# TEXAS REGISTER

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## *2021 Publication Schedule Inside*

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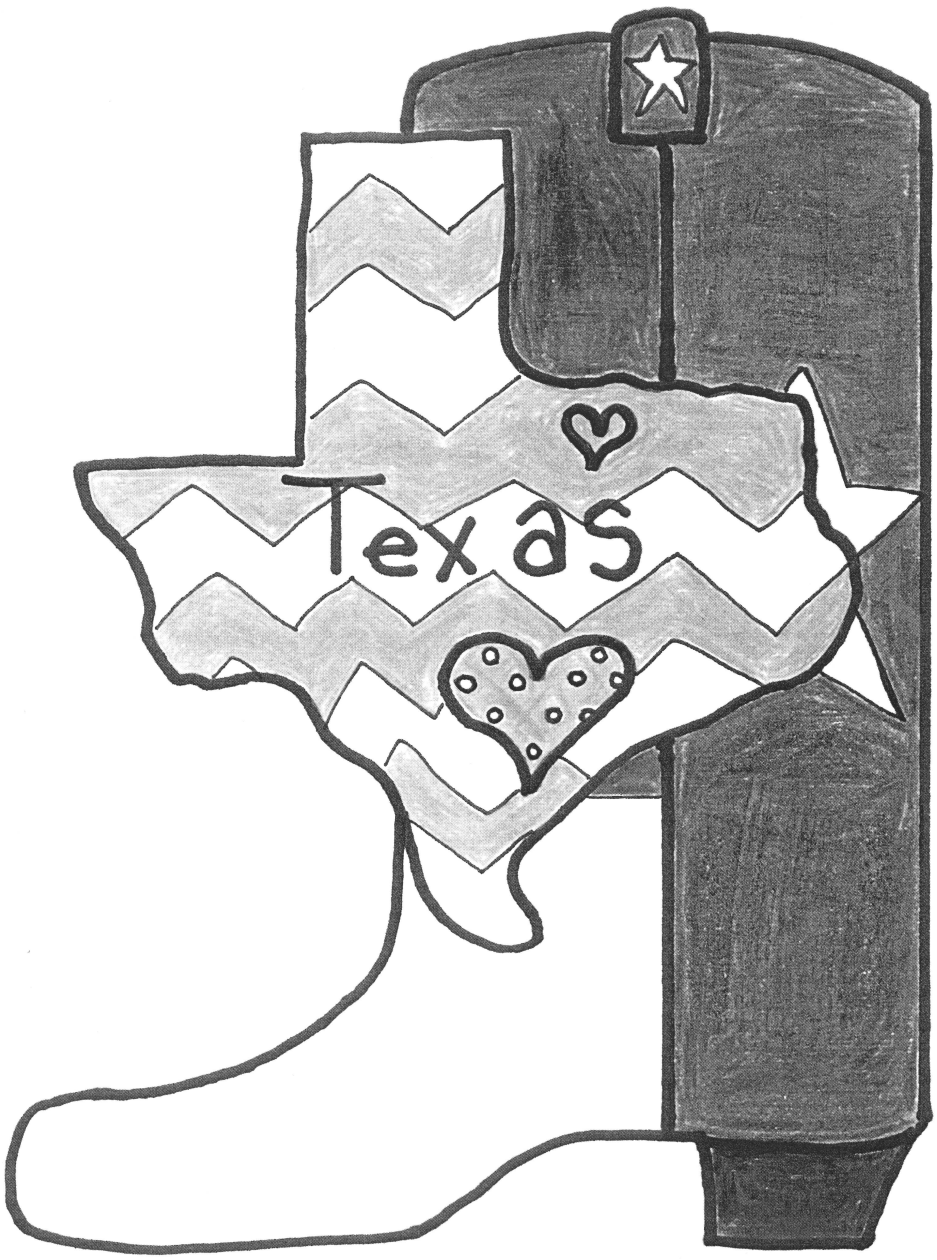

Texas

# 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.

## Appointments

**Appointments for June 18, 2020**

Appointed as Chief Administrative Law Judge, for a term to expire May 15, 2022, Kristofer S. "Kris" Monson of Driftwood, Texas (Mr. Monson is being reappointed).

Appointed as District Attorney of the 50th Judicial District, Baylor, Cottle, King and Knox Counties, for a term to expire December 31, 2020, or until his successor shall be duly elected and qualified, Jameson H. "Hunter" Brooks of Seymour, Texas (replacing Jennifer A. Habert of Seymour, who was appointed as Judge of the 50th Judicial District, Baylor, Cottle, King and Knox Counties).

**Appointments for June 22, 2020**

Appointed to the Board of Pilot Commissioners for Harris County Ports pursuant to SB 1915, 86th Legislature, Regular Session, for a term to expire September 1, 2020, Bruce D. Oakley of Houston, Texas.

Appointed to the Board of Pilot Commissioners for Harris County Ports pursuant to SB 1915, 86th Legislature, Regular Session, for a term to expire September 1, 2021, Randall W. "Randy" Wilson of Houston, Texas.

**Appointments for June 23, 2020**

Appointed to the Texas Veterans Commission, for a term to expire December 31, 2025, Mary Lopez Dale of Cedar Park, Texas (replacing Eliseo "Al" Cantu, Jr. of Corpus Christi, whose term expired).

Appointed to the Texas Veterans Commission, for a term to expire December 31, 2025, Mike P. Hernandez of Abilene, Texas (replacing Daniel P. "Dan" Moran of Cypress, whose term expired).

Designated as presiding officer of the Texas Veterans Commission, for a term to expire at the pleasure of the Governor, Laura G. Koerner of Fair Oaks Ranch (replacing Eliseo "Al" Cantu, Jr. of Corpus Christi).

Appointed to the Family and Protective Services Council, for a term to expire February 1, 2025, Cortney L. Jones of Austin, Texas (replacing Dorothy Jean Calhoun, Ed.D. of Missouri City, whose term expired).

Appointed to the Family and Protective Services Council, for a term to expire February 1, 2025, Enrique Mata of El Paso, Texas (replacing Janice M. Washington of Corpus Christi, whose term expired).

Greg Abbott, Governor

TRD-202002530

♦ ♦ ♦

## Executive Order GA-27

Relating to the need for increased hospital capacity during the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor 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 renewed 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 continues to represent 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-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, a shortage of hospital capacity would hinder efforts to cope with the COVID-19 disaster; and

WHEREAS, previous executive orders have enacted measures to avoid a shortage of hospital capacity; and

WHEREAS, elevated concerns exist concerning hospital capacity in certain parts of the state; and

WHEREAS, in coping with the COVID-19 disaster, government officials should look for the least restrictive means of combatting the threat to public health; and

WHEREAS, hospital capacity for COVID-19 patients can be overly diminished by surgeries and procedures that are not medically necessary to correct a serious medical condition or to preserve the life of a patient; and

WHEREAS, the "governor is responsible for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by a fine not to exceed $1,000, and may be subject to regulatory enforcement;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following effective at 11:59 p.m. on Friday, June 26, 2020:

Every hospital that is licensed under Chapter 241 of the Texas Health and Safety Code, and is also located in Bexar, Dallas, Harris, or Travis counties, shall postpone all surgeries and procedures that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician; provided, however, that this prohibition shall not apply to any surgery or pro-

cedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete any hospital capacity needed to cope with the COVID-19 disaster.

The governor may by proclamation add to or subtract from the list of counties covered by this prohibition.

This executive order does not supersede Executive Orders GA-10, GA-13, GA-17, GA-19, GA-24, GA-25, or GA-26. This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.

Given under my hand this the 25th day of June, 2020.

Greg Abbott, Governor

TRD-202002532

♦ ♦ ♦

Proclamation 41-3742

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

WHEREAS, I, Greg Abbott, Governor 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 renewed the disaster declaration for all counties in Texas; and

WHEREAS, the Commissioner of the Texas Department of State Health Services (DSHS), 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, proclamations, and suspensions of Texas laws in response to the COVID-19 disaster, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, on March 20, 2020, I issued a proclamation postponing the runoff primary election date from May 26, 2020, to July 14, 2020; and

WHEREAS, on May 11, 2020, I issued a proclamation requiring early voting for any election ordered or authorized to occur on July 14, 2020, to begin on June 29, 2020; and

WHEREAS, I also issued a proclamation suspending Sections 41.0052(a) and (b) of the Texas Election Code and Section 49.103 of the Texas Water Code to the extent necessary to allow political subdivisions that would otherwise hold elections on May 2, 2020, to move their general and special elections for 2020 only to the next uniform election date, occurring on November 3, 2020; and

WHEREAS, Section 41.007(d) of the Texas Election Code provides that no other election may be held on the date of a primary election; and

WHEREAS, Section 41.008 of the Texas Election Code provides that an election held on a date not permitted is void; and

WHEREAS, Section 85.001(a) of the Texas Election Code provides that the period for early voting by personal appearance begins on the 17th day before election day and continues through the fourth day before election day; and

WHEREAS, Texas law provides that a political subdivision may, on the fourth anniversary of the date the local street maintenance program originally took effect, hold an election on the question of whether to reauthorize a local street maintenance program on the next uniform election date authorized by Section 41.001(a) of the Texas Election Code; and

WHEREAS, the City of Clear Lake Shores ordered a special election on the question of whether to reauthorize a local street maintenance program, and such election was scheduled for May 2, 2020; and

WHEREAS, Section 41.0011 of the Texas Election Code provides that a special election may be held as an emergency election before the appropriate uniform election date if a political subdivision asks the Governor for permission to do so and the Governor determines that an emergency exists; and

WHEREAS, the City of Clear Lake Shores desires to order a special election as an emergency election on the question of whether to reauthorize a local street maintenance program pursuant to Section 41.0011 of the Texas Election Code and has asked the Governor for permission to hold such election prior to November 3, 2020; and

WHEREAS, an emergency exists under Section 41.0011 of the Texas Election Code due to the circumstances presented by the COVID-19 disaster and because the City of Clear Lake Shores is not able to wait until November 3, 2020, to hold a special election on the question of whether to reauthorize a local street maintenance program; and

WHEREAS, pursuant to Section 418.016 of the Texas Government Code, the Governor has the express authority to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and laws of the State of Texas, do hereby suspend Sections 41.007(d) and 41.008 of the Texas Election Code to the extent necessary to allow the City of Clear Lake Shores to order its special election, to occur on July 14, 2020, as an emergency election on the question of whether to reauthorize a local street maintenance program pursuant to Section 41.001l(b) of the Texas Election Code. I further suspend Section 85.001(a) of the Texas Election Code to the extent necessary to allow early voting by personal appearance for the special election to begin not earlier than Monday, June 29, 2020, and to run concurrently with the early voting period for the runoff primary election. Finally, I suspend Section 3.005(a) of the Texas Election Code to the extent necessary to allow the City of Clear Lake Shores to order a special election on July 14, 2020, on the question of whether to reauthorize a local street maintenance program pursuant to Section 41.0011(b) of the Texas Election Code.

The authority ordering the election under Section 3.004 of the Texas Election Code is the authority authorized to make the decision to postpone its election in accordance with this proclamation.

Early voting by personal appearance shall begin on Monday, June 29, 2020, in accordance with Section 85.001(d) of the Texas Election Code so that it runs concurrently with the early voting period for the runoff primary election.

The Secretary of State shall take notice of this proclamation and shall mail a copy of this order immediately to the municipality and all appropriate writs will be issued and all proper proceedings will be followed to the end that said election may be held and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto 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 9th day of June, 2020.

Greg Abbott, Governor

TRD-202002437

♦ ♦ ♦

Proclamation 41-3743

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

WHEREAS, I, Greg Abbott, Governor 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 renewed the disaster declaration for all Texas counties; and

WHEREAS, I issued Executive Order GA-26 on June 3, 2020, relating to the expanded opening of Texas in response to the COVID-19 disaster;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby amend paragraph number 5 of Executive Order GA-26 to read as follows:

5. For any outdoor gathering estimated to be in excess of 100 people, other than those set forth above in paragraph numbers 1, 2, or 4, the county judge or mayor, as appropriate, in consultation with the local public health authority, may impose additional restrictions;

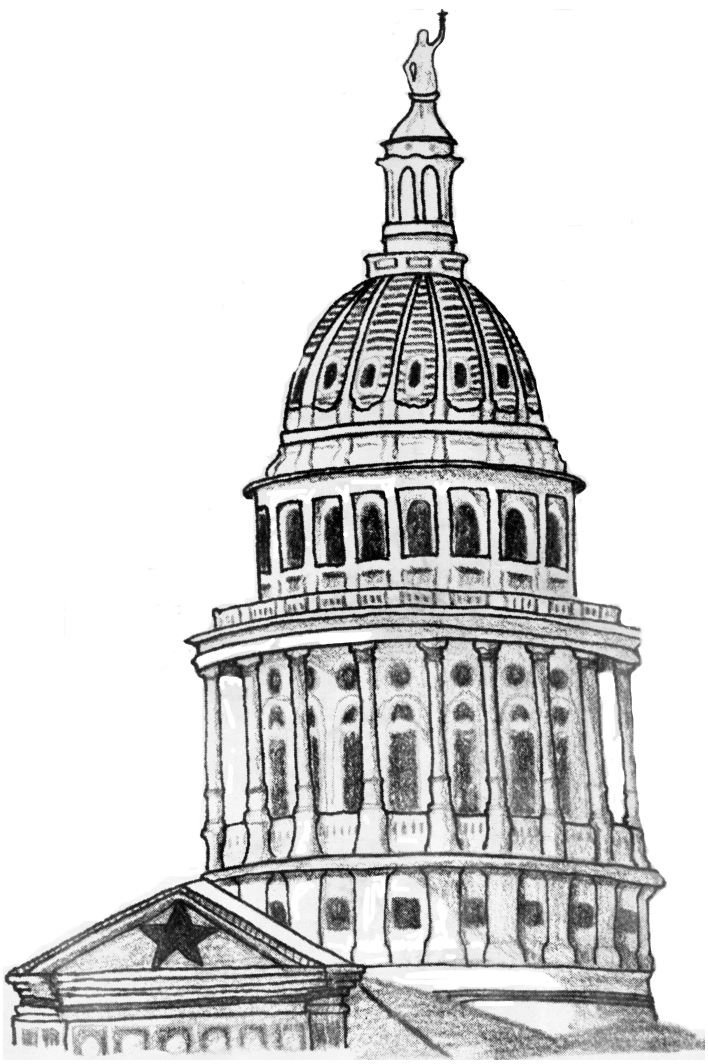
This proclamation shall remain in effect and in full force for as long as Executive Order GA-26 is in effect and in full force, unless otherwise modified, amended, rescinded, or superseded by the governor.

