Subchapter D (Lottery Game Rules) includes the following rules:

§401.301 - General Definitions

§401.302 - Scratch Ticket Game Rules

§401.303 - Grand Prize Drawing Rule

§401.304 - Draw Game Rules (General)

§401.305 - "Lotto Texas®" Draw Game Rule

§401.306 - Video Lottery Games

§401.307 - "Pick 3" Draw Game Rule

§401.308 - "Cash Five" Draw Game Rule

§401.309 - Assignability of Prizes

§401.310 - Payment of Prize Payments Upon Death of Prize Winner

§401.312 - "Texas Two Step" Draw Game Rule

§401.313 - Promotional Drawings

§401.314 - Retailer Bonus Programs

§401.315 - "Mega Millions" Draw Game Rule

§401.316 - "Daily 4" Draw Game Rule

§401.317 - "Powerball®" Draw Game Rule

§401.318 - Withholding of Delinquent Child-Support Payments from Lump-sum and Periodic Installment Payments of Lottery Winnings in Excess of Six Hundred Dollars

§401.319 - Withholding of Child-Support Payments from Periodic Installment Payments of Lottery Winnings

§401.320 - "All or Nothing" Draw Game Rule

§401.321 - Instant Game Tickets Containing Non-English Words

§401.322 - "Texas Triple Chance" Draw Game Rule

§401.324 - Prize Winner Election to Remain Anonymous

Subchapter D includes the Commission's lottery game rules. These rules provide information regarding how Texas Lottery scratch ticket and draw games are played, the prizes that can be won, the methods by which lottery tickets may be claimed and validated, as well as information relating to debt set-off for child-support payments, retailer bonus programs, payment of prize money to the estate of a deceased prize winner, and statements to be included in court orders involving assignments of prize payments. Because the Commission generates revenue for the state through the sale of lottery game tickets, the reasons for adopting each of these rules continue to exist, except for §401.322 ("Texas Triple Chance" Draw Game Rule), which should be repealed because this draw game is no longer offered.

The Commission has also determined that amendments to §§401.301, 401.302, 401.304, 401.305, 401.312, 401.315, and 401.321 are needed to make corrections to the text, including replacing the terms "instant ticket" with "scratch ticket," and to conform rule language to industry best practices. Amendments are needed to update the various game trademarks and definitions of "playboard." Clarifying amendments are also needed to move the various draw game "playslip" and "entry of play" provisions requirements from individual draw game rules (§§401.305, 401.307, 401.308, 401.312, 401.315, 401.316, 401.317, and 401.320) to the general definitions rule (§401.301) and the general draw game rule (§401.304). Similarly, clarifying amendments are needed to move the various provisions regarding authorized promotions and retail bonus/incentives (§§401.305, 401.307, 401.308, 401.312, 401.316, and 401.320) from individual draw game rules to the general draw game rule (§401.304). These clarifying amendments will simplify the rules and promote a more consistent application of these provisions among all the lottery draw games.

Subchapter E (Retailer Rules) includes the following rules:

§401.351 - Proceeds from Ticket Sales

§401.352 - Settlement Procedures

§401.353 - Retailer Settlements, Financial Obligations, and Commissions

§401.355 - Restricted Sales

§401.357 - Texas Lottery as Retailer

§401.360 - Payment of Prizes

§401.361 - Required Purchases of Lottery Tickets

§401.362 - Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property

§401.363 - Retailer Record

§401.364 - Training

§401.366 - Compliance with All Applicable Laws

§401.368 - Lottery Ticket Vending Machines

§401.370 - Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Stolen or Lost

§401.371 - Collection of Delinquent Obligations for Lottery Retailer Related Accounts

§401.372 - Display of License

As noted above, the Commission licenses approximately 20,000 lottery ticket sales agents. The Subchapter E rules set forth the operational requirements, duties, and obligations of sales agents, including their financial responsibility to the state of Texas. These rules are necessary for the administration and effective oversight of Texas Lottery ticket sales; thus, the reasons for adopting these rules continue to exist. The Commission has also determined that amendments to §§401.351, 401.353, 401.355, 401.363, 401.366, and 401.368 are needed to make corrections to the text and to conform rule language to industry best practices.

Subchapter F (ADA Requirements) includes the following rules:

§401.401 - Definitions

§401.402 - General Requirements

§401.403 - Readily Achievable Barrier Removal

§401.404 - Priority of ADA Compliance by Lottery Licensees

§401.405 - Alternatives to Barrier Removal

§401.406 - Future Alterations to a Lottery Licensed Facility

§401.407 - Complaints Relating to Non-accessibility

§401.408 - Requests for Hearings

The Subchapter F rules address the prohibition against discrimination imposed by the federal Americans with Disability Act (ADA), com-

pliance by licensed lottery ticket sales agents with ADA accessibility requirements, and the procedure for the Commission to receive and to address complaints regarding discrimination or accessibility under the ADA. Because the designated location of a Texas Lottery ticket sales agent license is subject to the ADA's requirements, the reasons for adopting each of these rules continue to exist. No substantive amendment or repeal of these rules is recommended at this time.

Subchapter G (Lottery Security) includes the following rule:

§401.501 - Lottery Security

The reasons for adopting §401.501, regarding the Commission's statutory mandate to ensure the security and integrity of the Texas Lottery, and to maintain a security plan and other security procedures, continue to exist. No substantive amendment or repeal of this rule is recommended at this time.

The Commission will propose amendments to the rules requiring amendments, and the repeal of §401.322, in separate rulemaking actions.

This review and readoption has been conducted in accordance with Texas Government Code Section 2001.039. The Commission received no comments on the proposed review, which was published in the October 25, 2019 issue of the *Texas Register* (44 TexReg 6378).

This action concludes the Commission's review of 16 TAC Chapter 401.

TRD-202002360
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 12, 2020

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The Texas Lottery Commission (Commission) has reviewed the Commission's rules at 16 TAC Chapter 402 (Charitable Bingo Operations Division) in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules), and hereby readopts the rules in Chapter 402. As a result of this review, and as discussed below, the Commission has determined that some of the rules in Chapter 402 need to be amended, actions which will be proposed in separate rulemaking proceedings. Further, the Commission notes that the Bingo Advisory Committee (BAC) met on March 4, 2020 to discuss this rule review and presented the staff with its recommendations, which are included in this adoption. The purpose of the BAC includes advising the Commission on the needs and problems of the state's bingo industry and to report their activities to the Commission. The Commission hereby takes the BAC's recommendations under advisement and will continue to work with the BAC on future rulemaking initiatives. The Commission also received written comments from the Department of Texas, Veterans of Foreign Wars (VFW).

The Chapter 402 rules consist of seven (7) subchapters with a total of seventy-one (71) rules. Subchapter A (Administration) consists of the following rules:

§402.100 - Definitions

§402.101 - Advisory Opinions

§402.102 - Bingo Advisory Committee

§402.103 - Training Program

§402.104 - Delinquent Obligations

Subchapter A consists of rules addressing the Commission's administration of charitable bingo and the process for handling delinquent obligations owed to the Commission. Section 402.100 remains necessary, and the reasons for initially adopting the rule continue to exist, because this rule defines key terms used throughout the Chapter 402 rules. Section 402.101 remains necessary, and the reasons for initially adopting the rule continue to exist, because this rule provides details regarding the process for requesting and issuing bingo advisory opinions, which is a duty imposed upon the Commission under Tex. Occ. Code §2001.059. Section 402.102 governs the operations of the BAC and the reasons for initially adopting the rule continue to exist. Section 402.103 remains necessary, and the reasons for initially adopting the rule continue to exist, because the rule implements Tex. Occ. Code §2001.107, which requires the Commission to establish by rule a training program for certain individuals associated with bingo conductors. Finally, §402.104 remains necessary, and the reasons for initially adopting the rule continue to exist, because this rule implements Texas Government Code §2107.002, which requires all state agencies to establish procedures by rule for collecting delinquent obligations. No substantive amendment or repeal of these rules is recommended at this time.

The BAC does not recommend any amendments to this Subchapter.

Subchapter B (Conduct of Bingo) consists of the following rules:

§402.200 - General Restrictions on the Conduct of Bingo

§402.201 - Prohibited Bingo Occasion

§402.202 - Transfer of Funds

§402.203 - Unit Accounting

§402.204 - Prohibited Price Fixing

§402.205 - Unit Agreements

§402.210 - House Rules

§402.211 - Other Games of Chance

§402.212 - Promotional Bingo

Subchapter B consists of rules governing the conduct and operation of charitable bingo, the creation and operation of bingo units, the transfer of funds into an organization's bingo account, the prohibition on price fixing for bingo equipment, and the restrictions on other games of chance conducted during a bingo occasion. These rules remain necessary, and the reasons for initially adopting the rules continue to exist, because they help ensure that charitable bingo in Texas is conducted fairly and in accordance with article III, section 47 of the Texas Constitution and the Bingo Enabling Act. No substantive amendment or repeal of these rules is recommended at this time.

The BAC recommends amendments to: (1) §402.200(h), to allow annual license holders to accept and award donated prizes; (2) §402.200(i)(4), to eliminate the requirement of maintaining records relating to the final game schedule; and (3) §402.203(h)(4)(c), to eliminate the requirement of maintaining records relating to the operator on duty.

The VFW recommends amendments to: (1) §402.200(h), to allow annual license holders to accept and award donated prizes; (2) §402.200(i)(4), to eliminate the requirement of maintaining records relating to the final game schedule; and (3) §402.203(h)(4)(c), to eliminate the requirement of maintaining records relating to the operator on duty.

Subchapter C (Bingo Games and Equipment) consists of the following rules:

§402.300 - Pull-Tab Bingo

§402.301 - Bingo Card/Paper

§402.303 - Pull-tab or Instant Bingo Dispensers

§402.321 - Card-Minding Systems--Definitions

§402.322 - Card-Minding Systems--Site System Standards

§402.323 - Card-Minding Systems--Device Standards

§402.324 - Card-Minding Systems--Approval of Card-Minding Systems

§402.325 - Card-Minding Systems--Licensed Authorized Organizations Requirements

§402.326 - Card-Minding Systems--Distributor Requirements

§402.327 - Card-Minding Systems--Security Standards

§402.328 - Card-Minding Systems--Inspections and Restrictions

Subchapter C consists of rules governing bingo equipment, including pull-tab tickets, bingo cards and paper, ticket dispensers, and card-minding systems. The rules remain necessary, and the reasons for initially adopting the rules continue to exist, because they help ensure that charitable bingo games are conducted in accordance with, and bingo equipment is created in compliance with, the Bingo Enabling Act. No substantive amendment or repeal of these rules is recommended at this time.

The BAC recommends amendments to: (1) §402.300(b)(4), to eliminate the requirement of submission of paper pull-tab tickets prior to final approval; and (2) §402.301(a)(3) and (11), to provide clarification on the use of bonus numbers on bingo cards.

The VFW recommends amendments to: (1) §402.300(b)(4), to eliminate the requirement of submission of paper pull-tab tickets prior to final approval; and (2) §402.301(a)(3) and (11), to provide clarification on the use of bonus numbers on bingo cards.

Subchapter D (Licensing Requirements) consists of the following rules:

§402.400 - General Licensing Provisions

§402.401 - Temporary License

§402.402 - Registry of Bingo Workers

§402.403 - Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises

§402.404 - License Classes and Fees

§402.405 - Temporary Authorization

§402.406 - Bingo Chairperson

§402.407 - Unit Manager

§402.408 - Designation of Members

§402.409 - Amendment for Change of Premises or Occasions Due to Lease Termination or Abandonment

§402.410 - Amendment of a License - General Provisions

§402.411 - License Renewal

§402.412 - Signature Requirements

§402.413 - Military Service Members, Military Veterans, and Military Spouses

§402.420 - Qualifications and Requirements for Conductor's License

§402.422 - Amendment to a Regular License to Conduct Charitable Bingo

§402.424 - Amendment of a License Electronic Mail, Telephone or Facsimile

§402.442 - Amendment to a Commercial Lessor License

§402.443 - Transfer of a Grandfathered Lessor's Commercial Lessor License

§402.450 - Request for Waiver

§402.451 - Operating Capital

§402.452 - Net Proceeds

§402.453 - Request for Operating Capital Increase

The Commission currently licenses nearly fourteen-hundred (1400) charitable bingo conductors, commercial lessors, and manufacturers and distributors, and has approved over eleven thousand (11,000) individuals to be listed on the bingo worker registry in Texas. Subchapter D includes rules governing the application, renewal, and amendment process for Commission-issued licenses and listings on the bingo worker registry. These rules are necessary for the proper administration of the Commission's charitable bingo licensing and worker registry program. Therefore, the Commission believes that the reasons for initially adopting these rules continue to exist. Subchapter D also includes rules that implement Bingo Enabling Act provisions that govern the amount of operating capital a bingo conductor may maintain, the net proceeds a bingo conductor must produce, and the process by which licensees may request a waiver of these requirements. These rules are necessary to help ensure that bingo proceeds are directed to statutorily-authorized purposes. Therefore, the Commission believes that the reasons for initially adopting these rules continue to exist. However, the Commission intends to propose amendments to: (1) §402.400(e), to provide that an incomplete original application will be returned, rather than denied, 21 days after the Commission requests more information if the applicant fails to respond; (2) §402.401(b)(3) and §402.401(d)(3)(D), to remove the requirement that a conductor display verification from the Commission during a temporary bingo occasion; (3) §402.404, to reduce and eliminate license fees; and (4) §402.420, to correct the requirements for licensure of authorized organizations. No other substantive amendment or repeal of these rules is recommended at this time.

The BAC recommends amendments to: (1) §402.400(e), to provide for the return of incomplete original applications, and to require staff to provide the 21 day letter requesting more information to the conductor's bingo hall; (2) §402.400(l), to allow for a license to go on administrative hold at any time; (3) §402.401(b)(3) and §402.401(d)(3)(D), to allow for the use of temporary licenses without display of verification from the Commission; (4) §402.408, to allow designated members to access BOSS (the Commission's Bingo Operations System Service) in order to renew and print licenses; (5) §402.450(b)(3), to clarify that a credible business plan may, but is not required to, include the listed items; and (6) §402.451(b)(2), to clarify that operating capital limits should not include prize fees to be paid to local governments.

The VFW recommends amendments to: (1) §402.400(e), to require staff to provide the 21 day letter requesting more information to the conductor's bingo hall; (2) §402.400(l), to allow for a license to go on administrative hold at any time; (3) §402.401(b)(3) and §402.401(d)(3)(D), to allow for the use of temporary licenses without display of verification from the Commission; (4) §402.408, to allow designated members to access BOSS in order to renew and print licenses; (5) §402.450(b)(3), to clarify that a credible business plan may, but is not required to, include the listed items; and (6) §402.451(b)(2), to clarify that operating capital limits should not include prize fees to be paid to local governments.

Subchapter E (Books and Records) consists of the following rules:

§402.500 - General Records Requirements

§402.501 - Charitable Use of Net Proceeds

§402.502 - Charitable Use of Net Proceeds Recordkeeping

§402.503 - Bingo Gift Certificates

§402.504 - Debit Card Transactions

§402.505 - Permissible Expense

§402.506 - Disbursement Records Requirements

§402.511 - Required Inventory Records

§402.514 - Electronic Fund Transfers

Subchapter E consists of rules governing the record-keeping and reporting requirements related to the conduct of charitable bingo and the standards for determining the propriety of certain expenses. These rules remain necessary, and the reasons for initially adopting the rules continue to exist, because the rules help ensure that bingo proceeds are only used for statutorily-authorized purposes. No substantive amendments are recommended at this time.

The BAC recommends amendments to: (1) §402.502(c)(5) and (6), to clarify that the listed items are sufficient but not necessary; (2) §402.503, to allow for digital gift cards; and (3) §402.511, to provide a form for maintaining a perpetual inventory of bingo cards.

The VFW recommends amendments to: (1) §402.502(c)(5) and (6), to clarify that the listed items are sufficient but not necessary; (2) §402.503, to allow for digital gift cards; and (3) §402.511, to provide a form for maintaining a perpetual inventory of bingo cards.

Subchapter F (Payment of Taxes, Prize Fees and Bonds) consists of the following:

§402.600 - Bingo Reports and Payments

§402.601 - Interest on Delinquent Tax

§402.602 - Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest

§402.603 - Bond or Other Security

§402.604 - Delinquent Purchaser

Subchapter F consists of rules governing the payment of requisite fees, the submission of bonds or other security, and the delinquent payment of the costs for bingo equipment. Section 402.600 governs the payment of bingo-related fees and the filing of quarterly reports, which are required by statute and used by the Commission to track its licensees' bingo-related finances. This rule remains necessary, and the reasons for initially adopting the rule continue to exist, because the rule helps ensure that licensees are remitting fees in the proper amount and that bingo proceeds are only used for statutorily-authorized purposes. Furthermore, the Commission is required by Tex. Occ. Code §2001.504 to adopt rules governing the payment of fees. Section 402.601 governs the payment of interest on delinquent fees, refunds and credit, while §402.602 governs the Commission's settlement of penalties and fees due. These rules remain necessary, and the reasons for initially adopting the rules continue to exist, because they implement Texas Tax Code §§111.060 (Interest on Delinquent Tax), 111.064 (Interest on Refund or Credit), 111.101 (Settlement) and 111.103 (Settlement of Penalty and Interest Only), which are made applicable to the Commission through Tex. Occ. Code §§ 2001.508 and 2001.512. Section 402.603 governs the submission of a bond or other security by a licensee, which is required under Tex. Occ. Code §2001.514. The rule remains necessary, and the reasons for initially adopting the rule continue to exist, because the rule helps secure the payment of statutorily-authorized fees by licensees. Finally, §402.604 imposes requirements when a purchaser of bingo equipment is delinquent in its payment of the amount due for the equipment. The rule implements Tex. Occ. Code §2001.218, and it remains necessary to help ensure that transactions for bingo equipment comply with that statute. Therefore, the Commission believes that the reasons for initially adopting the rule continue to exist. However, the Commission intends to propose amendments to §402.601 and §402.602, to remove all references to rental taxes because they are no longer collected. No other substantive amendments are recommended at this time.

The BAC recommends amendments to §402.601 and §402.602 to remove all references to rental taxes because they are no longer collected.

The VFW recommends amendments to §402.601 and §402.602 to remove all references to rental taxes because they are no longer collected.

Subchapter G (Compliance and Enforcement) consists of the following rules:

§402.700 - Denials; Suspensions; Revocations; Hearings

§402.701 - Investigation of Applicants for Licenses

§402.702 - Disqualifying Convictions

§402.703 - Audit Policy

§402.705 - Inspection of Premises

§402.706 - Schedule of Sanctions

§402.707 - Expedited Administrative Penalty Guideline

§402.708 - Dispute Resolution

§402.709 - Corrective Action

Subchapter G includes rules governing the Commission's disciplinary, inspection, and audit processes. These rules are necessary, and the reasons for initially adopting the rules continue to exist, because they help ensure that licensees and other persons abide by all applicable statutes and rules. Subchapter G also includes rules governing the conduct of criminal background checks on applicants and criminal convictions which may disqualify a license or bingo worker registry applicant. These rules are necessary, and the reasons for initially adopting the rules continue to exist, because they help implement Tex. Occ. Code §2001.541, which requires the Commission to adopt rules regarding the use of criminal history record information in the licensing process. However, the Commission intends to propose amendments to (1) §402.700(b), to provide for a temporary suspension process and guidelines; (2) §402.702(c)(2), to correct a citation to the Texas Code of Criminal Procedure; and (3) §402.702(e), to add assault to the list of directly related offenses in accordance with the Commission's published criminal background guidelines. No other substantive amendments are recommended at this time.

The BAC recommends amendments to: (1) §402.700(b) to require the Commission to provide all the evidence it will rely on at a temporary suspension hearing to the licensee prior to the hearing; (2) §402.700(d), to provide that the Commission "may" treat certain deferred adjudications as convictions, rather than "generally will"; and (3) §402.703(d), to provide for audit entrance conferences via telephone and to require that an audit be completed within one year, rather than two.

The VFW recommends amendments to: (1) §402.700(b) to require the Commission to provide all the evidence it will rely on at a temporary suspension hearing to the licensee prior to the hearing; (2) §402.700(d), to provide that the Commission "may" treat certain deferred adjudications as convictions, rather than "generally will"; and (3) §402.703(d),

to provide for audit entrance conferences via telephone and to require that an audit be completed within one year, rather than two.

The Commission will propose amendments to the rules requiring amendments in separate rulemaking actions. The Commission will take the recommendations of the BAC and the VFW under advisement and will continue to work with the BAC on any future rulemaking actions.

This review and readoption has been conducted in accordance with Texas Government Code Section 2001.039. The proposed review was published in the October 25, 2019 issue of the *Texas Register* (44 TexReg 6379).

This action concludes the Commission's review of 16 TAC Chapter 402.

TRD-202002361
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 12, 2020

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The Texas Lottery Commission (Commission) has reviewed the Commission's rules at 16 TAC Chapter 403, titled General Administration, in accordance with the requirements of Tex. Gov't Code §2001.039 (Agency Review of Existing Rules), and hereby readopts the rules in Chapter 403. The Commission has determined that the reasons for adopting each of the rules in Chapter 403 continue to exist, as discussed below. As a result of this review, and as discussed below, the Commission has determined that some of the rules in Chapter 403 need to be amended, actions which will be proposed in separate rulemaking proceedings.

Section 403.101 (Open Records) sets forth agency procedures under which public information may be inspected and copied, as authorized by Tex. Gov't Code §552.230, relating to Rules of Procedure for Inspection and Copying of Public Information (from the Texas Public Information Act). This rule also explains the implementation of Texas Government Code §552.275 (Requests that Require Large Amounts of Employee or Personnel Time) by establishing a reasonable limit of 36 hours per fiscal year as the maximum amount of time Commission personnel are required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without the Commission recovering costs attributable to that personnel time. This rule will require minor, non-substantive changes to change terminology from "open records" to "public information".