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 23rd day of June, 2020.

Greg Abbott, Governor

TRD-202002511

♦ ♦ ♦



# 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.)

## Requests for Opinions

**RQ-0356-KP**

**Requestor:**

The Honorable Vince Ryan

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: County authority to require facial coverings in courtrooms, courthouses, and county buildings (RQ-0356-KP)

**Briefs requested by July 22, 2020**

**RQ-0357-KP**

**Requestor:**

The Honorable James White

Chair, House Committee on Corrections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a peace officer has a duty to intervene in an attempt to prevent another peace officer from violating the rights of a citizen (RQ-0357-KP)

**Briefs requested by July 22, 2020**

**RQ-0358-KP**

**Requestor:**

Mr. Mark Wolfe

Executive Director

Texas Historical Commission

Post Office Box 12276

Austin, Texas 78711-2276

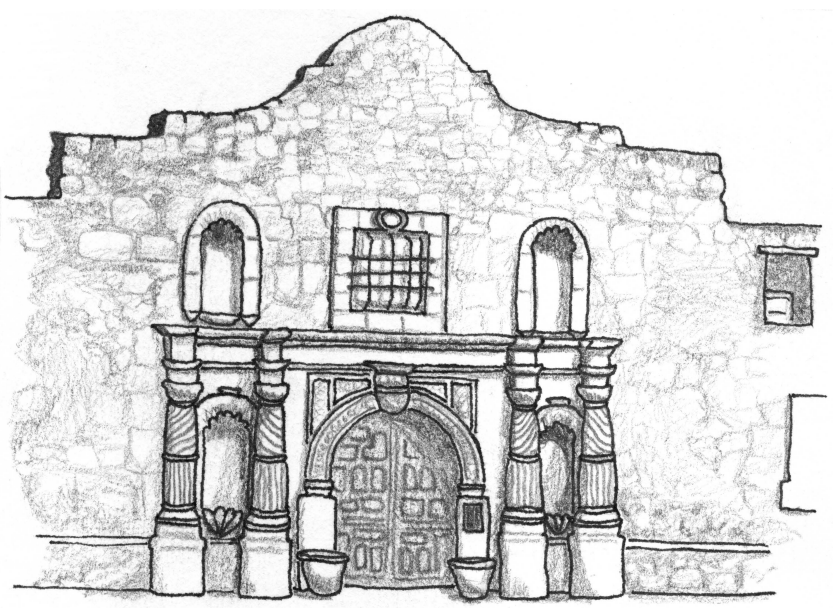
Re: Whether Blinn College may donate, convey, and transfer the Star of the Republic Museum to the Texas Historical Commission in light of section 442.062(b) of the Government Code (RQ-0358-KP)

**Briefs requested by July 22, 2020**

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

TRD-202002501
Lesley French
General Counsel
Office of the Attorney General
Filed: June 23, 2020

♦ ♦ ♦



# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Ethics Advisory Opinion

EAO-554: Whether a contribution from a federal political committee to a federal "Super PAC" is a political expenditure made "in connection with elections voted on in Texas." (AOR-632).

SUMMARY

In our opinion, a contribution from a federal political committee to a federal Super PAC is a political expenditure made in connection with elections voted on in Texas only if the federal political committee intends for the contribution to be used to support or oppose a candidate or measure in an election voted on in Texas. Conversely, a contribution to a Super PAC for a general or unspecified purpose is not a political expenditure made in connection with elections voted on in Texas.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on June 19, 2020.

TRD-202002486
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: June 22, 2020

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## Ethics Advisory Opinion

EAO-555: Whether a judge may use political contributions to pay for equipment and services in connection with producing an educational podcast for practicing lawyers. (AOR-633).

SUMMARY

A judge may use political contributions to pay ordinary and necessary expenses incurred in connection with producing an educational podcast for practicing lawyers.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on June 19, 2020.

TRD-202002487
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: June 22, 2020

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## Ethics Advisory Opinion

EAO-556: Whether a registered lobbyist can be "present"[1] at an event via videoconference technology. (AOR-635).

SUMMARY

No. To be "present" for purposes of Texas Government Code Sections 305.006(f) or 305.024(a), a registered lobbyist must share a physical location with the recipient of the expenditure.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on June 19, 2020.

[1] Tex. Gov't Code §§305.006(f), 305.024(a) (as amended by Chapters 92 (S.B. 1011) and 206 (H.B. 1508), Acts of the 79th Legislature, Regular Session, 2005).

TRD-202002488
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: June 22, 2020

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# EMERGENCY RULES

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 1. ADMINISTRATION

## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 355. REIMBURSEMENT RATES

### SUBCHAPTER B. ESTABLISHMENT AND ADJUSTMENT OF REIMBURSEMENT RATES FOR MEDICAID

**1 TAC §355.205**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 1 Texas Administrative Code, Chapter 355, Reimbursement Rates, new §355.205, concerning an emergency rule for emergency temporary reimbursement rate increases and limitations on use of emergency temporary funds for Medicaid in response to novel coronavirus (COVID-19). As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020 proclamation, and subsequent proclamations, certifying that COVID-19 poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses continue providing essential services. To that end, HHSC has identified certain provider types that provide critical and necessary care for Medicaid clients who may be at higher risk of severe illness from COVID-19 due to serious underlying medical conditions. Reimbursement rates should be immediately increased to ensure that these providers are able to purchase personal protective equipment, ensure adequate staff-to-client ratios, and take other necessary steps to serve clients individually rather than in congregate settings to protect the health and safety of the clients in their care. Accordingly, HHSC finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for emergency temporary reimbursement rate increases and limitations on use of emergency temporary funds for Medicaid in response to novel coronavirus (COVID-19).

To protect Medicaid clients, providers, and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to give HHSC the ability to establish emergency temporary reimbursement rate increases and limitations for certain Medicaid providers that serve vulnerable populations. HHSC may currently implement reimbursement rate modifications in accordance with §355.201(c)(3), which allows HHSC to establish fees, rates, and charges for medical assistance in accordance with various criteria, including "...economic conditions that, in HHSC's determination, substantially and materially affect provider participation." In addition to potential reimbursement rate modifications that HHSC may implement pursuant to §355.201(c)(3), HHSC is adopting this emergency rule to establish an emergency temporary reimbursement methodology to issue rate increases to providers in response to the COVID-19 pandemic. HHSC sought and received approval for this increase as required by House Bill 1 (Article II, Special Provisions for Health and Human Services Agencies, Special Provision 14), 86th Texas Legislature, Regular Session, 2019, and was directed to restrict use of funds by providers. HHSC is adopting this emergency rule to describe the process by which HHSC will restrict providers from using the increased reimbursement rates to increase hourly wages paid to direct care staff on an ongoing basis; use of the funds for staff compensation is limited to overtime payments, lump sum bonuses, bonuses for hazard pay, or other types of compensation that will not result in future reductions to hourly wages when the emergency temporary reimbursement rate increase is discontinued, in accordance with the contingencies placed upon use of the funds.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, Texas Government Code §531.033, Texas Human Resources Code §32.021, and Texas Government Code §531.021(a) and §531.021(b-1). Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Government Code §531.033 authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties. Texas Human Resources Code §32.021 and Texas Government Code §531.021(a) provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas. Finally, Texas Government Code §531.021(b-1) establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under the Texas Human Resources Code, Chapter 32.

The new section implements Texas Government Code §531.0055, Texas Government Code Chapter 531, and Texas Human Resources Code Chapter 32.

*§355.205. Emergency Rule for Emergency Temporary Reimbursement Rate Increases and Limitations on Use of Emergency Temporary Funds for Medicaid in Response to Novel Coronavirus (COVID-19).*

(a) Introduction. The Texas Health and Human Services Commission (HHSC) uses the methodology described in this section to establish emergency temporary reimbursement rate increases while limiting use of the funds received by the provider through the increases. This section also describes the circumstances in which recoupments will be necessary for certain provider types or services during the COVID-19 federal public health emergency period. Provider types and services that are eligible for increased reimbursement rates under this section include:

(1) all provider types and services for which a reimbursement rate methodology is described in this chapter; and

(2) any other provider or service that is established in response to COVID-19.

(b) Eligibility. To receive and retain emergency temporary reimbursement rate increases from HHSC under this section:

(1) the provider must be enrolled as a Medicaid provider with HHSC;

(2) the provider must be actively providing and billing for services provided to fee-for-service Medicaid clients;

(3) the provider must agree not to increase hourly wages paid to direct care staff on an ongoing basis, and to limit use of the funds to overtime payments, lump sum bonuses, bonuses for hazard pay, or other types of compensation that will not result in future reductions to hourly wages when the emergency temporary reimbursement rate increase is discontinued; and

(4) HHSC must receive approval from Centers for Medicare & Medicaid Services (CMS) for the provider type or specific service to be reimbursed through this section.

(c) Attestation of agreement. The provider must submit an electronic attestation of agreement to comply with subsection (b)(3) of this section either within 90 days of the effective date of the reimbursement rate increase, or by September 30, 2020, whichever date is later.

(d) Reconciliation process. HHSC uses the methodology in this subsection to recoup the temporary emergency payments made under this section if a provider fails to submit the attestation of agreement under subsection (c) of this section.

(1) HHSC will reduce reimbursement rates for any claim for services to the amount that would have been paid to the provider absent the emergency temporary reimbursement rate increase.

(2) The provider's claims will be reprocessed at the lower reimbursement rate under paragraph (1) of this subsection and an accounts receivable will be established.

(3) The provider will be paid on a normal per claim basis after the equivalent amount of the account receivable has been collected by HHSC, or its designee.

(4) After 270 days from the date of the establishment of the account receivable under paragraph (1) of this subsection, HHSC will recoup any overpayments owed under paragraph (1) of this subsection by demanding immediate repayment of any outstanding amount.

(e) Overpayment.

(1) If payments under this section result in an overpayment to a provider, HHSC, or its designee, may recoup an amount equivalent to the overpayment.

(2) Payments made under this section may be subject to any adjustments for payments made in error or due to fraud, including, without limitation, adjustments made under the Texas Administrative Code, the Code of Federal Regulations, and state and federal statutes. HHSC, or its designee, may recoup an amount equal to any such adjustments from the providers in question. This section may not be construed to limit the independent authority of another federal or state agency or organization to recover from the provider for a payment made due to fraud.

(f) Disallowance of federal funds. If payments under this section are disallowed by CMS, HHSC may recoup the amount of the disallowance from providers that participated in the program associated with the disallowance. If the recoupment from a provider for such a disallowance results in a subsequent disallowance, HHSC will recoup the amount of that subsequent disallowance from the same entity.

(g) Termination of emergency temporary rate increases. HHSC will terminate the emergency temporary rate increases at the earlier of either the termination of the federally declared public health emergency, including any extensions, or at the time that HHSC determines rate increases are no longer necessary pursuant to §355.201(c)(3). However, HHSC will continue to enforce the reconciliation and recoupment processes described in subsections (d), (e), and (f) of this section after the termination of the temporary emergency rate increases.

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 19, 2020.

TRD-202002450
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: June 19, 2020
Expiration date: October 16, 2020
For further information, please call: (512) 431-7028

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# TITLE 22. EXAMINING BOARDS

## PART 9. TEXAS MEDICAL BOARD

### CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) adopts on an emergency basis amendments to 22 TAC §§187.2(6), 187.6 and 187.16, relating to Definitions; Appearances Personally or by Representative; and Informal Show Compliance (ISC) Information and Notices, respectively, effective immediately upon filing.

The emergency amendment to §187.2(6) adds a definition of "appear/appearance." The amendments to §187.6 and §187.16 are conforming amendments to incorporate consistent usage of the term "appear" and "appearance."