Section 403.102 (Items Mailed to the Commission) is necessary to establish a standard approach to determine when items are mailed to the Commission, consistent with the requirements of Tex. Gov't Code §2001.004(1), relating to state agency Rules of Practice. No amendments to this rule are necessary at this time.

Section 403.110 (Petition for Adoption of Rule Changes) is necessary to comply with the requirement set forth in Tex. Gov't Code §2001.021(b) for a state agency to adopt rules prescribing the form for a Petition for Adoption of Rules. This rule will require amendments to add language regarding the residency requirement for the petitioner as amended by the 84th Legislature, R.S., Ch. 343 (H.B. 763), Sec. 1, effective June 9, 2015.

Section 403.115 (Negotiated Rulemaking and Alternative Dispute Resolution) sets forth agency procedures and policy to comply with the requirements of Tex. Gov't Code §467.109, relating to Negotiated Rulemaking and Alternative Dispute Resolution Policy. No amendments to this rule are necessary at this time.

Sections 403.201 (Definitions), 403.202 (Prerequisites to Suit), 403.203 (Sovereign Immunity), 403.204 (Notice of Claim of Breach of Contract), 403.205 (Agency Counterclaim), 403.206 (Request for Voluntary Disclosure of Additional Information), 403.207 (Duty to Negotiate), 403.208 (Timetable), 403.209 (Conduct of Negotiation), 403.210 (Settlement Approval Procedures), 403.211 (Settlement Agreement), 403.212 (Costs of Negotiation), 403.213 (Request for Contested Case Hearing), 403.214 (Mediation Timetable), 403.215 (Conduct of Mediation), 403.216 (Qualifications and Immunity of the Mediator), 403.217 (Confidentiality of Mediation and Final Settlement Agreement), 403.218 (Costs of Mediation), 403.219 (Settlement Approval Procedures), 403.220 (Initial Settlement Agreement), 403.221 (Final Settlement Agreement), 403.222 (Referral to the State Office of Administrative Hearings), and 403.223 (Use of Assisted Negotiation Processes) are necessary to comply with the requirement that a state agency develop rules to govern the negotiation and mediation of claims, set forth in Tex. Gov't Code §2260.052, relating to Negotiation. No amendments to these rules are necessary at this time.

Section 403.301 (Historically Underutilized Businesses) is necessary to comply with the requirement that a state agency adopt the Comptroller of Public Accounts' rules on Historically Underutilized Businesses, set forth in Government Code §2161.003, relating to Agency Rules. Minor, non-substantive amendments to this rule are needed to update a citation to the Texas Comptroller's administrative rules.

Section 403.401 (Use of Commission Motor Vehicles) is necessary to comply with the requirement that a state agency adopt rules relating to the assignment and use of agency vehicles, set forth in Government Code §2171.1045, relating to Restrictions on Assignment of Vehicles. No amendments to this rule are necessary at this time.

Section 403.501 (Custody and Use of Criminal History Record Information) is necessary to implement provisions governing the Commission's access to criminal history record information obtained from the Texas Department of Public Safety, set forth in Tex. Gov't Code §411.108, relating to Access to Criminal History Record Information: Texas Lottery Commission. No amendments to this rule are necessary at this time.

Section 403.600 (Complaint Review Process) sets forth agency procedures to comply with Tex. Gov't Code §467.111, which requires the Commission to maintain a system to promptly and efficiently act on each complaint filed with the Commission; and, specifically, the requirement in §467.111(d) that the agency adopt rules governing the entire complaint process from submission to disposition. Amendments to this rule are needed to address the availability of a dedicated voicemail system for the reporting and investigation of complaints without the requisite complaint information when the facts involve a significant risk to the public or to the integrity of lottery or bingo games.

Section 403.700 (Employee Tuition Reimbursement) sets forth necessary internal procedures under which the Commission provides financial assistance to employees who wish to improve or supplement their knowledge and skills by attending classes at accredited colleges, junior colleges, or universities while pursuing a degree plan. No amendments to this rule are necessary at this time.

Section 403.800 (Savings Incentive Program) implements Chapter 2108 of the Texas Government Code, which requires state agencies to provide notice to the Comptroller of savings realized from appropriated undedicated general revenue and to retain a portion of the amounts verified by the Comptroller. Amendments to this rule are needed to address the statement that the Commission has no appropriated undedicated general revenue. The Charitable Bingo Operations

Division currently is funded by general revenue. The Charitable Bingo program is supported by bingo prize fees and the Commission does not foresee retaining any general revenue savings.

The Commission intends to initiate separate rulemaking proceedings for the necessary Chapter 403 amendments noted herein. This review and readoption has been conducted in accordance with Tex. Gov't Code §2001.039. The Commission received no comments on the proposed review, which was published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6381).

This action concludes the Commission's review of 16 TAC Chapter 403.

TRD-202002362
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 12, 2020

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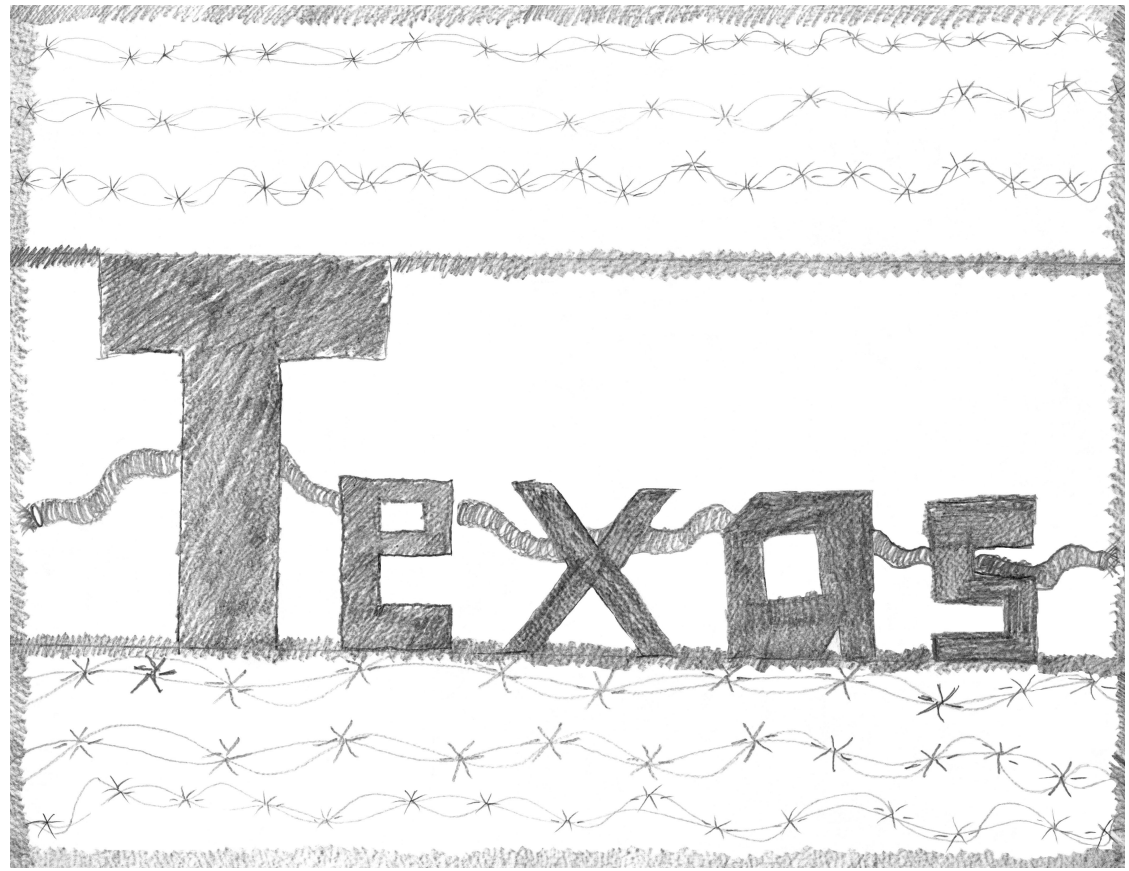

TEXAS

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §401.160(h)
[~~Figure: 16 TAC §401.160(g)(10)~~]

TEXAS LOTTERY COMMISSION RETAILER REGULATORY VIOLATIONS AND RELATED PENALTIES				
No.	DESCRIPTION OF VIOLATION	1st OCCURRENCE	2nd OCCURRENCE	3rd OCCURRENCE
1st Tier Violations				
1.	Licensee engages in telecommunication or printed advertising that the director determines to have been false, deceptive or misleading.	Warning Letter (Notification in writing to the licensee of the detected violation, including a warning that future violations will result in more severe administrative penalties including Suspension and/or revocation of the license.) [~~(Warning Letter)~~]	10-90 day Suspension	30-90 day Suspension to Revocation
2.	Licensee conditions redemption of a lottery prize upon the purchase of any other item or service.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
3.	Licensee imposes a restriction upon the redemption of a lottery prize not specifically authorized by the director.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
4.	Licensee fails to follow instructions and procedures for the conduct of any [~~particular~~] lottery game, lottery special event or promotion.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
5.	Licensee and/or its employee(s) exhibit discourteous treatment including, but not limited to, abusive language toward customers, commission employees or commission vendors.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
6.	Licensee fails to establish or maintain reasonable security precautions regarding [~~with regard to~~] the handling of lottery tickets and other materials.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation

	[~~Licensee endangers the security and/or integrity of the lottery games operated by the commission.~~	~~Warning Letter - Revocation~~	~~10-90 day Suspension to Revocation~~	~~30-90 day Suspension to Revocations~~]
7.	Licensee fails to deface a validated ticket.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
8.	Licensee sells a draw game ticket for a draw that has already taken place.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
9.	Licensee fails to follow validation procedures, including, but not limited to, paying a claim without validating the ticket, failing to pay a valid prize after validating a customer's winning ticket, or retaining a customer's winning ticket that has not been validated.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
10.	Licensee violates any directive or instruction issued by the director of Lottery Operations.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
11.	Licensee violates any express term or condition of its license not specifically set forth in this subchapter.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
	[~~Licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period.~~	~~Revocations~~	~~n/a~~	~~n/a~~]
12.	Licensee sells a scratch ticket from a game that has closed after the date designated for the end of the game.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
	[~~Licensee fails to pay a valid prize in the amount specified on the validation slip generated on the licensee's terminal or to pay the authorized amount.~~	~~Warning Letter~~	~~10-90 day Suspension~~	~~30-90 day Suspension to Revocation~~]
	[~~Licensee fails to pay a valid prize the licensee is required to pay.~~	~~Warning Letter~~	~~10-90 day Suspension~~	~~30-90 day Suspension to Revocation~~]
	[~~Licensee refuses or fails to sell lottery tickets during all normal business hours of the lottery retailer.~~	~~Warning Letter~~	~~10-90 day Suspension~~	~~30-90 day Suspension to Revocation~~]

13.	Licensee refuses to refund or properly cancel [~~and/or fails to properly cancel~~] a Pick 3 or Daily 4 ticket.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
14.	Licensee fails to return an exchange ticket to a prize claimant claiming a prize on a multi-draw ticket if an exchange ticket is produced by the licensee's terminal.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
15.	Licensee fails to keep accurate and complete records of all tickets that have not been sold from confirmed, active, and settled packs. [~~from confirmed, active, and settled packs that have not been sold.~~]	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
	[~~Licensee fails or refuses to meet minimum sales criteria.~~	~~Warning Letter~~	~~10-90 day Suspension~~	~~30-90 day Suspension to Revocation~~]
16.	Licensee fails to meet any requirement under §401.368, Lottery Ticket Vending Machines rule, if the licensee has been supplied with a self-service lottery ticket vending machine by the commission.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
17.	Licensee fails to take readily achievable measures within the allowed time period to comply with the barrier removal requirements regarding the ADA.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
18.	Licensee fails to prominently post license.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
19.	Licensee sells tickets that were assigned to another licensed location.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
20.	Licensee knowingly sells a ticket or pays a lottery prize to another person who is: (A) an officer or an employee of the commission; (B) an officer, member, or employee of a lottery operator; (C) an officer, member, or employee of a contractor or subcontractor that is excluded by the terms of its contract from playing lottery games; (D) the spouse, child, brother, sister, or parent of a person described by (A), (B), or (C) above	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation

	who resides within the same household as that person.			
2nd Tier Violations				
21	Licensee endangers the security and/or integrity of the lottery games operated by the commission.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
22.	Licensee intentionally or knowingly sells a ticket at a price the licensee knows is greater than the price set by the executive director.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
23.	Licensee charges a fee for lottery ticket purchases using a debit card and/or requires a minimum dollar amount for debit card purchases of only lottery tickets.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
24.	Licensee sells tickets at a location [~~issued to a licensed location at another location~~] that is not licensed.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
25.	Licensee intentionally or knowingly sells a ticket by extending credit or lends money to enable a person to buy a ticket.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
26.	Licensee intentionally or knowingly sells a ticket to a person that the licensee knows is younger than 18 years.	10-90 day Suspension to Revocation	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation
27.	Licensee intentionally or knowingly sells a ticket and accepts anything for payment not specifically allowed under the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
28.	Licensee sells tickets over the telephone or, via mail order sales, establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the licensee intentionally or knowingly: (A) uses any part of the funds solicited or accepted for a purpose other than purchasing tickets on behalf of the group or pool; or (B) retains a share of any prize awarded as compensation for establishing or	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation

	promoting the group purchase or pooling arrangement.			
29.	Licensee intentionally or knowingly alters or forges a ticket.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
30.	Licensee intentionally or knowingly influences or attempts to influence the selection of a [~~the~~] winner of a lottery game.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
31.	Licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
32.	Licensee intentionally or knowingly tampers with, damages, defaces, or renders inoperable any vending machine, electronic computer terminal, or other mechanical device used in a lottery game, or fails to exercise due care in the treatment of commission property.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
33.	Licensee: (A) induces another person to assign or transfer a right to claim a prize;[,] (B) initiates or accepts an offer to sell the right to claim a prize;[,] (C) initiates or accepts an offer of compensation from another person to claim a lottery prize;[,] or (D) purchases, for anything of value, a lottery ticket from a person who is not a licensed lottery retailer.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
34.	Licensee intentionally or knowingly makes a statement or entry that the person knows to be false or misleading on a required report.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
35.	Licensee fails to maintain or make an entry the licensee knows is required to be maintained or made for a required report.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
36.	Licensee knowingly refuses to permit the director of the Lottery Operations Division, the executive director,	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation

	commission, the lottery operator, the employees or agents of the lottery operator, or the state auditor to examine the agent's books, records, papers or other objects, or refuses to answer any question authorized under the State Lottery Act.			
37.	Licensee intentionally or knowingly makes a material and false or incorrect, or deceptive statement, written or oral, to a person conducting an investigation under the State Lottery Act or a commission rule.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
38.	Licensee commits an offense of conspiracy as defined in the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
39.	Licensee sells or offers for sale any interest in a lottery of another state or state government or an Indian tribe or tribal government, including an interest in an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of the interest.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
3rd Tier Violations				
40.	Licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period.	Revocation	n/a	n/a
41.	Licensee fails to pay the full amount of money owed to the commission after a nonsufficient funds transfer or non-transfer of funds to the commission's account.	Revocation	n/a	n/a

Figure: 16 TAC §401.305(c)(4)
[~~Figure: 16 TAC §401.305(c)(8)~~]

Terminal Type	**Manual Entry**	**Playslip with No Payment Option Selected**
GT1200 (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity	Playslip Rejected with message "Playslip Rejected. Select Payment Option."
GT1200C (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity.	Playslip Rejected with message "Playslip Rejected. Select Payment Option."
Gemini (Self-service Lottery Ticket Vending Machine [~~Terminal~~])	CVO only – designated on draw game Quick Pick buttons.	Playslip Rejected with message "Playslip Rejected. Select Payment Option."
GT20 (Self-service Lottery Ticket Vending Machine)	CVO only – designated on draw game Quick Pick buttons.	N/A
Third-party POS systems	CVO only – Quick Pick selections through authorized third-party systems.	N/A

Figure: 16 TAC §401.305(g)(3)

Lotto Texas[®] Prizes	**Extra! Guaranteed Prize Amount**
Jackpot Prize or Match 6-of-6	Not applicable
Second Prize or Match 5-of-6	Second Prize Amount Plus $10,000
Third Prize or Match 4-of-6	Third Prize Amount Plus $100
Fourth Prize or Match 3-of-6	Fourth Prize Amount Plus $10
Match 2-of-6	$2

Figure: 16 TAC §401.315(f)(1)

Terminal Type	**Manual Entry**	**Playslip with No Payment Option Selected**
GT1200 (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity	Playslip Rejected with message "Playslip Rejected. Select Payment Option."
GT1200C (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity.	Playslip Rejected with message "Playslip Rejected. Select Payment Option."
Gemini (Self-service Lottery Ticket Vending Machine [~~Terminal~~])	CVO only – designated on draw [~~online~~] game Quick Pick buttons.	Playslip Rejected with message "Playslip Rejected. Select Payment Option."
GT20 (Self-service Lottery Ticket Vending Machine)	CVO only – designated on draw game Quick Pick buttons.	N/A
Third-party POS systems	CVO only – Quick Pick selections through authorized third-party POS systems.	N/A

Figure: 16 TAC §401.317(f)(1)

Terminal Type	**Manual Entry**	**Playslip with No Payment Option Selected**
GT1200 (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity	Playslip Rejected with message "Playslip Rejected. Select Payment Option."
GT1200C (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity.	Playslip Rejected with message "Playslip Rejected. Select Payment Option."
Gemini (Self-service Lottery Ticket Vending Machine [~~Terminal~~])	CVO only – designated on draw [~~on-line~~] game Quick Pick buttons.	Playslip Rejected with message "Playslip Rejected. Select Payment Option."
GT20 (Self-service Lottery Ticket Vending Machine)	CVO only – designated on draw game Quick Pick buttons.	N/A
Third-party POS systems	CVO only – Quick Pick selections through authorized third-party POS systems.	N/A

Figure: 43 TAC §215.153(c)(1)

DEALER TAG - ASSIGNED TO VEHICLE

Tag Number:	00001E7	Expiration Date:	APR 21, 2018

You may want to place this page in a tag record file and keep a copy in the vehicle.

Issue Date:	Apr 20, 2018		
VIN:	VEHICLESPECIFICTAG		
Year:	2018	Body Style:	4D
Make:	ACUR	Model:	QQQ
Major Color:	YELLOW	Minor Color:	

Issuing Dealer:	ABC DEALERSHIP
Dealer Number:	P51769

DO NOT ISSUE DEALER TAGS TO RETAIL BUYERS.

When this tag expires, you may request another tag.

DEALER TAG - ASSIGNED TO VEHICLE

Figure: 43 TAC §215.153(c)(2)

DEALER TAG - ASSIGNED TO AGENT

Tag Number: 00001E6 Expiration Date: APR 21, 2018

You may want to place this page in a tag record file
and have the agent keep a copy with them.

Issue Date: Apr 20, 2018

Issuing Dealer: ABC DEALERSHIP
Dealer Number: P51769
Agent Name: AGENT FIRST NAME AGENT LAST NAME

DO NOT ISSUE DEALER TAGS TO RETAIL BUYERS.

BE SURE TO VOID THIS TAG SHOULD THE AGENT
TERMINATE THEIR RELATIONSHIP WITH YOUR DEALERSHIP.
YOU WILL BE HELD RESPONSIBLE FOR THIS TAG.

DEALER TAG - ASSIGNED TO AGENT

Figure: 43 TAC §215.153(c)(3)

BUYER'S TAG RECEIPT - DEALER'S COPY

Tag Number:	00001B7	Date of Sale:	APR 20, 2018
		Expiration Date:	JUN 19, 2018

Give buyer's receipt to buyer. PLACE THIS DEALER'S COPY IN SALES FILE.
It is part of the sales records required to be kept and subject to inspection by TxDMV. Verify this information before distributing copies:

Issue Date:	Apr 20, 2018		
VIN:	BUYERTAGVEH1CLE1		
Year:	2018	Body Style:	4D
Make:	ACUR	Model:	QQQ
Major Color:	WHITE	Minor Color:	

Issuing Dealer:	ABC DEALERSHIP
Dealer Number:	P51769
Purchaser	
Name 1:	BUYER FIRST NAME
Address:	BUYER STREET 1 BUYER CITY, TX 00000

DEALER'S COPY

BUYER'S TAG RECEIPT - BUYER'S COPY

Tag Number:	00001B7	Date of Sale:	APR 20, 2018
		Expiration Date:	JUN 19, 2018
Issue Date:	Apr 20, 2018		
VIN:	BUYERTAGVEH1CLE1		
Year:	2018	Body Style:	4D
Make:	ACUR	Model:	QQQ
Major Color:	WHITE	Minor Color:	

Issuing Dealer:	ABC DEALERSHIP
Dealer Number:	P51769
Purchaser	
Name 1:	BUYER FIRST NAME
Address:	BUYER STREET 1 BUYER CITY, TX 00000

BUYER is required to keep this receipt in the vehicle until vehicle is registered and metal plates are placed on the vehicle.