There is currently a sharp increase in COVID-19 cases in certain areas of Texas. Further, Governor Abbott stated on June 23, 2020, "[u]nless you do need to go out, the safest place for you is at your home." Thus, the emergency amendments are neces-

sary to facilitate safe continuity of operations of the Texas Medical Board with respect to resolution of complaint investigations. These complaint investigations and disciplinary process comprise essential functions of the Board. The Board currently has approximately 175 cases postponed. The emergency amendments will provide the Board with the ability to implement maximum safety measures mitigating against the spread of COVID-19.

Pursuant to §2001.034 and §2001.036(a)(2) of the Texas Government Code, the emergency amendments are adopted on an emergency basis and with an expedited effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. The emergency amendments will eliminate potential unnecessary exposure to COVID-19 for agency staff, gubernatorial appointees (including physicians and other health professionals), complainants (including patients and/or family members), licensees, and their representatives when addressing complaints through Informal Show Compliance Proceedings and Settlement Conferences (ISC).

In order to comply with public health officials' recommendations about how to protect against the spread of COVID-19, the emergency rules provide a means of providing maximum safety measures (virtually eliminating potential exposure) when conducting statutorily required ISCs regarding alleged violations of the Medical Practice Act and other applicable laws. In addition, the rules eliminate unnecessary expenditure of state funds during a time of decreased state revenue. The rules also provide adequate means for licensees and their representatives to respond to and address alleged violations of laws regarding the practice of medicine through the statutory ISC process.

## SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

### 22 TAC §187.2, §187.6

Under §2001.034 of the Texas Government Code, the emergency rule may not be in effect for more than 180 days.

The emergency rule amendments are adopted under the authority of the Texas Occupations Code, §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.

Other statutes affected by this rule are Chapters 151 and 164 of the Texas Occupations Code.

*§187.2. Definitions.*

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

(1) Act--Tex. Occ. Code Ann. Title 3 Subtitle B, for physicians; Tex. Occ. Code Ann. Chapter 204 for physician assistants; Tex. Occ. Code Ann. Chapter 205 for acupuncturists; and Tex. Occ. Code Ann. Chapter 206 for surgical assistants.

(2) Address of record--The last mailing address of each licensee or applicant, as provided to the agency pursuant to the Act.

(3) Administrative law judge (ALJ)--An individual appointed to preside over administrative hearings pursuant to the APA.

(4) Agency--The divisions, departments, and employees of the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Acupuncture Examiners.

(5) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001 as amended.

(6) Appear/Appearance--An opportunity to be heard at an Informal Show Compliance proceeding and settlement conference (ISC) via videoconference. A respondent who cannot utilize videoconference may request to appear via teleconference at least 15 days prior to the date of the appearance. Licensees are entitled to all substantive and procedural rights delineated in the Medical Practice Act.

(7) [~~(6)~~] Applicant--A person seeking a license from the board.

(8) [~~(7)~~] Attorney of record--A person licensed to practice law in Texas who has provided staff with written notice of representation.

(9) [~~(8)~~] Authorized representative--A person who has been designated in writing by a party to represent the party at a board proceeding or an attorney of record.

(10) [~~(9)~~] Board--The Texas Medical Board for physicians and surgical assistants, the Texas State Board of Acupuncture Examiners for acupuncturists, and the Texas Physician Assistant Board for physician assistants.

(11) [~~(10)~~] Board member--One of the members of the board appointed pursuant to the Act.

(12) [~~(11)~~] Board proceeding--Any proceeding before the board or at which the board is a party to an action, including a hearing before SOAH.

(13) [~~(12)~~] Board representative--A board member or district review committee member who sits on a panel at an informal proceeding.

(14) [~~(13)~~] Complaint--Pleading filed at SOAH by the board alleging a violation of the Act, board rules, or board order. The word "complaint" is also used in this rule in the context of complaints made to the board as provided in §153.012 of the Act.

(15) [~~(14)~~] Contested case--A proceeding, including but not restricted to licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an administrative hearing to be held at SOAH.

(16) [~~(15)~~] Default Order--A board order in which the factual allegations against a party are deemed admitted as true upon the party's failure to file a timely answer to a Complaint or to appear at a properly noticed SOAH hearing.

(17) [~~(16)~~] Executive director--The executive director of the agency, the authorized designee of the executive director, or the secretary of the board if and whenever the executive director and authorized designee are unavailable.

(18) [~~(17)~~] Formal board proceeding--Any proceeding requiring action by the board, including a temporary suspension hearing.

(19) [~~(18)~~] Group practice--Any business entity, including a partnership, professional association, or corporation, organized under Texas law and established for the purpose of practicing medicine in which two or more physicians licensed in Texas are members of the practice.

(20) [~~(19)~~] Informal board proceeding--Any proceeding involving matters before the board prior to the filing of a pleading at SOAH, to include, but not limited to show compliance proceedings, eligibility determinations, and informal resolutions.

(21) [~~(20)~~] Informal show compliance proceeding and settlement conference (ISC)--A board proceeding that provides a licensee the opportunity to demonstrate compliance with all requirements of the Act and board rules and an opportunity to enter into an agreed settlement.

(22) [~~(21)~~] License--Includes the whole or part of any board permit, certificate, approval, registration or similar form of permission authorized by law.

(23) [~~(22)~~] Licensee--Any person to whom the agency has issued a license, permit, certificate, approval, registration or similar form of permission authorized by law.

(24) [~~(23)~~] Licensing--The agency process relating to the granting, denial, renewal, cancellation, limitation, or reissuance of a license.

(25) [~~(24)~~] Party--The board and each person named or admitted as a party in a SOAH hearing or contested case before the board.

(26) [~~(25)~~] Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization.

(27) [~~(26)~~] Petition--Pleading filed at SOAH by an applicant appealing the board's denial of licensure.

(28) [~~(27)~~] Pleading--A written document that requests procedural or substantive relief, makes claims, alleges facts, makes legal arguments, or otherwise addresses matters involved in a board proceeding.

(29) [~~(28)~~] Presiding officer--The president of the board or the duly qualified successor of the president or other person presiding over a board proceeding.

(30) [~~(29)~~] Probationer--A licensee who is under a board order.

(31) [~~(30)~~] Probationer show compliance proceeding--A board proceeding that provides a probationer the opportunity to demonstrate compliance with the Act, board rules, and board order prior to the board finding that a probationer is in noncompliance with the probationer's order.

(32) [~~(31)~~] Register--The Texas Register.

(33) [~~(32)~~] Rehabilitation Order--An agreed order entered pursuant to the authority of §164.201 of the Act.

(34) [~~(33)~~] Remedial plan--A nondisciplinary settlement agreement entered into pursuant to §164.0015 of the Act.

(35) [~~(34)~~] Respondent--A licensee or applicant who is the subject of disciplinary, non-disciplinary, or rehabilitative action by the board.

(36) [~~(35)~~] Rule--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of this board. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures. This definition includes substantive regulations.

(37) [~~(36)~~] Secretary--The secretary-treasurer of the board.

(38) [~~(37)~~] SOAH--The State Office of Administrative Hearings.

(39) [~~(38)~~] SOAH hearing--A public adjudication proceeding at SOAH.

(40) [~~(39)~~] SOAH rules--1 Texas Administrative Code §155.1 et seq.

(41) [~~(40)~~] Texas Public Information Act--Texas Government Code, Chapter 552.

(42) [~~(41)~~] Witness--Any person offering testimony or evidence at a board proceeding.

*§187.6. Appearances [~~Personally or by Representative~~].*

(a) An individual may appear [~~in person~~] or by an authorized representative. This right may be waived.

(b) Any authorized representative, other than an attorney of record, must produce a written statement executed by the individual they are representing which grants the representative the authority to appear on behalf of the individual. The original or a notarized copy of the authorization must be provided to the board at least three days prior to the appearance of the authorized representative in a proceeding unless waived by the board.

(c) A corporation, partnership, or association may appear and be represented by any authorized representative.

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.

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TRD-202002527
Scott Freshour
General Counsel
Texas Medical Board
Effective date: June 24, 2020
Expiration date: October 21, 2020
For further information, please call: (512) 305-7016

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## SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

### 22 TAC §187.16

Under §2001.034 of the Texas Government Code, the emergency rule may not be in effect for more than 180 days.

The emergency rule amendments are adopted under the authority of the Texas Occupations Code, §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.

Other statutes affected by this rule are Chapters 151 and 164 of the Texas Occupations Code.

*§187.16. Informal Show Compliance (ISC) Information and Notices.*

(a) Texas Medical Board finds that statutory minimum requirements related to the Informal Show Compliance Proceedings (ISCs) as set out in the Texas Occupations Code, §164 et seq. are comprehensive and complete. Pursuant to §153.001 and §164.003 of the Medical Practice Act, the Board is authorized to adopt rules relating to the ISCs and how they are to be conducted. These rules are promulgated to clarify the ISC process and procedures only as necessary to be consistent with the statutory requirements.

(b) Notice of the time, date and place of the ISC shall be extended to the licensee and the complainant(s) in writing, by hand de-

livery, regular mail, certified mail -- return receipt requested, overnight or express mail, courier service, or registered mail, to the address of record of the complainants and the address of record of the licensee or the licensee's authorized representative to be sent at least 45 days prior to the date of the ISC. The notice to the licensee or the licensee's authorized representative shall also include:

(1) a statement that the licensee has the opportunity to appear [~~attend~~] and participate in the ISC;

(2) a written statement of the nature of the allegations; and

(3) a copy of the information the board intends to use at the ISC. If the complaint includes an allegation that the licensee has violated the standard of care, the notice shall also include a copy of the Expert Physician Reviewers' Report, prepared in accordance with §154.0561, Texas Occupations Code. The information required by this section may be given in separate communications at different times, provided all of the information has been provided at least 45 days prior to the date of the ISC.

(c) All information provided by the board staff and the licensee shall be provided to the board representatives for review prior to the board representatives making a determination of whether the licensee has violated the Act, board rules, remedial plan, or board order.

(d) All ISC proceedings shall be scheduled not later than the 180th day after the date the board's official investigation of the complaint is commenced, unless good cause is shown by the board for scheduling the ISC after that date. For purposes of this subsection:

(1) "Scheduled" means the act of the agency to reserve a date for the ISC.

(2) "Good cause" shall have the meaning set forth in §179.6 of this title (relating to Time Limits).

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.

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# 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 §745.10003**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 745 Licensing, new §745.10003, concerning an emergency rule with ongoing requirements for certain day care operations in response to COVID-19. As authorized by Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed once for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support: (1) the Governor's continuing March 13, 2020 proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas; and (2) the minimum standard health protocols that the Governor's Strike Force to Open Texas created to help protect the health and safety of employees and children in child care centers during COVID-19. In the Governor's proclamation, he authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule with Ongoing Requirements for Certain Day Care Operations in Response to COVID-19.

To protect children in day care and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to: (1) require compliance with CDC requirements for child care programs; (2) require caregiver training related to COVID-19; (3) require screening of persons and children entering an operation and explicitly deny entry to persons or children that meet a screening criteria; (4) require a pick-up and drop-off plan for children; (5) require stricter standards when changing diapers and when clothes get contaminated; (6) adjust the HVAC system; (7) limit the use of cloth toys; (8) require the posting of handwashing posters; (9) limit the use of food preparation sinks; (10) not allow the serving of family style meals; and (11) clarify that a more restrictive rule or executive order controls.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Human Resources Code §42.001 and §42.042. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Human Resources Code §42.042, authorizes the Executive Commissioner of HHSC to adopt rules to carry out the provisions of Chapter 42 of the Texas Human Resources Code, concerning Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services. Texas Human Resources Code §42.001, states that the purpose of Chapter 42 is to protect the health, safety, and

well-being of children of the state who reside in child-care facilities by establishing minimum standards for the children's safety and protection and by regulating the facilities through the licensing program.

The new section implements Texas Government Code §531.0055 and Texas Human Resources Code §42.001 and §42.042.

*§745.10003. Emergency Rule with Ongoing Requirements for Certain Day Care Operations in Response to COVID-19.*

(a) This section applies to the following operations:

(1) School-age programs;

(2) Before and after-school programs;

(3) Child-care centers;

(4) Licensed child-care homes; and

(5) Registered child-care homes.

(b) An operation must comply with the current CDC Guidance for Child Care Programs that Remain Open located at: www.cdc.gov/coronavirus/2019-ncov/community/schools-child-care/guidance-for-childcare.html.

(c) Regarding caregivers, an operation:

(1) Must ensure that all caregivers take the Special Considerations for Infection Control during COVID-19 training through the Texas A&M AgriLife Extension; and

(2) Encourage caregivers and staff 65 years of age or older, or others who might be at higher risk for severe illness from COVID-19, to talk to their healthcare provider to assess their risk and determine if they should continue to be present at the operation.

(d) An operation must screen all persons and children according to CDC guidance before allowing entry into the operation, including checking the temperature of each person and child upon arrival at the operation each day and denying entry to any person who meets one of the following criteria:

(1) Fever or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) Close contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, someone who is under investigation for COVID-19, or someone who is ill with a respiratory illness; or

(3) International travel within the last 14 days to countries with ongoing community transmission. For updated information on affected countries visit:https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html.

(e) An operation must not deny entry to persons performing official duties, unless the individual meets a screening criteria in subsection (d) of this section. The screening required by this section does not apply to emergency services personnel entering the operation in an emergency situation.