BUYER'S COPY

Figure: 43 TAC §215.153(c)(4)

INTERNET DOWN - BUYER'S TAG RECEIPT - DEALER'S COPY

Tag Number: 00001B9 Date of Sale: _____

Expiration Date: _____

Give buyer's receipt to buyer. PLACE THIS DEALER'S COPY IN SALES FILE.
It is part of the sales records required to be kept and subject to inspection by TxDMV.
Verify this information before distributing copies:

Issue Date: _____

VIN: _____

Year: _____ Body Style: _____

Make: _____ Model: _____

Major Color: _____ Minor Color: _____

Issuing Dealer: ABC DEALERSHIP

Dealer Number: P51769

Purchaser

Name 1: _____

Name 2: _____

Address: _____

_____

_____, _____

_____

DEALER'S COPY

INTERNET DOWN - BUYER'S TAG RECEIPT - BUYER'S COPY

Tag Number: 00001B9

Date of Sale: _____

Expiration Date: _____

Issue Date: _____

VIN: _____

Year: _____ Body Style: _____

Make: _____ Model: _____

Major Color: _____ Minor Color: _____

Issuing Dealer: ABC DEALERSHIP

Dealer Number: P51769

Purchaser

Name 1: _____

Name 2: _____

Address: _____

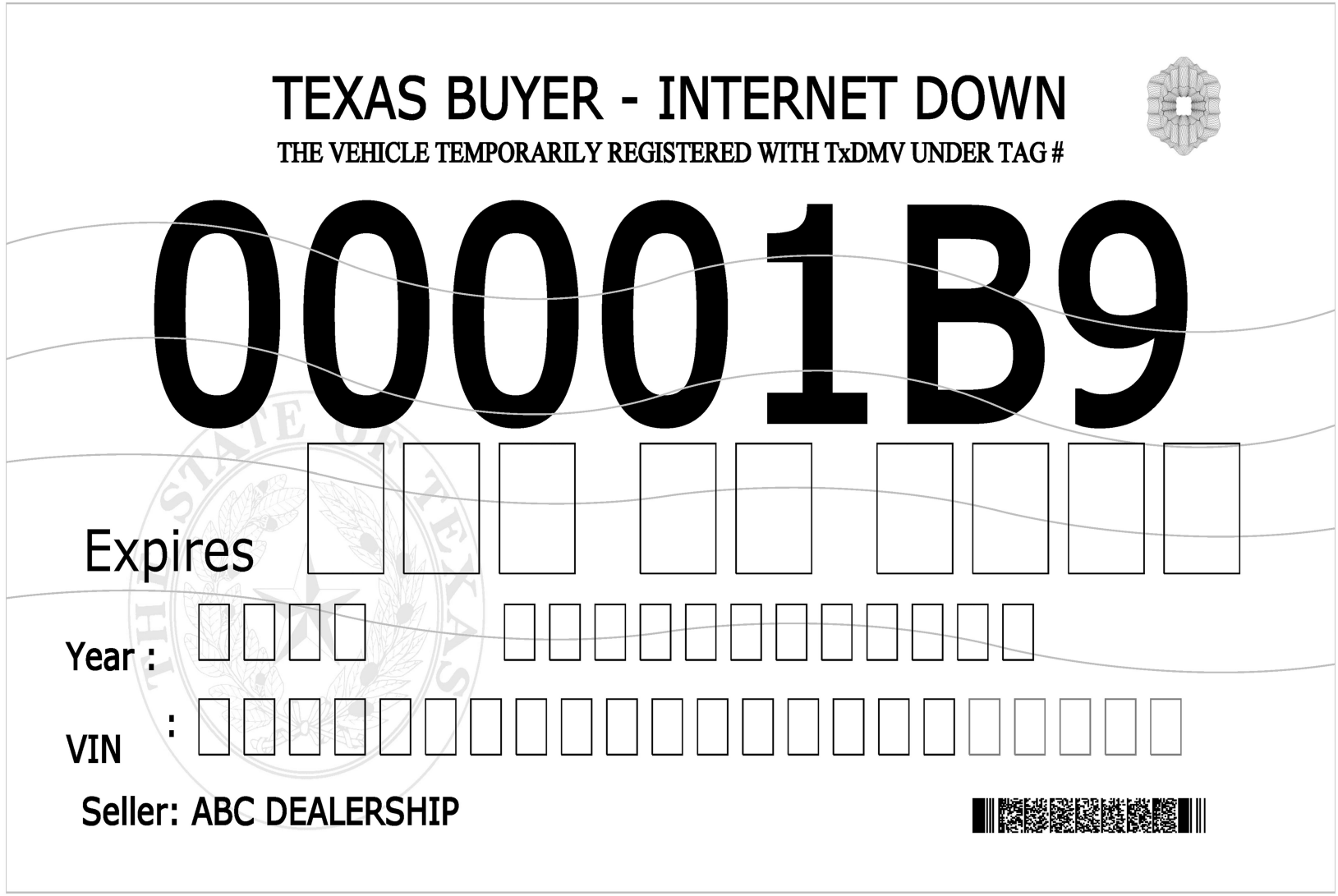
_____

_____, _____

_____

BUYER is required to keep this receipt in the vehicle until vehicle is registered and metal plates are placed on the vehicle.

BUYER'S COPY


TEXAS BUYER - INTERNET DOWN
THE VEHICLE TEMPORARILY REGISTERED WITH TxDMV UNDER TAG #
0001B9
Expires
Year :
VIN :
Seller: ABC DEALERSHIP

Make:

Figure: 43 TAC §215.153(c)(5)

CONVERTER TAG

Tag Number:	00001E8	Expiration Date:	APR 21, 2018

You may want to place this page in a tag record file and keep a copy in the vehicle.

Issue Date:	Apr 20, 2018		
VIN:	CONVERTERTAG		
Year:	2018	Body Style:	CM
Make:	ACUR	Model:	QQQ
Major Color:	SILVER	Minor Color:	

Issuing Converter:	FRAZER LTD
License Number:	0184

DO NOT ISSUE CONVERTER TAGS TO RETAIL BUYERS.

When this tag expires, you may request another tag.

CONVERTER TAG

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.

Capital Area Rural Transportation System

RFP - Relocation of the CARTS's Tucker Hill Lane Complex Hwy. 71 Entry in Cedar Creek, Texas

Capital Area Rural Transportation System (CARTS) invites qualified General Contractors to submit proposals for the Relocation of the CARTS's Tucker Hill Lane Complex Hwy. 71 Entry in Cedar Creek, Texas.

RFP and Construction Documents will be available on the CARTS Website beginning at 2:00 p.m., Tuesday, June 16th, 2020, Go to: http://ridecarts.weebly.com/procurement.html, select the THL Entry Relocation link and follow the instructions.

A non-mandatory pre-proposal meeting will be held Virtually at 11:00 a.m., June 23, 2020. Link to the event will be posted in the RFP.

The schedule is:

Tuesday, June 16 2:00 p.m. - RFP Documents available for download

Tuesday, June 23 11:00 a.m. - Virtual pre-proposal conference

Tuesday, June 30 2:00 p.m. - Deadline for proposal questions

Thursday, July 2 Responses to questions posted on website

Thursday, July 9 2:00 p.m. - Proposals due at CARTS

Proposals will be evaluated on cost, qualifications, experience, the quality and content of the submittal.

TRD-202002397
David L. Marsh
General Manager
Capital Area Rural Transportation System
Filed: June 15, 2020

♦ ♦ ♦

RFP - Renovations of the CARTS's Bastrop Station in Bastrop, Texas

Capital Area Rural Transportation System (CARTS) invites qualified General Contractors to submit proposals for the Renovations of the CARTS's Bastrop Station in Bastrop, Texas.

RFP and Construction Documents will be available on the CARTS Website beginning at 2:00 p.m., Tuesday, June 16th, 2020, Go to: http://ridecarts.weebly.com/procurement.html, select the **Bastrop Station** link and follow the instructions.

A non-mandatory pre-proposal meeting will be held Virtually at 1:00 p.m., June 23, 2020. Link to the event will be posted in the RFP.

The schedule is:

Tuesday, June 16 - 2:00 p.m. - RFP Documents available for download

Tuesday, June 23 - 1:00 p.m. - Virtual pre-proposal conference

Tuesday, June 30 - 2:00 p.m. - Deadline for proposal questions

Thursday, July 2 - Responses to questions posted on website

Thursday, July 9 - 2:00 p.m. - Proposals due at CARTS

Proposals will be evaluated on cost, qualifications, experience, the quality and content of the submittal.

TRD-202002396
David L. Marsh
General Manager
Capital Area Rural Transportation System
Filed: June 15, 2020

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/22/20 - 06/28/20 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/22/20 - 06/28/20 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202002404
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 16, 2020

♦ ♦ ♦

Credit Union Department

Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Rio Grande Valley Credit Union, Harlingen, Texas, to expand its field of membership. The proposal would permit persons who live, work, attend school or worship in, and businesses located within 10-miles of 117 E. Colorado Ave., Rio Hondo, Texas, to be eligible for membership in the credit union.

An application was received from Rio Grande Valley Credit Union, Harlingen, Texas, to expand its field of membership. The proposal would permit persons who live, work, attend school or worship in, and businesses located within 10-miles of the Rio Grande Valley Credit Union offices located at 1221 Morgan Blvd., Harlingen, Texas, to be eligible for membership in the credit union.

An application was received from Texans Credit Union, Richardson, Texas, to expand its field of membership. The proposal would permit persons who live, work, or attend school in Denton County, Texas, to be eligible for membership in the credit union.

An application was received from Texans Credit Union, Richardson, Texas, to expand its field of membership. The proposal would permit persons who live, work, or attend school in Tarrant County, Texas, to be eligible for membership in the credit union.

An application was received from Texans Credit Union, Richardson, Texas, to expand its field of membership. The proposal would permit persons who live, work, or attend school in Cooke County, Texas, to be eligible for membership in the credit union.

An application was received from Texans Credit Union, Richardson, Texas, to expand its field of membership. The proposal would permit persons who live, work, or attend school in Fannin County, Texas, to be eligible for membership in the credit union.

An application was received from Texans Credit Union, Richardson, Texas, to expand its field of membership. The proposal would permit persons who live, work, or attend school in Hunt County, Texas, to be eligible for membership in the credit union.

An application was received from Texans Credit Union, Richardson, Texas, to expand its field of membership. The proposal would permit persons who live, work, or attend school in Kaufman County, Texas, to be eligible for membership in the credit union.

An application was received from Texans Credit Union, Richardson, Texas, to expand its field of membership. The proposal would permit persons who live, work, or attend school in Ellis County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202002425
John J. Kolhoff
Commissioner
Credit Union Department
Filed: June 17, 2020

♦ ♦ ♦

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

Community Resource Credit Union, #1, Baytown, Texas - See *Texas Register* issue dated February 28, 2020.

Community Resource Credit Union, #2, Baytown, Texas - See *Texas Register* issue dated February 28, 2020.

Community Resource Credit Union, #3, Baytown, Texas - See *Texas Register* issue dated February 28, 2020.

Community Resource Credit Union, #4, Baytown, Texas - See *Texas Register* issue dated February 28, 2020.