(f) Regarding the pick-up and drop-off of children, an operation:

(1) Must limit the direct contact between parents and caregivers to the extent possible considering the age of the child; and

(2) Must complete the pick-up and drop-off of children outside of the operation, unless the operation determines that there is a legitimate need for the parent to enter. Should the parent have a legitimate need to enter the operation, the parent must be screened by the operation as provided in subsection (d) of this section

(g) Regarding the spread of germs:

(1) In addition to following the current minimum standards related to diapering:

(A) A caregiver must wash an infant's or toddler's hands and the caregiver's hands before changing a diaper;

(B) A caregiver must wear gloves when changing a diaper; and

(C) An operation must post diaper changing procedures in all diaper changing areas.

(2) Children and caregivers must have multiple changes of clothing available at an operation because any secretions on a child's clothes or bib or a caregiver's clothes will mean that the clothes or bib must be changed; and

(A) Contaminated clothes or bibs must be placed in a sealed plastic bag to be sent home with the child or caregiver or washed in a washing machine;

(B) The child's hands and the caregiver's hands must be washed after changing clothes; and

(C) A child must not be allowed to wear another child's clothing; and

(3) An operation:

(A) Must adjust the HVAC system, if possible, to allow fresh air to enter the operation;

(B) Must not use machine washable cloth toys, or the toys must only be used by one child and then laundered before use by another child; and

(C) Must place posters describing handwashing steps near sinks used for handwashing. Developmentally appropriate posters in multiple languages are available from the CDC.

(h) Regarding food preparation, an operation:

(1) When using a sink for food preparation, may not use that sink for any other purpose; and

(2) Must not serve family style meals; each child must be provided individual meals and snacks.

(i) If this emergency rule is more restrictive than any minimum standard relating to the operations addressed by this rule, this emergency rule will prevail so long as this emergency rule is in effect.

(j) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to the operations addressed in this emergency rule, the operations must comply with the executive order or other direction.

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 25, 2020.

TRD-202002536

Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-5559

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# TITLE 28 INSURANCE

## PART 1. TEXAS DEPARTMENT OF INSURANCE

### CHAPTER 35. EMERGENCY RULES
### SUBCHAPTER A. COVID-19 EMERGENCY RULES

**28 TAC §35.1**

The Texas Department of Insurance is renewing the effectiveness of new Title 28, Chapter 34, Subchapter A, COVID-19 Emergency Rules, §35.1, Telemedicine and Telehealth Services, which was adopted on an emergency basis. The text of the emergency amendment was originally published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2100). Under the authority of Government Code §2001.034(c), the renewal will be effective for 60 days.

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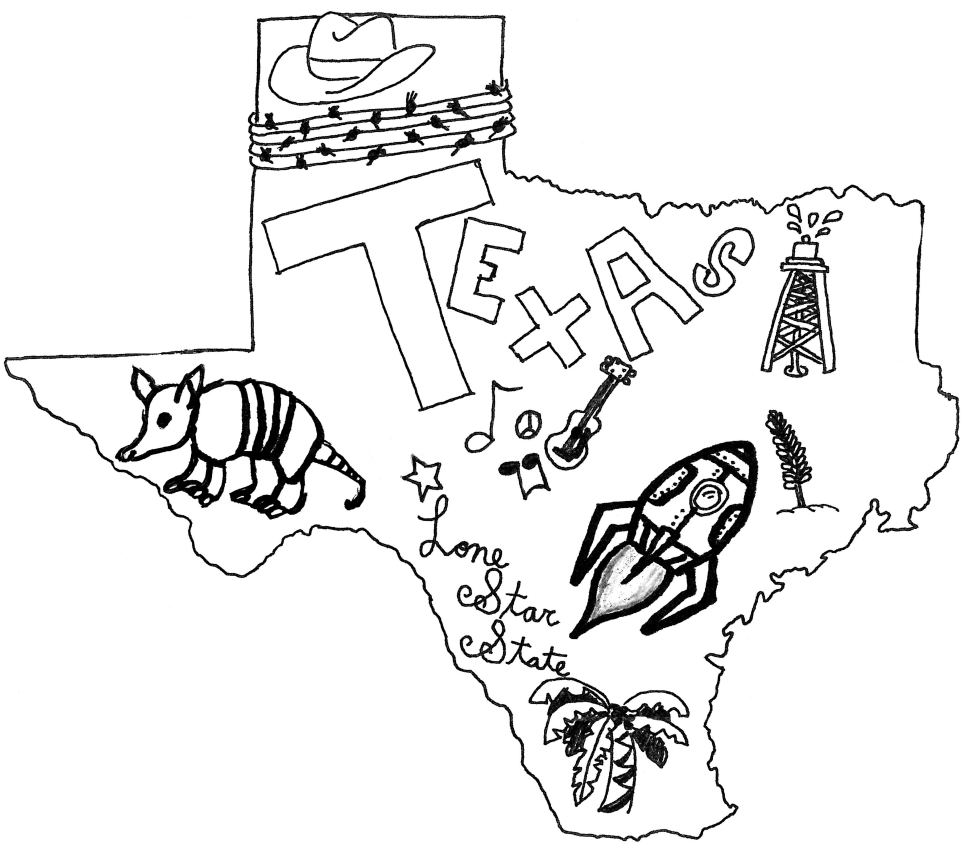
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Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons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

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

# TITLE 7. BANKING AND SECURITIES

## PART 2. TEXAS DEPARTMENT OF BANKING

### CHAPTER 12. LOANS AND INVESTMENTS

### SUBCHAPTER D. INVESTMENTS

**7 TAC §12.91**

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §12.91 of Title 7 of the Texas Administrative Code, concerning other real estate owned. The amended rule is proposed to reduce the scope of the rule with regard to mandatory appraisals of certain real estate assets owned by state banks and to extend various deadlines for those appraisals.

BACKGROUND AND PURPOSE

Section 12.91 regulates "other real estate owned" (OREO). Most typically, OREO consists of interests in real property acquired by state banks through foreclosure or deed-in-lieu of foreclosure.

Among other things, this rule limits the ability of state banks to acquire OREO, prevents state banks from holding OREO indefinitely, and requires state banks to take steps to ensure that their books and records accurately reflect the reasonably fair market value of the OREO. State banks are currently required to obtain formal appraisals of all OREO within 60 days of acquisition unless the recorded book value of the OREO is less than $250,000 without exception. State banks are required to perform formal, written evaluations of the true market value of all of their OREO assets at least once a year. In addition, for state banks that record OREO assets on their books at values above a certain dollar threshold, a formal re-appraisal of that OREO is currently required every three years.

Under the current rule, while the department has authority to require additional OREO appraisals, it does not have authority to extend the initial 60-day appraisal deadline or the three-year OREO re-appraisal deadline.

The proposed amendments, if adopted, would extend the initial appraisal deadline from within 60 days of OREO acquisition to within 90 days and give the Texas Banking Commissioner (the commissioner) authority to extend all appraisal deadlines where appropriate.

The proposed amendments also reduce the scope of the OREO appraisal rule by raising the recorded book value threshold for OREO subject to the rule. Specifically, the proposed amendments, if adopted, would only require an initial appraisal, and then re-appraisal every three years, of OREO with recorded book values of more than $500,000. This raises the existing threshold from $250,000.

The amendments proposed herein follow similar amendments to similar federal rules adopted jointly by the United States Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve (Board), and the Federal Deposit Insurance Corporation (FDIC) in recent years to their regulations at Title 12 of the Code of Federal Regulations, §§34.43, 225.63, and 323.3, respectively.

The $250,000 threshold in the department's current OREO appraisal rule was adopted in 1996 based on these federal regulations regarding valuations of real estate-related assets. This threshold has not been modified since the rule was promulgated in 1996.

The federal banking agencies recently raised their threshold for requiring formal appraisals of the real estate involved in transactions. The department incorporates by reference the extensive analysis and discussion by the federal banking agencies in adopting the federal amendments, published in the *Federal Register* (Real Estate Appraisals, 84 Fed. Reg. 53,579 (October 8, 2019); Real Estate Appraisals, 83 Fed. Reg. 15,019 (April 9, 2018)).

As was aptly discussed by the federal banking agencies in adopting the federal amendments, real estate prices have risen significantly since the 1990s.

According to national data from the Federal Reserve Commercial Real Estate Price Index, a commercial property that sold for $250,000 as of June 30, 1994 would be expected to sell for approximately $760,000 as of December 2016, and the average price of that property during the low-point of the aftermath of the 2008 financial crisis in March 2010 was $423,000. Data from the Standard & Poor's Case-Shiller Home Price Index and the Federal Housing Finance Agency show similar increases in the prices of residential properties during these time periods.

Taking the foregoing into consideration, the department concurs with the federal banking agencies in concluding that the dollar threshold last established in the 1990s for certain formal real estate appraisal requirements can be raised to the levels in the proposed amendments without resulting in substantially increased risks for state banks. This would reduce appraisal expenses for state banks.

The proposed amendments would also reduce appraisal requirements for state banks by extending the initial appraisal deadline to within 90 days of OREO acquisition, and permitting extensions of both this deadline and the three-year re-appraisal deadline where appropriate. These changes would not adversely impact bank safety or soundness--expanding the window for initial appraisals by 30 days would not materially reduce initial ap-

praisal accuracy or otherwise negatively affect state banks, and the commissioner would have full discretion to deny or conditionally grant extension requests as appropriate to protect safety and soundness.

SUMMARY OF CHANGES

As discussed above, the proposed amendments, if adopted, would extend the initial appraisal deadline to within 90 days of OREO acquisition and enable the commissioner to extend this deadline and the three-year re-appraisal deadline where appropriate.

The proposed amendments also reduce the scope of the OREO appraisal rule by raising the recorded book value threshold for OREO subject to the rule. Specifically, the proposed amendments, if adopted, would only require initial appraisals and three-year re-appraisals for OREO with recorded book values of more than $500,000, raising the existing threshold amount from $250,000.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

W. Kurt Purdom, Deputy Banking Commissioner, has determined that for the first five-year period the proposed amended rule is in effect, there will be no foreseeable increases or reductions in costs or other fiscal implications to state or local government as a result of enforcing or administering the rule as amended.

Mr. Purdom has further determined that for the first five-year period the proposed amended rule is in effect, there will be no foreseeable loss in revenue for state or local government as a result of enforcing or administering the rule as amended.

PUBLIC BENEFITS/COSTS TO REGULATED PERSONS

Mr. Purdom has determined that for each of the first five years the proposed amended rule is in effect, the public benefit anticipated from the amendments to the rule will be reducing regulatory complexity and operating costs for state banks, thereby improving the financial condition of those banks, their returns to investors, and their ability to provide cost-effective financial services to customers.

In addition, the proposed amendments ensure that state banks do not have materially more burdensome regulations with regard to OREO holdings than their federal competitors enjoy. Although the department's current OREO appraisal regulations are reasonable and do not prevent state banks from exercising the same substantial rights and privileges that federally-chartered banks may exercise regarding OREO assets, the department nevertheless is cognizant that its OREO retention requirements are somewhat more rigid than federal equivalents. The proposed amendments ameliorate that rigidity by doubling the threshold for mandatory appraisals, extending the initial appraisal deadline, and giving the department discretion to further extend all appraisal deadlines.

More importantly, the proposed amendments will not risk the interests of the public by reducing the safety and soundness of state banks--all state banks must still have prudent OREO valuation policies, and the department will continue to have authority under these regulations to require additional appraisals of OREO as deemed necessary to address safety and soundness concerns. Further, state banks are required to limit their OREO holdings to reduce risk and increase safety and soundness, which further reduces any potential impact of the rule amendments upon safety and soundness of state banks.

Mr. Purdom has further determined that for the first five years the rule amendments are in effect, there are no costs anticipated for persons required to comply with the rule as amended. The proposed amendments can only reduce costs to state banks by decreasing the number of mandatory OREO appraisals state banks must conduct. Real estate appraisals are typically significantly more costly than the alternative option of evaluation in terms of actual expenses and personnel time, so reducing the mandatory appraisals a state bank must pay for will result in savings to the bank. Further, state banks are free to conduct an appraisal rather than an evaluation should the state bank determine that to be more cost-effective or otherwise prudent.

ONE-FOR-ONE RULE ANALYSIS

Pursuant to Texas Finance Code (Finance Code), §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Texas Government Code (Government Code), §2001.0045. Further, since the proposed amended rule will not increase costs upon any state bank or other regulated person, and is instead amended to reduce costs for compliance, the requirements of Government Code, §2001.0045 would be satisfied if applicable.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed amendments are in effect, the department has determined the following: (1) the rule amendments do not create or eliminate a government program; (2) implementation of the rule amendments does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the rule amendments does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule amendments do not require an increase or decrease in fees paid to the agency; (5) the rule amendments do not create any new regulations; (6) the rule amendments neither expand nor eliminate existing regulations, but do limit existing regulation; and (7) the rule amendments do not increase or decrease the number of individuals subject to the rule's applicability. The proposed rule if amended may positively affect this state's economy by increasing competitiveness and reducing operating costs for state banks.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Purdom has determined the rule, if amended, will not have an adverse economic effect on small or micro-businesses, or rural communities because there are no costs or other adverse economic effects to the state banks who are required to comply with the rule. Further, because many state banks are community banks that serve small business and rural areas, the decreased operating costs and increased competitiveness resulting from the proposed amendment may result in positive economic effects on small businesses and rural communities. Moreover, many of the state banks benefitting from the reduced regulatory burden of the proposed amendments are micro-businesses or small businesses.

Because there is no adverse impact on micro-businesses or small businesses from the proposed amendments, the department asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code, §2006.002, are not required.

Mr. Purdom has determined the proposed amendments, if adopted, may indirectly have a minimal adverse economic impact on small and micro-businesses that conduct real es-

tate appraisals. The proposed amendments, if adopted, have the potential to reduce the number of real estate appraisals required by state banks and thereby reduce demand for appraisals, some of which are conducted by small businesses or micro-businesses. However, Mr. Purdom, in accordance with guidelines established by the Office of the Attorney General as provided by Government Code, §2006.002(g), has determined that such potential adverse economic impact only concerns appraisal services not regulated by the department and thus is only indirectly related to the rule amendment, and does not require the additional analysis for a direct adverse economic effect contemplated by Government Code, §2006.002(c).

Further, Mr. Purdom finds that any such loss of business to appraisal firms that are small or micro-businesses from the proposed amendments would be unrelated to the business's status as a small or micro-business. Businesses other than a small or micro-business performing appraisals will be similarly affected proportionate to the amount of work derived from appraisals performed for state banks.

The department further asserts the public benefits of the proposed rule, as discussed above, outweigh any potential adverse impact on small or micro-businesses.

PUBLIC COMMENTS

To be considered, comments on the proposed amendments must be submitted to the department in writing to within 30 days of publication of this proposal. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

STATUTORY AUTHORITY

This proposal is made under the authority of Finance Code, §11.301 which authorizes the commission to adopt rules applicable to state banks, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of state banks.

This proposal affects the statutes administered and enforced by the department's commissioner with respect to state banks, contained in Finance Code, Subtitle A. No other statute is affected by this proposal.

*§12.91. Other Real Estate Owned.*

(a) - (c) (No change.)

(d) Appraisal requirements.

(1) Subject to paragraph (2) of this subsection, when OREO is acquired, a state bank must substantiate the market value of the OREO by obtaining an appraisal within 90 [~~60~~] days of the date of acquisition, unless extended by the banking commissioner. An evaluation may be substituted for an appraisal if the recorded book value of the OREO is $500,000 or less [~~less than $250,000~~].

(2) An additional appraisal or evaluation is not required when a state bank acquires OREO if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the OREO and the appraisal or evaluation is less than one year old.

(3) An evaluation shall be made on all OREO at least once a year. An appraisal shall be made at least once every three years, unless extended by the banking commissioner, on OREO with a recorded book value in excess of $500,000 [~~$250,000~~].

(4) Notwithstanding another provision of this section, the banking commissioner may require an appraisal of OREO if the banking commissioner considers an appraisal necessary to address safety and soundness concerns.

(e) - (i) (No change.)

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

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Catherine Reyer
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1301

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# PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

## CHAPTER 76. MISCELLANEOUS SUBCHAPTER F. FEES AND CHARGES

### 7 TAC §76.98

The Finance Commission (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to Title 7, Texas Administrative Code (TAC), Part 4, Chapter 76, Subchapter F, §76.98. This proposal and the rule as amended by this proposal are referred to collectively as the "proposed rule."

Background and Purpose

7 TAC, Chapter 76 contains the department's rules concerning charges and fees imposed on regulated state savings banks. Existing §76.98 imposes an annual assessment fee on state savings banks to fund the operations of the department and provide for the supervision and examination of state savings banks by the department. Under the requirements of existing §76.98, regulated state savings banks are assessed a fee that is based on their size as reflected by their total assets. By assessing a fee based on asset size, a state savings bank is meant to pay an assessment fee proportionate to the cost of its required supervision and examination. The proposed rule, if adopted, would allow the department to also consider a state savings bank's total risk-weighted assets as a basis on which to establish the amount of its assessment fee. A risk-weighted asset approach takes into consideration not only the state savings bank's asset size, but also the character of its operations as revealed by its investment positions and associated risk profile. The department asserts a risk-weighted asset approach promotes more equitable fees for state savings banks. A state savings bank taking riskier investment positions is more likely to raise safety and soundness concerns, and typically requires closer supervision and additional scrutiny during examination, leading to increases in attendant costs disproportionate to a similarly-sized state savings bank with equivalent total assets but more conservative investment positions. As a result, the requirements of the existing rule have the tendency to distort the actual costs required for the supervision and examination of regulated state savings banks, and in some instances resulting in inflated assessment

fees outsizing the actual cost of regulation. As related herein *infra.* the department anticipates that administering and enforcing the proposed rule will result in reduced assessment fees for regulated state savings banks overall. Existing §79.98 has been in place and stood largely unchanged since its adoption in 2012. The underlying requirements of the rule have been in place since 1993 when they were initially adopted by the department (at that time, the Texas Savings and Loan Department; 7 TAC §79.98; 18 TexReg 6100). With the advent of modern capital requirements based on risk weighting, the department has ready access to data for most state savings banks with which to apply a risk-weighted asset approach in assessing fees. Specifically, implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 at the federal level (Public Law No. 111-203, 124 Stat. 1376, 1435-38 (2010)) and application of the Basel III standards of the Basel Committee for Banking Supervision in federal law means many state savings banks already regularly report data concerning their total risk-weighted assets for purposes of their minimum capital requirements. Such data may be easily repurposed by the department for use in assessing fees on a risk-weighted asset basis. In consideration of the foregoing, the department determined that assessments based on total risk-weighted assets would result in fees that are equitable and more accurately reflect the true cost of regulation. This proposal seeks to make amendments to §76.98 to effectuate such change.

SUMMARY OF CHANGES

The proposed rule amends Subchapter F, Fees and Charges.

The proposed rule amends §76.98, Annual Fee To Do Business. The current title of the rule is replaced with "Annual Assessments," to better reflect the subject matter of the rule. Additional language is inserted in subsection (a) (which was formerly implied) to clarify when assessments are invoiced and the method by which they should be paid. A new subsection (b) is inserted to add language requiring the determination of assessments based on either total assets or the total risk-weighted assets, as reflected on the state savings bank's call report, or as otherwise voluntarily reported to the department for purposes of calculating the assessment. Other minor terminology and modernization changes are made throughout the rule to update the rule and improve readability.

Fiscal Impact on State and Local Government

Antonia Antov, director of administration and finance for the department, has determined that for the first five-year period the proposed rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rule. Ms. Antov has further determined that for the first five-year period the proposed rule is in effect, there will be no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rule. Ms. Antov has further determined that for the first five years the rule is in effect there will be no foreseeable losses or increases in revenue to the state overall and that would impact the general revenue fund. Implementation of the proposed rule will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The foregoing notwithstanding, Ms. Antov further determined that for the first five-year period the proposed rule is in effect, there will be a probable decrease in revenue to the department in the form of reduced assessment fees collected by the department from regulated state savings banks. The anticipated reduction in assessment fees collected will facilitate the department's continued compliance with Finance Code §16.003(c), requiring that the department collect only those amounts necessary for the purposes of carrying out its functions. The anticipated reduction in assessment fees collected by the department will not hinder the department's operations or require increases in other fees imposed by the department, or commensurate reductions in staff or other resources of the department.

Public Benefits

Stephany Trotti, deputy commissioner of the department (deputy commissioner), has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to have a rule that more equitably imposes fees on regulated state savings banks. Since the purpose of such fees is to provide revenue for the department sufficient to supervise and examine regulated state savings banks, the proposed rule more accurately reflects the true cost of regulation, thereby increasing transparency with and accountability to the public concerning the department's operations. As discussed *infra.* the proposed rule also has the potential to reduce costs to regulated persons which may, in turn, confer a reduction of costs on those members of the public who are borrowers of or otherwise do business with a regulated state savings bank.

Probable Economic Costs to Persons Required to Comply with the Proposed Rule

The deputy commissioner has determined that for the first five years the proposed rule is in effect, there are no economic costs anticipated to persons required to comply with the proposed rule. The proposed rule has the potential to lower costs for regulated persons by allowing the assessment of annual fees to be conducted on the basis of the state savings bank's total risk-weighted assets, which typically results in lower assessment fees than when made on the basis of total assets.

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rule is in effect, the department has determined the following: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to of the department; (4) the proposed rule does not require an increase in fees paid to the department. As related *supra* the proposed rule will likely result in a reduction in fees paid by most if not all state savings banks to the department; (5) the proposed rule does not create a new regulation (rule requirement); (6) the proposed rule does not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rule does not adversely affect this state's economy and has the potential to positively affect the state's economy as most if not all state savings banks will pay a reduced assessment fee if the proposed rule is adopted.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rule. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The proposed rule will not have an adverse effect on small or micro-businesses, or rural communities because there are no anticipated costs to persons required to comply with the proposed rule. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rule. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Public Comments

Written comments regarding the proposed rule may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code §91.007(1)(A), which requires the commission to adopt rules for fees and charges related to the supervision and examination of state savings banks. This proposal is further made under the authority of Finance Code §16.003(c) which provides that the department may set the amounts of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department.

This proposal affects the statutes administered and enforced by the department's commissioner with respect to state savings banks, contained in Finance Code, Subtitle C. No other statute is affected by this proposal.

*§76.98. Annual Assessments [~~Fee To Do Business~~].*

(a) Annual assessment. All savings banks chartered under the laws of the state and all foreign savings banks under the laws of another state of the United States holding a certificate of authority to do business in this state shall pay to the department an [~~such~~] annual assessment fee in an amount determined by the commissioner as provided by subsection (b) of this section and subject to the rate requirements [~~or assessment and examination fees as are~~] set by the Finance Commission of Texas. The annual assessment shall be paid in quarterly installments. Upon receipt of a written invoice from the department, the savings bank must pay the assessment fee by electronic/ACH payment, or by another method if directed to do so by the department. The department will maintain on its website information concerning prevailing assessment rates and fees.

(b) Determination of assessment. The assessment [~~Annual fees and assessments~~] shall be determined [~~established~~] based on either [~~upon~~] the total assets or the total risk-weighted assets of the savings bank, whichever results in the lowest applicable assessment fee. The valuation of assets shall be determined as of [~~at~~] the close of the calendar quarter immediately preceding the effective date of the [~~fee or~~] assessment. A savings bank's total assets or total risk-weighted assets shall be derived from the savings bank's Federal Financial Institutions Examination Council (FFIEC) consolidated report of condition and income (call report), filed in accordance with federal law. If a savings bank is not required by applicable federal law to disclose its total risk-weighted assets in the call report, the savings bank may voluntarily report to the commissioner information concerning its total risk-weighted assets for purposes of calculating its assessment, which shall be provided to the commissioner in the manner and within the time prescribed by the commissioner; otherwise, the assessment will be based on the savings bank's total assets.

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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Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
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# PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

## CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES
## SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

The Finance Commission of Texas (commission) proposes amendments to §83.2003 (relating to Attempted Evasion of Applicability of Chapter), §83.4003 (relating to Denial, Suspension, or Revocation Based on Criminal History), §83.5001 (relating to Data Reporting Requirements), §83.5003 (relating to Examinations), §83.5004 (relating to Files and Records Required), and §83.6007 (relating to Consumer Disclosures); proposes new §83.5005 (relating to Separation Between Credit Access Business and Third-Party Lender); and proposes the repeal of §83.4007 (relating to License Reissuance) in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

The rules in 7 TAC Chapter 83, Subchapter B govern credit access businesses (CABs). In general, the purpose of the proposed rule changes to 7 TAC Chapter 83, Subchapter B is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 83, Subchapter B was published in the *Texas Register* on March 27, 2020, (45 TexReg 2211). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received five informal precomments on the rule text draft. The OCCC appreciates the thoughtful input provided by stakeholders, and has incorporated changes suggested by stakeholders into the proposed amendments and new rule.

Proposed amendments to §83.2003 would implement Texas Finance Code, §393.602(c), which prohibits a device-subterfuge, or pretense to evade the application of Texas Finance Code, Chapter 393, Subchapter G. In opinion no. KP-0277 (2019),

the Texas attorney general addressed attempts to evade Chapter 393. The attorney general declined to determine whether a particular business practice was a device or subterfuge, stating: "Whether any specific extension of credit is substantially the same as that available to the public, or uses a device, subterfuge, or pretense to evade regulation as a credit access business, are fact questions that this office cannot decide through an attorney general opinion." In examinations, the OCCC has identified credit services organizations (CSOs) asserting that they provide non-CAB loans, and that their loans are not subject to the regulatory requirements for CABs. In some cases, the loans were not deferred presentment transactions or motor vehicle title loans, but the CSO notified consumers that it was a CAB licensed and examined by the OCCC, and that consumers could file complaints with the OCCC. These false and misleading representations are a pretense to evade the Finance Code, because the CSO suggests that the transaction is regulated by the OCCC, while also asserting that the transaction is a non-CAB transaction that the OCCC does not regulate.