TRD-202002424
John J. Kolhoff
Commissioner
Credit Union Department
Filed: June 17, 2020

♦ ♦ ♦

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 **July 27, 2020.** 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 commissions jurisdiction or the commissions orders and permits issued in accordance with the commissions 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 commissions 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 **July 27, 2020.** 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: City of Silverton; DOCKET NUMBER: 2020-0352-MSW-E; IDENTIFIER: RN110952652; LOCATION: Silverton, Briscoe County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.7(a) and §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: $1,125; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: Dwk Group Holdings, LLC; DOCKET NUMBER: 2020-0225-PWS-E; IDENTIFIER: RN102318961; LOCATION: Bandera, Bandera 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 disinfectant residual of at least 0.2 milligrams per liter free chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (ii)(III), 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)(1)(A), by failing to inspect the facility's ground storage tank annually; 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; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; PENALTY: $1,746; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2020-0290-AIR-E; IDENTIFIER: RN100542281; LOCATION: Channelview, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 24677, Special Conditions Number 1, Federal Operating Permit Number O1426, General Terms and Conditions and Special Terms and Conditions Number 38, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $6,150; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $2,460; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(4) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2020-0263-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§115.722(c)(1), 116.115(c), and 122.143(4), New Source Review Permit Number 19109, Special Conditions Number 1, Federal Operating Permit Number O1606, General Terms and Conditions and Special Terms and Conditions Numbers 1.A and 18, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions and failing to limit highly reactive volatile organic compounds emissions to 1,200 pounds or less per one-hour block period; PENALTY: $13,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,250; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Flint Hills Resources Houston Chemical, LLC; DOCKET NUMBER: 2019-1331-AIR-E; IDENTIFIER: RN102576063; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(1) and (3), 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §60.18(c)(1), New Source Review (NSR) Permit Numbers 18999, PSDTX755M1, and N216, Special Conditions (SC) Number 26.C, Federal Operating Permit (FOP) Number O1251, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A and 11, and Texas Health and Safety Code (THSC), §382.085(b), by failing to operate the flare with no visible emissions except for periods not to exceed a total of five minutes during any two consecutive hours; 30 TAC §§101.20(1) and (3), 116.115(c), and 122.143(4), 40 CFR §60.18(c)(3)(ii), NSR Permit Numbers 18999, PSDTX755M1, and N216, SC Number 26, FOP Number O1251, GTC and STC Numbers 1.A and 11, and THSC, §382.085(b), by failing to maintain the net heating value of the combustion zone for the flare; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), NSR Permit Numbers 18999, PSDTX755M1, and N216, SC Number 1, FOP Number O1251, GTC and STC Number 11, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rates; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 18999, PSDTX755M1, and N216, SC Number 16, FOP Number O1251, GTC and STC Number 11, and THSC, §382.085(b), by failing to comply with the emissions limit and concentration limits; 30 TAC §101.201(b)(2)(B) and §122.143(4), FOP Number O1251, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to identify all required information on the final record for a non-reportable emissions event; 30 TAC §115.725(h)(1) and THSC, §382.085(b), by failing to prevent the operation of a single flare in highly reactive volatile organic compound service for more than 336 hours in any 12 consecutive months; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1251, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $56,552; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: George West Independent School District; DOCKET NUMBER: 2020-0330-PST-E; IDENTIFIER: RN101766160; LOCATION: George West, Live Oak County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: INEOS Styrolution America LLC; DOCKET NUMBER: 2020-0312-AIR-E; IDENTIFIER: RN100542224; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(1), 111.111(a)(4)(A), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.18(c)(1), New Source Review Permit Number 5252, Special Conditions Numbers 1 and 8.C, Federal Operating Permit Number O1625, General Terms and Conditions and Special Terms and Conditions Numbers 1.A and 12, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions, and failing to operate a flare with no visible emissions, except for periods not to exceed a total of five minutes during any two consecutive hours; PENALTY: $5,437; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $2,175; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: MILLER WASTE MILLS, INCORPORATED; DOCKET NUMBER: 2020-0289-IWD-E; IDENTIFIER: RN102552619; LOCATION: Latexo, Houston County; TYPE OF FACILITY: plastic compounding plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0002207000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Number 201, by failing to comply with permitted effluent limitations; PENALTY: $6,300; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Mutual First, LLC; DOCKET NUMBER: 2020-0350-AIR-E; IDENTIFIER: RN104256136; LOCATION: Denton, Denton County; TYPE OF FACILITY: concrete crusher; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $963; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: OXEA Corporation; DOCKET NUMBER: 2020-0354-AIR-E; IDENTIFIER: RN105195655; LOCATION: Bay City, Matagorda County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 118403 and PSDTX1400, Special Conditions Number 10.F, Federal Operating Permit (FOP) Number O2943, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 25, and Texas

Health and Safety Code (THSC), §382.085(b), by failing to sample the cooling water at least once per week for total dissolved solids; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O2943, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; and 30 TAC §122.143(4) and §122.146(2), FOP Number O2943, GTC and STC Number 29, and THSC, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: $5,916; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $2,366; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Plum Creek Utility Company, LLC; DOCKET NUMBER: 2020-0335-MWD-E; IDENTIFIER: RN110065935; LOCATION: Uhland, Hays 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 WQ0015635001, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $3,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $1,250; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(12) COMPANY: Quadvest, L.P.; DOCKET NUMBER: 2019-1721-MWD-E; IDENTIFIER: RN109018424; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: wastewater treatment facility with an associated lift station; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015452001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Shelbyville Water Supply Corporation; DOCKET NUMBER: 2020-0324-MLM-E; IDENTIFIER: RN101452027; LOCATION: Shelbyville, Shelby County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(a), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; 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 with a well casing vent that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated, and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards and is readily accessible outside the facility's two chlorinator rooms and immediately available to the operator in the event of an emergency; 30 TAC §290.42(e)(4)(C), by failing to provide forced air ventilation, which includes both high level and floor level screened and louvered vents, a fan which is located at and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent; 30 TAC §290.42(f)(1)(E)(ii), by failing to provide adequate containment facilities for the facility's liquid chemical storage tanks; 30 TAC §290.42(j), by failing to ensure that all chemicals and any additional or replacement process media used in treatment of water supplied by public water systems conform to American National Standards Institute/National Sanitation Foundation Standard 61 for Drinking Water System Components; 30 TAC §290.46(e) and Texas Health and Safety Code, §341.033(a), by failing to use a water works operator who holds an applicable, valid license issued by the executive director (ED); 30 TAC §290.46(f)(2) and (3)(A)(i) and (ii)(II), (B)(iii), and (D)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 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; 30 TAC §290.46(p)(2), by failing to provide the ED with a list of all the operators and operating companies that the public water system uses on an annual basis; 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; and 30 TAC §290.121(a) and (b), by failing to maintain an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $7,155; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: SilverBow Resources Operating, LLC; DOCKET NUMBER: 2020-0342-AIR-E; IDENTIFIER: RN105901136; LOCATION: Tilden, McMullen County; TYPE OF FACILITY: a tank battery; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit (FOP) Number O3790/General Operating Permit (GOP) Number 514, Site-wide Requirements (b)(2), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a deviation report no later than 30 days after the end of the reporting period; and 30 TAC §122.143(4) and §122.146(2), FOP Number O3790/GOP Number 514, Site-wide Requirements (b)(3), and THSC, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(15) COMPANY: SOUTHERN HORIZONS DEVELOPMENT, INCORPORATED; DOCKET NUMBER: 2020-0210-PWS-E; IDENTIFIER: RN101226108; LOCATION: Splendora, Liberty County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(v) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide emergency power that will deliver water at a minimum rate of 0.35 gallons per minute (gpm) per connection in the event of the loss of normal power supply, for systems that do not meet the elevated storage requirement and serve 250 or more service connections; 30 TAC §290.45(b)(1)(D)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gpm per connection; 30 TAC §290.46(f)(2) and (3)(A)(iii), (D)(ii), and (E)(iv), by failing to properly maintain water works operation and maintenance records and make them available for review to the executive director upon request; 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 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can easily be located during emergencies; PENALTY: $922; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: STRATEGIC MATERIALS, INCORPORATED; DOCKET NUMBER: 2020-0319-MSW-E; IDENTIFIER: RN102563152; LOCATION: Midlothian, Ellis County; TYPE OF

FACILITY: glass recycling; RULE VIOLATED: 30 TAC §328.5(b), by failing to submit a Notice of Intent prior to the commencement of recycling activities; PENALTY: $1,325; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: T7 Enterprises LLC dba Reliable Tire Disposal; DOCKET NUMBER: 2019-1553-MLM-E; IDENTIFIER: RN100722362; LOCATION: Burnet, Burnet County; TYPE OF FACILITY: scrap tire facility; RULES VIOLATED: 30 TAC §§37.111, 37.121, 37.141, 328.60(b)(10)(D), and 328.71(b), (c), and (e), by failing to provide an accurate estimate of closure cost for financial assurance requirements; 30 TAC §281.25(a)(4), 40 Code of Federal Regulations §122.26, and Texas Pollutant Discharge Elimination System General Permit Number TXR05CU15, Part V, Sector N and General Requirements for the Multi-Sector General Permit (MSGP) parts I-IV, by failing to comply with the terms of MSGP stormwater permit associated with industrial facilities; 30 TAC §328.60(b)(10)(C), (C)(ii) and (iii), by failing to maintain copies of the fire plan and all revisions at the site and provide copies to all local fire departments and other emergency response teams; 30 TAC §328.61(b)(1), (c), and (d), by failing to limit the number of whole used or scrap tires on the ground to a maximum of three piles with a maximum size of 8,000 square feet; failing to maintain a minimum separation of 40 feet between outdoor piles of scrap tires or tire pieces and between buildings and tire piles; failing to maintain a minimum 25-foot turning radii, and failing to ensure that outdoor piles consisting of scrap tires or tire pieces and entire buildings used to store scrap tires or tire pieces are not within 40 feet of the property line or easements of the scrap tire storage site; 30 TAC §328.61(j), by failing to conspicuously display at the entrance a sign at least 1 1/2 feet by 2 1/2 feet in size with clear, legible letters stating the name of the scrap tire storage site using the words scrap tire site, the commission registration number, and operating hours; and 30 TAC §328.62(b), by failing to maintain complete daily logs; PENALTY: $115,963; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(18) COMPANY: Tarrant County Hospital District; DOCKET NUMBER: 2020-0292-PST-E; IDENTIFIER: RN106397623; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: hospital with an emergency generator; RULES VIOLATED: 30 TAC §334.8(c)(5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.50(b)(2)(A)(i) and TWC, §26.3475(a), by failing to equip each separate pressurized line with an automatic line leak detector; PENALTY: $6,375; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: THE PREMCOR REFINING GROUP INCORPORATED; DOCKET NUMBER: 2020-0107-IWD-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery with an associated wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0000309000, Phase I Effluent Limitations and Monitoring Requirements Number 1 and Other Requirements Number 6, by failing to comply with permitted effluent limitations; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: Undine Texas Environmental, LLC; DOCKET NUMBER: 2020-0110-MWD-E; IDENTIFIER: RN101702470; LOCATION: Angleton, Brazoria County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012113001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (5), §319.5(b) and TPDES Permit Number WQ0012113001, Effluent Limitations and Monitoring Requirements Numbers 3 and 6, by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: $4,814; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: WINDSOR WATER COMPANY; DOCKET NUMBER: 2020-0241-IHW-E; IDENTIFIER: RN101455640; LOCATION: Waco, McLennan County; TYPE OF FACILITY: retail public water supply; RULES VIOLATED: 30 TAC §325.2(b)(4)(A) and Texas Health and Safety Code, §505.006(e), by failing to submit an initial form and pay the appropriate filing fee within 90 days; PENALTY: $1,190; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Yara Freeport LLC; DOCKET NUMBER: 2019-1308-AIR-E; IDENTIFIER: RN100218049; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: ammonia production plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Numbers 118239 and N200, Special Conditions Number 1, Federal Operating Permit Number O3826, General Terms and Conditions and Special Terms and Conditions Number 6, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: $42,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $17,100; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: ZAFAR, INCORPORATED dba Bellaire Shell; DOCKET NUMBER: 2020-0042-PST-E; IDENTIFIER: RN100531870; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 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 USTs; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, including dispenser sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of any liquid or debris, and failing to remove and properly dispose of any liquid or debris from the spill containment equipment within 96 hours of its discovery; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $16,227; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202002401

Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 16, 2020

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Enforcement Orders

An agreed order was adopted regarding LAKEVIEW GROCERY, INC., Docket No. 2019-0604-PWS-E on June 16, 2020, assessing $455 in administrative penalties with $91 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BlazinSky ENVIRONMENTAL SERVICES, LLC dba BlazinSky Environmental Solutions, Docket No. 2019-0674-IHW-E on June 16, 2020, assessing $938 in administrative penalties with $187 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 Marsons HV Store, LLC dba BAR T TRAVEL CENTER, Docket No. 2019-0843-PST-E on June 16, 2020, assessing $6,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Christopher Mullins, 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 Waller Independent School District, Docket No. 2019-1208-PWS-E on June 16, 2020, assessing $200 in administrative penalties with $40 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 W & L Campbell, Inc, Docket No. 2019-1317-PST-E on June 16, 2020, assessing $2,000 in administrative penalties with $400 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 EAST MOUNT BUSINESS, LLC dba Roadwaze 2, Docket No. 2019-1318-PST-E on June 16, 2020, assessing $200 in administrative penalties with $40 deferred. Information concerning any aspect of this order may be obtained by contacting Herbert 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 Ladd Vien and Paul Shearin, Docket No. 2019-1348-MSW-E on June 16, 2020, assessing $938 in administrative penalties with $187 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, 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 Tridder Industrial LLC, Docket No. 2019-1414-PST-E on June 16, 2020, assessing $1,813 in administrative penalties with $362 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 SPADE WATER SUPPLY CORPORATION, Docket No. 2019-1475-PWS-E on June 16, 2020, assessing $127 in administrative penalties with $25 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, 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. 2019-1499-PWS-E on June 16, 2020, assessing $1,620 in administrative penalties with $324 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 Aqua Utilities, Inc., Docket No. 2019-1500-PWS-E on June 16, 2020, assessing $325 in administrative penalties with $65 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, 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 G. Kelly Brewer dba Evergreen Park Hickory Hills Water System, Docket No. 2019-1528-PWS-E on June 16, 2020, assessing $252 in administrative penalties with $50 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, 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 Town of Combes, Docket No. 2019-1638-PWS-E on June 16, 2020, assessing $50 in administrative penalties with $10 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 PREMIER APEX, LLC, Docket No. 2019-1656-PWS-E on June 16, 2020, assessing $210 in administrative penalties with $42 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.

A field citation was adopted regarding JEFFREY S MARTINDALE, Docket No. 2020-0031-OSS-E on June 16, 2020, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Stephanie Frederick, 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 WE Hereford, LLC, Docket No. 2020-0088-AIR-E on June 16, 2020, assessing $1,375 in administrative penalties with $275 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 Lindell Enterprises, Inc. dba Lindell Chevron & Automotive, Docket No. 2020-0126-PST-E on June 16, 2020, assessing $2,438 in administrative penalties with $487 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.

A field citation was adopted regarding DFW Creative Homes & Renovation, LLC, Docket No. 2020-0224-WQ-E on June 16, 2020, as-

sessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding FERNANDO RIVERA, Docket No. 2020-0378-WOC-E on June 16, 2020, assessing $175 in administrative penalties. Information concerning any aspect of this citation 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.

TRD-202002426
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 17, 2020

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 161180

APPLICATION. Cemex Construction Materials Houston, LLC, 16100 Dillard Drive, Jersey Village, Texas 77040-2077 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 161180 to authorize the operation of a concrete batch plant. The facility is proposed to be located at the following driving directions: at Farm-to-Market 521 and Fenn Road, go west on Fenn Road 0.30 mile, turn right into entrance of the Cemex Aggregates Terminal, go 0.85 mile north on access road to the Cemex concrete batch plant, Arcola, Fort Bend County, Texas 77583. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.497674&lng=-95.470003&zoom=13&type=r. This application was submitted to the TCEQ on April 30, 2020. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on May 22, 2020.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. 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.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Thursday, July 23, 2020, at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 941-351-691. Those without internet access may call (512) 239-1201 before the hearing begins for assistance in accessing the hearing and participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (631) 992-3221 and enter access code 832-791-708.

Additional information will be available on the agency calendar of events at the following link: https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Houston Regional Office, located at 5425 Polk St., Suite H, Houston, Texas 77023-1452, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Cemex Construction Materials Houston, LLC, 16100 Dillard Drive, Jersey Village, Texas 77040-2077, or by calling Mr. Daniel Escobar, Environmental Manager at (713) 332-4040.

Notice Issuance Date: June 1, 2020

TRD-202002420
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 17, 2020

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Notice of District Petition

Notice issued June 10, 2020

TCEQ Internal Control No. D-03162020-020; Binnacle Texas City Ninety LLC, a Texas Limited Liability Company, filed a petition for creation of Galveston County Municipal Utility District No. 79 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code;

30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land in the proposed District; (2) there is one lienholder on the land in the proposed District, The Lyman S. Reed Family Limited Partnership, a Texas limited partnership, and they have consented to the creation of the District; (3) the proposed District will contain approximately 89.756 acres located within Galveston County, Texas; and (4) the proposed District is entirely within the extraterritorial jurisdiction of the City of Texas City, Texas and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 19-102, passed and approved October 16, 2019, the City of Texas City gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the general nature of the work proposed to be done by the District, as contemplated at the present time, is (a) the purchase, design, construction, acquisition, maintenance, ownership, operation, repair, improvement, extension, financing, and issuance of bonds for: (i) a water works and sanitary sewer system for domestic and commercial purposes; (ii) works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District; (iii) park and recreational facilities; and (iv) such other additional facilities, systems, plants and enterprises are consistent with all of the purposes for which the District is created; and (b) the design, acquisition, construction, financing, and issuance of bonds for roads and improvements in aid of roads. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately $28,000,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at https://www.tceq.texas.gov.

TRD-202002419
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 17, 2020

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Notice of Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40309

Application. Mrl Property Holdings, Inc., has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40309, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, Lone Star Environmental Center, will be located at 142 Jenkins Road, Cedar Creek, Texas 78612 in Bastrop County. 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/0iz5rW. For exact location, refer to the application. The Applicant is requesting authorization to transfer municipal solid waste which includes wastes resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; construction or demolition waste; special waste that does not interfere with site operations; and other wastes such as Class 2 and Class 3 industrial waste.

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.

Public Comment/Public Meeting. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the registration application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the registration application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the registration application, members of the public may state their formal comments orally into the official record. All formal comments will be considered before a decision is reached on the registration application. The executive director is not required to file a response to comments.

The Public Meeting is to be held:

Monday, July 13, 2020, at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 660-441-995. Those without internet access may call (512) 239-1201 before the meeting begins for assistance in accessing the meeting and participating telephonically. Members of the

public may listen to the meeting by calling, toll free, (415) 655-0052 and entering Access Code 114-618-180.

Las personas que deseen escuchar o participar en la reunión en español pueden llamar al (844) 368-7161 e ingresar el código de acceso 904535#. Para obtener más información o asistencia, comuníquese con Jaime Fernández al (512) 239-2566.

Additional information will be available on the agency calendar of events at the following link: https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

Information. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the registration application or the registration process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

The registration application is available for viewing and copying at the Bastrop Public Library, 1100 Church Street, Bastrop, Texas 78602 and may be viewed online at https://www.scsengineers.com/state/lone-star-environmental-center/.

Further information may also be obtained from Mrl Property Holdings, Inc. by calling Brett O'Connor at (832) 840-8136.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issued Date: June 10, 2020

TRD-202002421
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 17, 2020

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Notice of Water Rights Application

Notices issued June 10, 2020

APPLICATION NO. 13622; Arthur K. McFadden, Applicant,1241 County Road 467, Carthage, Texas 75633, seeks a temporary water use permit to divert and use not to exceed 50 acre-feet of water within a period of three years from a point on a reservoir on an unnamed tributary of Little Creek, Sabine River Basin, for mining purposes in Panola County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on August 12, 2019. Additional information and fees were received on October 11, 2019. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on October 23, 2019. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and installation of a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by June 29, 2020.

APPLICATION NO. 13623; Arthur K. McFadden, Applicant,1241 County Road 467, Carthage, Texas 75633, seeks a temporary water use permit to divert and use not to exceed 70 acre-feet of water within a period of three years from a point on a reservoir on an unnamed tributary of Mill Creek, Sabine River Basin, for mining purposes in Panola County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on August 12, 2019. Additional information and fees were received on October 11, 2019. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on October 23, 2019. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and installation of a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by June 29, 2020.

APPLICATION NO. 13624; Arthur K. McFadden, Applicant,1241 County Road 467, Carthage, Texas 75633, seeks a temporary water use permit to divert and use not to exceed 80 acre-feet of water within a period of three years from a point on a reservoir on an unnamed tributary of Mill Creek, Sabine River Basin, for mining purposes in Panola County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on August 12, 2019. Additional information and fees were received on October 11, 2019. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on October 23, 2019. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and installation of a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by June 29, 2020.

APPLICATION NO. 13628; JMD Land Company, LLC, Applicant, P.O. Box 52191, Shreveport, Louisiana 71135, seeks a temporary water use permit to divert and use not to exceed 1,208.5 acre-feet of water within a period of three years from a point on Mill Creek, Sabine River Basin, for mining purposes in Panola County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on August 16, 2019. Additional information was received on October 15, 2019. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on October 28, 2019. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions

including, but not limited to, streamflow restrictions and installation of a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by June 29, 2020.

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results. A public meeting is intended for the taking of public comment, and is not a contested case hearing. The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns.

Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. 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.

TRD-202002422
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 17, 2020

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Notice of Water Rights Application

Notice issued June 10, 2020

APPLICATION NO. 13363; Oppenheimer Biotechnology, Inc (Applicant), P.O. Box 1490 Pflugerville, Texas 78691, seeks authorization to divert and use 0.006 acre-feet of water per year from a point on Lavaca Bay, Lavaca-Guadalupe Coastal Basin, at a maximum diversion rate of 0.1782 cfs (80 gpm), for industrial purposes in Calhoun County. Applicant also seeks an exempt interbasin transfer to the Colorado River Basin within Travis County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on February 27, 2017. Additional information and fees were received on May 19, 2017, and February 23, 2018. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on May 11, 2018. The Executive Director completed the technical review of the application and prepared a draft Water Use Permit. The draft Water Use Permit, if granted, would include special conditions including, but not limited to, maintaining a measuring device at the diversion point. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results. A public meeting is intended for the taking of public comment, and is not a contested case hearing. The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. 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.