The purpose of the proposed amendments to §83.2003 is to make the rule's language more clear, and to specify practices that the OCCC has identified as a device, subterfuge, or pretense to evade Chapter 393. The list is not exclusive, because new attempts to evade Chapter 393 could arise from new facts. Based on a suggestion from stakeholder precomments, proposed paragraphs (1) and (2) would state that a device, subterfuge, or pretense includes a transaction that is not identified as a deferred presentment transaction or motor vehicle title loan, if the transaction is a deferred presentment transaction or motor vehicle title loan.

Proposed amendments to §83.4003 relate to the OCCC's review of the criminal history of a CAB applicant or licensee. The OCCC is authorized to review criminal history of CAB applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109; and Texas Government Code, §411.095. The proposed amendments to §83.4003 would ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Proposed amendments throughout subsections (c) and (f) of §83.4003 would implement these statutory changes from HB 1342. Other proposed amendments to §83.4003 include technical corrections, clarifying changes, and updates to citations.

The proposal would repeal §83.4007. Currently, §83.4007 requires a licensee to return its license certificate in the event of reissuance of a license. When this section was adopted, it was based on the assumption that the OCCC would issue a paper license certificate. Because the OCCC now issues licenses through an online system, ALECS, this section is no longer necessary.

Proposed amendments to §83.5001 would reflect the OCCC's practices on reporting violations. This section describes the requirement for CABs to provide quarterly and annual reports, implementing Texas Finance Code, §393.627. Currently, §83.5001(e)(2)(A) describes a $100 administrative penalty for a CAB's first violation. The OCCC's current practice is to issue an injunction for the first reporting violation, not to impose an administrative penalty. Proposed amendments to §83.5001(e) would reflect this. Proposed amendments would also specify that that the OCCC may revoke the license of a CAB that fails to pay an administrative penalty resulting from a final order, as provided by Texas Finance Code, §393.614. This situation is rare, and typically occurs when a CAB has ceased doing business without telling the OCCC.

Proposed amendments to §83.5003 would specify the content of witness declarations and records declarations that OCCC examiners obtain from CABs during examinations. The proposed amendments explain that these declarations must substantially comply with Texas Civil Practice and Remedies Code, Chapter 132, which governs unsworn declarations that may be used in lieu of a sworn declaration or affidavit. The proposed amendments also replace the term "statement" with "declaration," and remove provisions that are not necessary to include in a declaration under Chapter 132.

Proposed amendments to §83.5004(2)(B)(vi), would provide recordkeeping requirements for threats or referrals for criminal prosecution. Currently, this provision requires a CAB to maintain a "criminal charge or complaint filed by" the CAB. In *Henry v. Cash Biz, LP,* 551 S.W.3d 111, 117-18 (Tex. 2018), the Texas Supreme Court found that a CSO did not file a criminal complaint when it forwarded information to a district attorney about checks returned for insufficient funds. The proposed amendments would add text to specify that a CAB must maintain referrals, written statements threatening criminal prosecution, a written summary of any oral statement threatening criminal prosecution, and any information submitted to law enforcement relating to alleged criminal conduct by a consumer. This information will document the CAB's compliance with Texas Finance Code, §393.201(c)(3), which provides that a CAB may not threaten or pursue criminal charges against a consumer in the absence of criminal conduct.

A proposed amendment to §83.5004(3) would state that a CAB must maintain documentation and records of transfers of money between itself and any third-party lender, for the same time period that the CAB must maintain other documentation of its agreements with third-party lenders. This amendment is intended document a CAB's compliance with proposed new §83.5005, described in the next paragraph.

Proposed new §83.5005 describes requirements for separation between a CAB and a third-party lender. Under Chapter 393, CABs are a type of CSO, and a CSO is defined as a person who obtains for consumers, or assists consumers in obtaining, extensions of credit "by others." Tex. Fin. Code, §393.001(3). In this provision, the phrase "by others" means that a CAB must operate independently from any third-party lender. The OCCC is aware of two published decisions analyzing this separation requirement. First, the Fifth Circuit found that a CSO was sufficiently separate from a third-party lender where the CSO and lender were not the same entity, the CSO applied underwriting criteria selected by the lender (the CSO did not select the underwriting criteria), the CSO fee was not passed on to the lender, and the CSO fee did not directly benefit the lender. *Lovick v. Ritemoney Ltd.,* 378 F.3d 433, 438-42 (5th Cir. 2004). Second, a Texas bankruptcy court found that even though a CSO was a separate entity from a lender, the CSO violated Chapter 393 by

falsely stating that it would issue a letter of credit if required by the lender. *In re Grayson,* 488 B.R. 579, 589-92 (Bankr. S.D. Tex. 2012).

Proposed new §83.5005 would implement the CAB-lender separation requirement. The rule is intended to provide clear standards to ensure that CABs operate independently from third-party lenders as required by Chapter 393, and to document a CAB's compliance with this requirement. Subsection (b) would specify requirements that must be satisfied, including a requirement that the CAB and lender be separate legal entities. In response to precomments that the OCCC received, paragraph (3) specifies that a CAB may not perform the functions of a third-party lender except by written agreement, paragraph (7) specifies that a CAB may not act as a general agent of a third-party lender but may act as a special limited agent, and paragraph (8) specifies that a licensee may not directly or indirectly share fees for CAB services with the lender. Subsection (c) describes additional factors that the OCCC may consider in determining whether a CAB operates independently, and subsection (d) explains that a CAB may not make a false or misleading representation regarding its relationship with a third-party lender.

The proposal also includes amendments to the figures accompanying §83.6007, which are the model forms for the consumer cost disclosure used by CABs. The proposed amendments implement Texas Finance Code, §393.223(a), which authorizes the commission to adopt rules including the disclosure. The proposed amendments include updated information regarding the cost of comparable forms of consumer credit, as well as updated information on patterns of repayment based on 2019 quarterly and annual reports provided by CABs to the OCCC.

Mirand Diamond, Director of Licensing and Registration, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will better protect consumers, will better enable licensees to comply with Chapter 393 of the Texas Finance Code, and will aid licensees in preparing disclosures that clearly disclose up-to-date information to consumers.

Additional economic costs may be incurred by persons who are required to comply with the proposed amendments to the consumer disclosure rule at §83.6007. The anticipated costs would include the costs associated with producing new forms, and costs attributable to the loss of obsolete forms inventory. For licensees not using the fillable forms provided by the agency online, any additional economic costs are anticipated to be minimal, with an estimated programming time of less than five hours to produce the updated forms.

The agency has attempted to lessen any potential costs by providing on the agency's website fillable PDF versions of the disclosure forms free of charge. Additionally, the agency is considering a delayed implementation date for use of the revised forms, which will help minimize potential costs and allow use of current forms inventory. In particular, the agency is considering a possible implementation date of March 1, 2021, and invites comments on this issue.

The OCCC does not anticipate economic costs to persons who are required to comply with the other rule changes as proposed.

The agency is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the OCCC. The proposal would create a new regulation at §83.5005 to implement a statutory requirement that a CAB obtain extensions of credit by others. The proposal would expand current §83.2003 to identify acts that constitute a device or subterfuge to evade the subchapter, and would expand current §83.5004 to specify records that CABs must maintain relating to criminal history and third-party lenders. The proposal would limit current §83.4003 by amending grounds on which the OCCC may deny, suspend, or revoke a license on grounds of criminal history. The proposal would repeal current §83.4007, relating to license reissuance. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

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

## DIVISION 2. AUTHORIZED ACTIVITIES

### 7 TAC §83.2003

The rule changes are proposed under Texas Finance Code, §393.622, which authorizes the commission to: (1) adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs), (2) adopt rules with respect to quarterly reporting by CABs, and (3) adopt rules with respect to the OCCC's examinations of CABs (including review of contracts between CABs and third-party lenders). In addition, Texas Finance Code, §393.223 authorizes the commission to adopt rules regarding the cost disclosure used by CABs.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

*§83.2003. Attempted Evasion of Applicability of Subchapter [~~Chapter~~].*

A "device, subterfuge, or pretense to evade the application of this subchapter," [~~of this chapter,~~] as used in Texas Finance Code, §393.602(c), includes: [~~refers to any transaction that in form may appear on its face to be something other than a deferred presentment transaction or a motor vehicle title loan, but in substance meets the definition of a deferred presentment transaction or a motor vehicle title loan as defined in Texas Finance Code, §393.602.~~]

(1) a transaction that is not identified as a deferred presentment transaction or payday loan, if the transaction is a deferred presentment transaction;

(2) a transaction that is not identified as a motor vehicle title loan, if the transaction is a motor vehicle title loan;

(3) a statement that a person is licensed by the Office of Consumer Credit Commissioner if the person is not licensed;

(4) a statement that a transaction is regulated by the Office of Consumer Credit Commissioner if the transaction is not regulated by the Office of Consumer Credit Commissioner;

(5) a reference in a transaction to a statute or rule regulating deferred presentment transactions or motor vehicle title loans if the transaction is not a deferred presentment transaction or motor vehicle title loan; and

(6) a disclosure or notice to a consumer about a deferred presentment transaction or motor vehicle title loan if the transaction is not a deferred presentment transaction or motor vehicle title loan.

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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Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7660

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## DIVISION 4. LICENSE

**7 TAC §83.4003**

The rule changes are proposed under Texas Finance Code, §393.622, which authorizes the commission to: (1) adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs), (2) adopt rules with respect to quarterly reporting by CABs, and (3) adopt rules with respect to the OCCC's examinations of CABs (including review of contracts between CABs and third-party lenders). In addition, Texas Finance Code, §393.223 authorizes the commission to adopt rules regarding the cost disclosure used by CABs.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

*§83.4003. Denial, Suspension, or Revocation Based on Criminal History.*

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.3010 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a credit access business, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing credit access business services involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; [~~and~~]

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) [~~(F)~~] evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation. [~~from one or more of the following:~~]

~~*[(i)* prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]~~

~~*[(ii)* the sheriff or chief of police in the community where the person resides; and]~~

~~*[(iii)* other persons in contact with the convicted person.]~~

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

~~[(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);]~~

(1) [~~(2)~~] a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2) - (3) [~~§53.021(a)(3) - (4)~~];

(2) [~~(3)~~] errors or incomplete information in the license application;

(3) [~~(4)~~] a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §393.614(a)(3); and

(4) [~~(5)~~] any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a) and §393.614(a).

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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Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7660

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**7 TAC §83.4007**

The rule changes are proposed under Texas Finance Code, §393.622, which authorizes the commission to: (1) adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs), (2) adopt rules with respect to quarterly reporting by CABs, and (3) adopt rules with respect to the OCCC's examinations of CABs (including review of contracts between CABs and third-party lenders). In addition, Texas Finance Code, §393.223 authorizes the commission to adopt rules regarding the cost disclosure used by CABs.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

*§83.4007. License Reissuance.*

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

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## DIVISION 5. OPERATIONAL REQUIREMENTS

### 7 TAC §§83.5001, 83.5003 - 83.5005

The rule changes are proposed under Texas Finance Code, §393.622, which authorizes the commission to: (1) adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs), (2) adopt rules with respect to quarterly reporting by CABs, and (3) adopt rules with respect to the OCCC's examinations of CABs (including review of contracts between CABs and third-party lenders). In addition, Texas Finance Code, §393.223 authorizes the commission to adopt rules regarding the cost disclosure used by CABs.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

*§83.5001. Data Reporting Requirements.*

(a) Generally. Each licensee must file the required reports described by this section for the prior period's credit access business activity in a form prescribed by the commissioner and must comply with all instructions relating to submitting the reports. During each calendar year, licensees are required to submit four quarterly reports as provided by Texas Finance Code, §393.627. Additionally, certain quarterly data will be collected by the OCCC on an annual basis under Texas Finance Code, §393.622(a)(1). For purposes of this section, the term "annual report" refers to the quarterly data submitted on an annual basis. Each quarterly or annual report must be completed in accordance with the OCCC's instructions. All information provided on each quarterly or annual report must be accurate and calculated in accordance with the OCCC's instructions.

(b) Due dates.

(1) Quarterly reports. The quarterly reports are due on:

(A) April 30, for transactions conducted during January through March;

(B) July 31, for transactions conducted during April through June;

(C) October 31, for transactions conducted during July through September; and

(D) January 31, for transactions conducted during October through December.

(2) Annual report. The annual report is due on January 31 for transactions conducted during the preceding January through December.

(c) Confidentiality. All individual licensee submissions of data, whether submitted on a quarterly or annual basis, are confidential in their entirety under the provisions of Texas Finance Code, §393.622(b).

(d) Aggregated public information. The OCCC will publish aggregated data on its website within a reasonable time after each quarterly report and annual report is due.

(e) Enforcement actions. The OCCC may take enforcement actions described by this subsection if a licensee violates this section by failing to file a complete and accurate quarterly or annual report by the applicable deadline.

(1) Injunction. As provided by Texas Finance Code, §14.208(a), if the OCCC has reasonable cause to believe that a licensee has violated this section, it may issue an injunction ordering the licensee to file one or more complete, accurate, and timely quarterly or annual reports.

(2) Administrative penalty. As provided by Texas Finance Code, §14.251, the OCCC may assess an administrative penalty against a licensee that knowingly and wilfully violates Texas Finance Code, §393.627 or this section. In addition, as provided by Texas Finance Code, §14.208(c), the OCCC may impose [~~assess~~] an administrative penalty against a licensee that violates an injunction described by paragraph (1).

(3) Cumulative sanctions. The OCCC may impose the following sanctions for violations of this section.

(A) First violation. If the licensee violates this section and has not violated this section during any of the four quarters preceding the violation, then the OCCC may issue an injunction [~~administrative penalty is $100 for each licensed location~~].

(B) Second violation. If the licensee violates this section during any of the four quarters following a first violation described by subparagraph (A) of this paragraph, then the administrative penalty is $500 for each licensed location.

(C) Third and subsequent violations. If the licensee violates this section during any of the four quarters following a second violation described by subparagraph (B) of this paragraph, then the administrative penalty is $1,000 for each licensed location. The $1,000 administrative penalty applies to subsequent violations that occur during any of the four quarters following a third or subsequent violation described by this subparagraph.

(4) [~~(3)~~] Suspension or revocation [~~for fourth or subsequent violation~~]. If the licensee violates this section during any of the four quarters following a third or subsequent violation described by subsection (e)(3)(C) of this section, or if a licensee fails to pay an administrative penalty required by a final administrative penalty order, [~~(e)(2)(C),~~] then the OCCC may suspend or revoke the licensee's license, as provided by Texas Finance Code, §393.614.

*§83.5003. Examinations.*

(a) Examination authority. The OCCC may periodically examine each place of business of a licensee and inspect the licensee's transactions and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to business regulated under Texas Finance Code, Chapter 393.

(b) Access to records. A licensee must allow the OCCC to examine the licensee's place of business and make a copy of an item that may be inspected under subsection (a) of this section.

(c) Third-party lender agreements. The OCCC's examination authority includes the authority to review all agreements between a licensee and any third-party lender with which the licensee contracts to provide services under Texas Finance Code, Chapter 393.

(d) Witness declarations [~~statements~~]. In connection with an examination, the OCCC may obtain witness declarations [~~statements~~]

that pertain to business regulated under Texas Finance Code, Chapter 393. A witness declaration must substantially comply with Texas Civil Practice and Remedies Code, Chapter 132. [~~A witness statement must be signed and dated, and must include an acknowledgment that the statement may be introduced in an enforcement action in which the licensee is a party.~~]

(e) Records declarations [~~statements~~]. In connection with an examination, the OCCC may obtain declarations [~~statements~~] regarding records maintained by the licensee that pertain to business regulated under Texas Finance Code, Chapter 393. A records declaration must substantially comply with Texas Civil Practice and Remedies Code, Chapter 132 [~~statement must be signed and dated by a witness~~], and must include acknowledgments of the following:

(1) a statement that the witness is the custodian of records [~~of the witness's positon and duties~~] at the licensee;

(2) a statement that the witness is familiar with the manner in which records are created and maintained by virtue of duties and responsibilities;

(3) the number of pages of attached records;

(4) a statement that the records are original records or exact duplicates of the original records;

(5) a statement that the records were made at or near the time of each act, event, condition, opinion, or diagnosis set forth;

(6) a statement the records were made by, or from information transmitted by, persons with knowledge of the matters set forth;

(7) a statement that the records were kept in the course of regularly conducted business activity; and

(8) a statement that it is the regular practice of the business activity to make the records. [~~; and~~]

[~~(9) an acknowledgment that the statement and the accompanying records may be introduced in an enforcement action in which the licensee is a party.~~]

*§83.5004. Files and Records Required.*

A licensee must maintain records for each transaction under Texas Finance Code, Chapter 393, and make those records available to the OCCC for examination. The records required by this section may be maintained by using a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of these types of systems, unless otherwise specified. All records must be prepared and maintained in accordance with generally accepted accounting principles. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) (No change.)

(2) Consumer's transaction file. A licensee must maintain a paper or electronic transaction file for each individual transaction under Texas Finance Code, Chapter 393, or be able to produce this information within a reasonable amount of time. The transaction file must contain documents that show the licensee's compliance with applicable state and federal law, including Texas Finance Code, Chapter 393. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the transaction file if the electronic record can be accessed upon request.

(A) (No change.)

(B) The transaction file must include the following documentation if the licensee services or collects a loan in connection with a transaction under Texas Finance Code, Chapter 393, or if the licensee otherwise obtains this documentation in the course of business:

*(i) - (v)* (No change.)

*(vi)* Criminal charge records. The transaction file must include complete documentation of any threat of criminal prosecution against a consumer, and must include complete documentation of any criminal referral, charge, or complaint filed by a licensee against a consumer, showing the licensee's compliance with Texas Finance Code, §393.201(c)(3). This must include any written statement threatening criminal prosecution, a written summary of any oral statement threatening criminal prosecution, any written evidence of criminal conduct, any information submitted to law enforcement relating to alleged criminal conduct by a consumer, a written summary of any oral statement submitted to law enforcement, any police report, and any court records obtained by the licensee.

*(vii) - (viii)* (No change.)

(C) (No change.)

(3) Agreements between licensee and third-party lender. A licensee must maintain all documentation of its current agreements with third-party lenders, including copies of the agreement, any guarantees or letters of credit, and underwriting guidelines issued by the lender. A licensee must maintain documentation and records of transfers of money between itself and any third-party lender, as described by §83.5005 of this title (relating to Separation Between Credit Access Business and Third-Party Lender). The documentation must show the licensee's compliance with Texas Finance Code, §393.001(3). The licensee may maintain this documentation at a centralized location other than the licensed location or branch office if the agreements apply to multiple locations. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it. If an agreement terminates, documentation of the agreement must be maintained until the latest of:

(A) four years from the date of the last consumer transaction subject to the agreement;

(B) two years from the date of the final entry made on the consumer's account in the last consumer transaction subject to the agreement;

(C) one year from the date of termination of the agreement; or

(D) the OCCC's next examination of the licensee (if the documentation is maintained at a centralized location, this refers to the next examination of the centralized location).

(4) - (8) (No change.)

(9) Index of litigation, criminal charges, and repossessions. A licensee must maintain (or be able to produce within a reasonable period of time) an index of each litigation action and criminal charge or referral filed by or against the licensee, as well as each repossession initiated by the licensee. The index must show the consumer's name, account number, and date of action. Each record in the index must be retained for a period of four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later.

(10) - (12) (No change.)

*§83.5005. Separation Between Credit Access Business and Third-Party Lender.*

(a) Generally. A licensee assists consumers in obtaining extensions of credit by others, as provided by Texas Finance Code, §393.001(3).

(b) Independent operation. A licensee must operate independently from any third-party lender that makes a loan in connection with a transaction under Texas Finance Code, Chapter 393. Independent operation includes the following requirements:

(1) A licensee must be a separate legal entity from any third-party lender that makes a loan in connection with a transaction under Texas Finance Code, Chapter 393.

(2) The individuals who make major operational decisions for a licensee must be different from the individuals who make major operational decisions for any third-party lender.

(3) A licensee may not perform the functions of a third-party lender, except by written agreement.

(4) A licensee may not delegate functions to a third-party lender, except by written agreement.

(5) A licensee may not select the underwriting criteria used in determining whether the lender will make a loan to the consumer, but a licensee may apply underwriting criteria selected by the third-party lender.

(6) A licensee may not lend money to a consumer in connection with a transaction under Texas Finance Code, Chapter 393. In particular, a licensee may not borrow money from another person and then lend that money to a consumer.

(7) A licensee may not act as a general agent of a third-party lender, but may act as a special limited agent under a written agreement with a third-party lender in accordance with this section.

(8) A licensee may not directly or indirectly share fees for credit access business services with a third-party lender. If a third-party lender receives any portion of a fee for credit access business services charged by a licensee, it must be promptly remitted to the licensee.

(9) A licensee must document each transfer of money between itself and a third-party lender, in a manner sufficient to show each amount that was remitted in connection with each transfer. A licensee must maintain sufficient and complete records to show the exact amounts that were earned by the licensee and the third-party lender in connection with a deferred presentment transaction or motor vehicle title loan.

(c) The OCCC may consider the following factors in determining whether a licensee operates independently from a third-party lender in compliance with this section:

(1) the extent of common ownership or control between the licensee and any third-party lender, including common ownership or control resulting from familial relationships between owners and directors of the licensee and any third-party lender;

(2) whether a licensee shares common officers, directors, or employees with a third-party lender;

(3) the sufficiency of documentation of transfers of money between the licensee and a third-party lender; and

(4) whether the licensee's course of performance is consistent with its written agreements with third-party lenders and its agreements with consumers, including agreements that specify a time within which the licensee will act on a guarantee.

(d) Representations regarding relationship with third-party lender. Under Texas Finance Code, §393.304, a licensee may not make a false or misleading representation in the offer or sale of services. In particular, a licensee may not make a false or misleading representation regarding its relationship with a third-party lender or any guarantee that the licensee provides to a third-party lender on the consumer's behalf. For example, a licensee may not represent that it will enter a letter of credit with the third-party lender if, in its course of performance, it does not actually enter a letter of credit as that term is defined in Texas Business & Commerce Code, §5.102(a)(10). A licensee may not represent that it guarantees repayment to a third-party lender on the consumer's behalf if it does not act on that guarantee as described in its representations.

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

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## DIVISION 6. CONSUMER DISCLOSURES AND NOTICES

### 7 TAC §83.6007

The rule changes are proposed under Texas Finance Code, §393.622, which authorizes the commission to: (1) adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs), (2) adopt rules with respect to quarterly reporting by CABs, and (3) adopt rules with respect to the OCCC's examinations of CABs (including review of contracts between CABs and third-party lenders). In addition, Texas Finance Code, §393.223 authorizes the commission to adopt rules regarding the cost disclosure used by CABs.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

*§83.6007. Consumer Disclosures.*

(a) Consumer disclosure for single payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a single payment payday loan is presented in the following figure.
Figure: 7 TAC §83.6007(a)
[~~Figure: 7 TAC §83.6007(a)~~]

(b) Consumer disclosure for multiple payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a multiple payment payday loan is presented in the following figure.
Figure: 7 TAC §83.6007(b)
[~~Figure: 7 TAC §83.6007(b)~~]

(c) Consumer disclosure for single payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a single payment auto title loan is presented in the following figure.

Figure: 7 TAC §83.6007(c)
[~~Figure: 7 TAC §83.6007(c)~~]

(d) Consumer disclosure for multiple payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a multiple payment auto title loan is presented in the following figure.
Figure: 7 TAC §83.6007(d)
[~~Figure: 7 TAC §83.6007(d)~~]

(e) Consumer disclosures required for three to five common examples. For the three to five examples of the most common loans transacted by a credit access business as utilized under §83.6004 of this title (relating to Fee Schedule Content), the business must develop a consumer disclosure for those loan amounts, including appropriate fee information. Three to five examples must be developed for each payday or auto title product sold by the business (e.g., three single payment payday examples of $300, $500, and $700; three multiple payment auto title examples of $1,000, $1,500, and $2,500). The credit access business should provide the consumer with the example form for the product and amount that most closely relates to the consumer's loan request.

(f) Internet sales. A credit access business must provide the required disclosure to a consumer immediately upon the consumer's arrival at the credit access business's website that includes information about a payday or auto title loan as defined by Texas Finance Code, §393.221. Access to the required disclosure must be clearly visible upon the consumer's arrival at the website. If a consumer is directed to a credit access business's website by another commercial entity that is not required to be licensed as a credit access business, then the credit access business's website to which the consumer is first directed must contain a direct link to the appropriate consumer disclosure as outlined in subsections (a) - (d) of this section. The direct link to the consumer disclosure must be provided before the consumer is required to verify previously provided information, and before the consumer is required to provide additional information.

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

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# CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS
## SUBCHAPTER B. RULES FOR CRAFTED PRECIOUS METAL DEALERS
## DIVISION 1. REGISTRATION PROCEDURES

### 7 TAC §85.1012

The Finance Commission of Texas (commission) proposes the repeal of §85.1012 (relating to Registration System Transition), in 7 TAC, Chapter 85, Subchapter B, concerning Rules for Crafted Precious Metal Dealers.

In general, the purpose of the proposed repeal in 7 TAC Chapter 85, Subchapter B is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 85, Subchapter B was published in the *Texas Register* on March 27, 2020, (45 TexReg 2211). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of the proposed repeal to interested stakeholders for review, and then held a stakeholder webinar regarding the repeal. The OCCC received no informal precomments on the rule text draft.

The proposed repeal is intended to delete a section of 7 TAC Chapter 85, Subchapter B that expired by its own terms on January 1, 2020. This provision was meant to transition crafted precious metal dealers from a registration system in the Department of Public Safety to one in the OCCC.

Mirand Diamond, Director of Licensing, has determined that for the first five-year period the proposed repeal is in effect, there will be no fiscal implications for state or local government as a result of administering the rule repeal.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the repeal of §85.1012 is in effect, the public benefits anticipated as a result of the change will be that the commission's rules will be more easily understood by crafted precious metal registrants and more in line with current practices.

There is no anticipated cost to individual crafted precious metal dealers who are required to comply with the repeal as proposed.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, micro-businesses, and rural communities, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts.