TRD-202002423
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 17, 2020

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Personal Financial Statement due February 12, 2020

Bryan V. Acklin, 1234 Jackson Blvd., Houston, Texas 77006

Jeff Antonelli, 2528 Ball St., Galveston, Texas 77550

Carvana Cloud, P.O. Box 25113, Houston, Texas 77265

Randle C. Daniels, Attn: SD12 Campaign, 5021 Locke Ave., Fort Worth, Texas 76107

Angelica Garcia, P.O. Box 259, Katy, Texas 77492-0259

Erin Martinson, P.O. Box 4482, Austin, Texas 78765

Shawn D. Terry, 3130 N. Harwood #1001, Dallas, Texas 75201

Vanessa S. Tijerina, 352 E. Hidalgo Ave., Raymondville, Texas 78580

Audrey G. Young, 20135 N St., Highway 94, Lufkin, Texas 75904

Evan A. Bohl, 6206 Checkrein St., San Antonio, Texas 78240

Richard A. Bonton, 12680 W. Lake Houston Pkwy., Ste. 510 PMB 180, Houston, Texas 77044

Adrian Garcia, P.O. Box 10087, Houston, Texas 77018

Michelle D. Hammel, 6340 N. Eldridge Pkwy., Ste. N107, Houston, Texas 77041

Robert Stanley Litoff, 7026 Forest Crest N., San Antonio, Texas 78240

Kimberly R. McLeod, 4201 FM 1960, Ste. 503, Houston, Texas 77068

Jose Menendez, 7715 Windmill Hill, San Antonio, Texas 78229

Bill Metzger, P.O. Box 850224, Mesquite, Texas 75185

Melissa M. Morris, 7650 Springhill St., Unit 704, Houston, Texas 77021

Byron K. Ross, 3223 North Park Dr., Missouri, Texas 77459

Kory D Watkins, 6611 Etchstone Dr., Spring, Texas 77389

Likeithia Williams, P.O. Box 2019, Harker Heights, Texas 76548

Deadline: 30 Day Pre-Election Report due February 24, 2020 for Committees

Blaine T. Cooper, Baytown Fire Fighters Political Action Committee, 13541 Lake Breeze Ln., Texas 77318

TRD-202002358
Anne Temple Peters
Executive Director
Texas Ethics Commission
Filed: June 11, 2020

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Texas Facilities Commission

Request for Proposals (RFP) #303-1-20694

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC) and the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-1-20694. TFC seeks a five (5) or ten (10) year, lease of approximately 11,607 square feet of office space in Decatur, Texas.

The deadline for questions is July 7, 2020, and the deadline for proposals is July 21, 2020, at 3:00 p.m. The award date is August 20, 2020. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at Evelyn.Esquivel@tfc.state.tx.us. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://www.txsmartbuy.com/spdetails/view/303-1-20694.

TRD-202002365
AJ Salazar
General Counsel
Texas Facilities Commission
Filed: June 12, 2020

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 5, 2020, to June 12, 2020. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, June 19, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, July 19, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: Texas Department of Transportation-Houston District (TxDOT)

Location: The project route is located in waters of the US, including Galveston Bay, and adjacent wetlands, along Interstate Highway (IH) 45 from the from south of Farm-to-Market (FM) 519 to the Texas City Wye, approximately 2.65 miles in length, in Galveston County, Texas.

Latitude & Longitude (NAD 83): Begin: 29.355376, -94.97328; End: 29.343014, -94.951105

Project Description: The applicant proposes to temporarily discharge cubic yards of fill material into 0.742 acres of wetlands and to permanently discharge acres of fill material into 7.194 acres of wetlands, of which 1,391 linear feet of streams will be filled, during the roadway improvements associated with the reconstruction and widening of IH 45. The total discharge for all impacts is cumulatively 11,571 cubic yards of fill material.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2020-00247. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act Section 404 of the Clean Water Act. The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 20-1280-F1

Applicant: Sunoco Partners Marketing & Terminals LP

Location: The project site is located in and adjacent to the Neches River, approximately 7.5 miles southeast of Beaumont, within Jefferson County, Texas.

Latitude & Longitude (NAD 83): 30.010525, -94.000444

Project Description: The applicant proposes to modify an existing permit by temporarily filling 8.75 acres of palustrine emergent wetlands (PEM), 0.66 acre of palustrine scrub shrub wetlands (PSS), and 3.33 acres of palustrine forested wetlands (PFO). The applicant proposes to permanently fill 50.20 acres of PEM, 2.74 acres of PSS, 190.44 acres of PFO, 0.03 acre of streams, and 0.07 acres of open water. The applicant proposes to permanently convert 0.66 acres of PSS to PEM and 3.33 acres of PFO to PEM. The applicant proposes to dredge 14.88 acres (1,938 linear feet) of the Neches River. The applicant proposes to permanently impact 0.07 acres of stream by placing two 48-inch culverts and install slope revetments and rip rap within 0.14 acres of the Neches River.

The applicant proposes to construct a new dock, known as "Dock 7/8" which will require the dredging of 2.94 million cubic yards of material to a depth of -43 Mean Lower Low Water (MLLW) +/- 2 feet (-43.9 Mean High Water) in order to create a new marine berth large enough to support two Aframax-sized vessels, a 100- by 80-foot pile supported dock platform, 8 breasting dolphins with walkways, 6 inshore mooring dolphins, 2 offshore mooring dolphins, an offshore turning dolphin, a landside mooring dolphin, a vehicle approach way, 400 linear feet of sheet pile bulkhead, an access road, a dock house, a valve containment structure, a parking area, a firewater intake structure and meter, and various inshore foundations for ancillary equipment.

The applicant also proposes to raise the grade, by filling an adjacent 222-acre area to an elevation of +9 feet MLLW using excavated material. This 222-acre area will house new liquefied petroleum gas processing units, approximately 4 refrigerated liquidized petroleum gas storage tanks, 27 aboveground storage tanks, a new pump manifold, and a 36-inch crude oil transfer pipeline which will connect Dock 7/8 to the existing Nederland Terminal.

The applicant proposes to modify the existing Dock C to accommodate Aframax-sized vessels and meet Sabine Pilot's association safety standards. As a component of this dock modification, the applicant will remove 9 breasting dolphins, the Dock C platform, two firewater pump foundations and associated firewater equipment, firewater intake support piles, the approachway, the dock house, a section of bulkhead, and product piping. Following removal, the applicant proposes to dredge 330,000 cubic yards of material within a 6.3-acre area to a depth of -43 MLLW +/- 2 feet (-43.9 Mean High Water). This dredged material will be placed on-site or within Placement Areas 18, 21, 22, 23, 24, or 25. The applicant will then construct a 135- by 80-foot pile supported platform, a gangway tower, a hose tower with hydraulic crane, 4 product loading arms, 4 ship breasting dolphins with walkways, 5 inshore mooring dolphins, an inshore valve containment foundation, firewater intake structure and equipment, dock house, pipe rack, product piping, and install approximately 1,160 linear feet of sheet pile bulkhead.

The applicant also requests 10 years of maintenance dredging. The applicant requests authorization to place all maintenance dredged material on-site within the new development area or within Placement Areas 18, 21, 22, 23, 24, and 25.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2007-01401. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act Section 404 of the Clean Water Act. The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 20-1281-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202002429
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: June 17, 2020

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Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The amendment is proposed to be effective July 1, 2020.

The purpose of this amendment is to implement a reimbursement methodology for when a new national procedure code is assigned for HealthCare Common Procedure Coding System Updates and when federally-mandated reimbursement rates, physician-administered drugs (PADs), or biological products are released. This will allow HHSC to set preliminary rates for new codes prior to a rate hearing.

As this proposal represents a change in methodology rather than rates, there is no estimated fiscal impact.

Copy of Proposed Amendment. Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Cynthia Henderson, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, TX 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be available for review at the local county offices of HHSC, which were formerly the local offices of the Texas Department of Aging and Disability Services.

Written Comments. Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Rate Analysis, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Rate Analysis, Mail Code H-400

Brown-Heatly Building

4900 North Lamar Blvd

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Rate Analysis at (512) 730-7475

Email

RADAcuteCare@hhsc.state.tx.us

TRD-202002428
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 17, 2020

♦ ♦ ♦

Department of State Health Services

Correction of Error

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the Texas Asbestos Health Protection Rules Penalty Matrix is not included in the print version of the Texas Register. The figure is available in the on-line version of the June 26, 2020, issue of the Texas Register.)

The Department of State Health services published a Texas Asbestos Health Protection Rules Penalty Matrix in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2588). Due to a software error, the matrix was published incorrectly. Some of the "X's" were missing from the violation columns and other "X's" were misplaced.

The correct Asbestos Penalty Matrix Graphic is published as follows:

Texas Asbestos Health Protection Rules Penalty Matrix

TRD-202002400
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: June 16, 2020

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for Texas Home Insurance Company, a domestic fire and/or casualty company. The home office is in San Antonio, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202002427
James Persons
General Counsel
Texas Department of Insurance
Filed: June 17, 2020

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Texas Parks and Wildlife Department

Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

ONEOK Permian NGL Operating Company, LLC has applied to the Texas Parks and Wildlife Department (TPWD) for a General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86 to remove or disturb up to 411 cubic yards of sedimentary material within the Trinity River in Freestone and Anderson counties. The purpose is to stabilize exposed sections of two pipelines. The location is approximately 0.9 miles upstream of the US Highway 79/84 crossing and 59.2 river miles downstream from the US Highway 287 crossing. Notice is being published pursuant to 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on July 17, 2020, at TPWD headquarters, 4200 Smith School Road, Austin, Texas 78744. Due to COVID-19 transmission concerns with travelling and person-to-person gatherings, remote participation is required for the public comment hearing. Potential attendees should contact Tom Heger at (512) 389-4583 or at tom.heger@tpwd.texas.gov for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may also be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register* or a newspaper, whichever is later. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; fax (512) 389-4405; or e-mail tom.heger@tpwd.texas.gov.

TRD-202002399
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Filed: June 16, 2020

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Public Utility Commission of Texas

Notice of ERCOT's Filing for Expedited Approval of Bylaws Amendment

Notice is hereby given to the public of the June 10, 2020, filing with the Public Utility Commission of Texas of a petition of the Electric Reliability Council of Texas, Inc. seeking expedited approval of an amendment to the Bylaws.

Docket Style and Number: Petition of the Electric Reliability Council of Texas, Inc. for Expedited Approval of Bylaws amendment, Docket Number 50918.

The Application: Electric Reliability Council of Texas, Inc., under 16 Texas Administrative Code §25.362, respectfully requests expedited Commission approval of an amendment to the *Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc.,* conditioned upon approval by the ERCOT Corporate Members. The proposed Bylaws amendment was approved by ERCOT's Board of Directors on June 9, 2020, and a vote of ERCOT's Corporate Members is currently pending.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 50918.

TRD-202002383

Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 2020

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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