During the first five years the proposal will be in effect, it will not create or eliminate a government program. Implementation of the proposal will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposal will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal does not create a new regulation. The proposal does not expand or limit an existing regulation. The proposal repeals 7 TAC §85.1012. The proposal does not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Audrey Spalding, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of business on the 31st day after the proposal is published in the

*Texas Register,* no further written comments will be considered or accepted by the commission.

The repeal is proposed under Texas Occupations Code, §1956.0611, which authorizes the commission to adopt rules to implement and enforce Texas Occupations Code, Chapter 1956.

The statutory provisions affected by the proposal are contained in Texas Occupations Code, Chapter 1956.

*§85.1012. Registration System Transition.*

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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Audrey Spalding
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## CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) proposes amendments to §89.701 (relating to Sworn Document Authorizing Transfer of Tax Lien), and proposes new §89.805 (relating to Payoff for Property Tax Loan Secured by Multiple Properties) in 7 TAC, Chapter 89, concerning Property Tax Lenders.

In general, the purpose of the proposed amendments and new rule in 7 TAC Chapter 89 is to remove language suggesting that the sworn document must be recorded, and to specify requirements for payoff of a tax lien for an individual property (in the case of a property tax loan secured by multiple properties).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. Stakeholders provided feedback during the webinar, and the OCCC received nine informal precomments on the rule text draft. Based on this feedback, the OCCC distributed a revised precomment draft and received three additional precomments. The OCCC appreciates the thoughtful input provided by stakeholders.

Proposed amendments to §89.701 would remove language suggesting that the sworn document must be recorded. Under Texas Tax Code, §32.06(a-1), in order to authorize a tax lien transfer from a taxing unit to a property tax lender, a property owner must execute a sworn document containing an authorization for payment of taxes, contact information for the property tax lender, and a description of the property, among other information. Before 2013, Texas Tax Code, §32.065(b)(4) required the sworn document to be recorded in the county's real property records. In 2013, the Texas Legislature passed SB 247, which removed this requirement. Currently, §89.701(a)(2) requires the sworn document to state "that after the document is recorded, it is to be returned to the transferee." Proposed amendments to §89.701(a)(2) and the accompanying figure at §89.701(c) would amend this statement to remove the reference to recording. However, a proposed amendment at §89.701(d)(4) would allow property tax lenders to include this reference if the sworn document will be recorded.

Proposed new §89.805 would provide a method for calculating the amount for a lienholder or mortgage servicer to pay off an individual property, in the case of a property tax loan that is secured by more than one property. In other words, if a property tax loan is secured by properties A, B, and C, and another lienholder holds a lien on property A, the new rule describes how to calculate the amount that the lienholder will pay to release the tax lien on property A. This rule is intended to implement Texas Tax Code, §§32.06(f), 32.06(f-1), and 32.065(b-1), which describe situations where a lienholder or mortgage servicer can obtain a release of a transferred tax lien.

Texas Tax Code, §32.06(f) states: "The holder of a loan secured by a transferred tax lien that is delinquent for 90 consecutive days must send a notice of the delinquency by certified mail on or before the 120th day of delinquency or, if the 120th day is not a business day, on the next business day after the 120th day of delinquency, to any holder of a recorded preexisting lien on the property. The holder or mortgage servicer of a recorded preexisting lien on property encumbered by a tax lien transferred as provided by Subsection (b) is entitled, within six months after the date on which the notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee."

Texas Tax Code, §32.06(f-1) states in part: "If an obligation secured by a preexisting first lien on the property is delinquent for at least 90 consecutive days and the obligation has been referred to a collection specialist, the mortgage servicer or the holder of the first lien may send a notice of the delinquency to the transferee of a tax lien. The mortgage servicer or the first lienholder is entitled, within six months after the date on which that notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee."

Texas Tax Code, §32.065(b-1) states: "On an event of default and notice of acceleration, the mortgage servicer of a recorded lien encumbering real property may obtain a release of a transferred tax lien on the property by paying the transferee of the tax lien or the holder of the tax lien the amount owed by the property owner to that transferee or holder."

In proposed new §89.805, subsection (a) describes the scope of the rule, with citations to the three Texas Tax Code provisions containing rights of other lienholders to pay off tax liens. Subsection (b) explains that if a property tax loan is secured by more than one property, a property tax lender must allow a holder or mortgage servicer to obtain a release for an individual property, by paying the amount owed for the individual property. Subsection (c) describes the method for calculating the amount owed for the individual property. The method is based on the individual property's attributable percentage in relation to the total amount paid to taxing units or governmental entities in connection with the property tax loan. Subsection (c)(4) describes how to calculate post-closing costs that may be included in the payoff amount. Subsection (c)(5) describes the requirement to maintain records, and subsection (c)(6) explains that a property tax lender may charge a lien release fee for each individual property for which a lien is released.

New §89.805 is being proposed in response to complaints that the OCCC received from banks, alleging that property tax

lenders overcharged them in connection with payoffs under the Texas Tax Code. Many of these disputes have involved overcharges by the property tax lender and failure to maintain documentation that adequately supports the payoff amount. In some cases, the complaint involved an assertion by the property tax lender that the bank had no right to pay off the tax lien for an individual property. The OCCC has expended significant staff resources to review records spanning multiple years and multiple properties, identify and remove unauthorized charges, and calculate appropriate payoff amounts. The OCCC hopes that the new rule will provide a standard calculation method to avoid these disputes.

In informal precomments, stakeholders were mixed in whether they supported or opposed new §89.805. Some stakeholders, including an association of banks and a property tax lender, supported the new rule. Some property tax lenders suggested changes to the new rule, and some opposed the new rule. The proposed text includes several changes responding to suggestions from stakeholders. The stakeholders who suggested changes or opposed the rule focused mainly on seven issues.

First, stakeholders emphasized that §89.805 should apply only to payoffs by lienholders or mortgage servicers under Texas Tax Code, §§32.06(f), 32.06(f-1), and 32.065(b-1). In response to these precomments, proposed §89.805(a) specifies that the rule applies only to these three situations.

Second, stakeholders requested confirmation that §89.805 would apply only to property tax loans entered on or after the rule's effective date. The rule will apply only to property tax loans entered on or after the rule's effective date. One stakeholder requested confirmation of this in the rule text itself. The OCCC and commission believe that this is unnecessary, and that this confirmation in the preamble is sufficient.

Third, the precomment drafts included a requirement to disclose the specific dollar amount paid for each property to the property owner before closing. Stakeholders responded that it would be difficult to calculate specific dollar amounts paid for each property, and to list these amounts on a pre-closing disclosure. One stakeholder suggested that this amount could be identified later if needed. In response to these precomments, the proposal does not include this disclosure requirement.

Fourth, stakeholders requested that the rule specify that the lien release fee applies to each property. In response to this comment, §89.805(c)(6) would specify that the lien release fee applies to each individual property for which a lien is released.

Fifth, stakeholders requested that the rule allow property tax lenders to charge additional types of fees in connection with a payoff, such as attorney fees in bankruptcy to amend pleadings, update court documents, and restart cases, as well as attorney fees to complete a foreclosure. The OCCC believes that this issue is addressed by language in §89.805(c)(4) that allows a portion of post-closing costs described by Texas Finance Code, §351.0021. Any post-closing costs that are not expressly authorized by statute may not be included in the payoff amount.

Sixth, a stakeholder requested that refinances (i.e., new property tax loans that satisfy and replace previous property tax loans) be exempted from new §89.805. The commission declines to put this exemption into the rule. Texas Tax Code, §32.06 and §32.065 do not contain any exemption for refinances. In addition, some of the complaints from banks, as described earlier, resulted from property tax loans that were refinances. Exempting refinances would not achieve the rule's intended purposes.

Seventh, some property tax lenders objected to the rule's core concept that a lienholder can pay off the tax lien for an individual property by paying the amounts associated with the individual property. These property tax lenders argued that the proposed rules would cause property tax lenders to enter fewer loans secured by multiple properties, and would cause property tax lenders to charge higher closing costs. One of these property tax lenders proposed an alternative interpretation of the payoff rights in Texas Tax Code, §§32.06(f), 32.06(f-1), and 32.065(b-1). This property tax lender noted that the Tax Code provisions require the lienholder to pay the "amount owed" for the property tax loan, and interpreted the phrase "amount owed" to mean the full amount owed for all properties under the property tax loan. Under this alternative interpretation, if a property tax loan is secured by properties A, B, and C, and another lienholder holds a lien on property A, the lienholder would have to pay off the full amount owed for properties A, B, and C in order to obtain a release of the tax lien for property A. This property tax lender argued that a lienholder is not entitled to a "partial release."

The commission and the OCCC disagree with this alternative interpretation, because it would frustrate the statutory rights of lienholders and servicers to pay off transferred tax liens. The payoff described in the rule is not a "partial release," but is a full release of the tax lien for an individual property. Texas Tax Code, §§32.06(f), 32.06(f-1), and 32.065(b-1) each refer to the "property" for which the lienholder holds the lien, and refer to the "amount owed" that must be paid in order to exercise the right to pay off the tax lien. The commission and the OCCC understand the phrase "amount owed" to refer to the amount owed for the individual property, and the proposed new rule provides a way to calculate that amount. This reading appropriately enables lienholders to exercise the rights described by the Tax Code, so that they can consolidate amounts owed for the property, reduce costs associated with servicing obligations on the property, and potentially avoid foreclosure.

The proposed alternative interpretation would inappropriately shift costs and risks associated with the property tax loan onto other lienholders. If "amount owed" refers to the amount owed for all properties, this suggests that lienholders must pay amounts for properties with no connection to their liens, and that the property tax lender can receive the same amount multiple times by requiring multiple lienholders to pay the same amounts. The property tax lenders that object to the rule's core concept seem to be stating that, when they make property tax loans secured by multiple properties, they depend on their ability to restrain other lienholders from paying off individual properties, and depend on the extra revenue that results from lienholders having to pay off multiple properties. To the extent that these practices depend on holding property A captive to a payoff for properties B and C, these practices are not consistent with a lienholder's payoff rights under the Tax Code, and it is entirely appropriate for the rule to specify that these practices are prohibited.

Mirand Diamond, Director of Licensing and Registration, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a

result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will better protect consumers, will better enable licensees to comply with Chapter 32 of the Texas Tax Code, and will better enable lienholders to exercise their statutory rights under Chapter 32.

Additional economic costs may be incurred by persons who are required to comply with the proposed new rule at §89.805. The anticipated costs would include the costs associated with updating systems to use the calculation method described in the rule. For licensees that currently allow lienholders to pay off individual properties, any additional economic costs are anticipated to be minimal. The agency has attempted to lessen any potential costs by specifying the limited scope of the rule in proposed §89.805(a). In addition, the new rule will apply only to property tax loans entered on or after the rule's effective date.

In an informal precomment, a property tax lender argued that the rule would lead to increased closing costs for borrowers. This property tax lender argued that the rule will require property tax lenders to make a separate property tax loan for each separate property, and that this will result in increased documentation, resulting in increased closing costs for borrowers. The property tax lender proposed an alternative interpretation of the Tax Code's provisions, under which a lienholder must pay off the entire property tax loan, not just the amount corresponding to the individual property where the lienholder holds a lien. The OCCC disagrees with this argument and interpretation. First, the rule does not prohibit property tax lenders from making property tax loans secured by multiple properties. Second, if there are costs associated with enabling lienholders to pay off liens, these costs are required by the Tax Code, and do not result from the rule. Third, the property tax lender's alternative interpretation would result in increased costs for other lienholders, because it would require lienholders to pay off liens on property that they have no interest in, in order to exercise their statutory rights.

The OCCC does not anticipate economic costs to persons who are required to comply with the proposed amendments to §89.701.

The agency is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the OCCC. The proposal would create a new regulation at §89.805 to describe requirements for a payoff of a property tax loan secured by multiple properties. The proposal would limit current §89.701 by removing language suggesting that the sworn document must be recorded. The proposal would not expand or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

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

## SUBCHAPTER G. TRANSFER OF TAX LIEN

### 7 TAC §89.701

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Tax Code, §32.06 and §32.065, and Texas Finance Code, Chapter 351. In addition, Texas Tax Code, §32.06(a-4) authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under that section, and to prescribe the form and content of the sworn document by rule. Texas Finance Code, §351.0021 authorizes the commission to adopt rules implementing and interpreting that section, which describes limitations on post-closing costs. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Tax Code, Chapter 32 and Texas Finance Code, Chapter 351.

*§89.701. Sworn Document Authorizing Transfer of Tax Lien.*

(a) Required information. A sworn document containing all of the required information provided by this subsection meets the requirements of Texas Tax Code, §32.06(a-1). A sworn document under this section must contain the following information:

(1) (No change.)

(2) a statement that [~~after~~] the document [~~is recorded, it~~] is to be returned to the transferee;

(3) - (17) (No change.)

(b) (No change.)

(c) Standard sworn document. The standard sworn document under Texas Tax Code, §32.06(a-1) is presented in the following figure.
Figure: 7 TAC §89.701(c)
[~~Figure: 7 TAC §89,701(c)~~]

(d) Permissible changes.

(1) Multiple account transfers. In the case of multiple account transfers, the information required by subsection (a)(6), (7), and (8) of this section may be provided in table or list format as an attachment to the standard form.

(2) Joint owners. In a transfer involving joint owners, additional signature blocks containing the information required by subsection (a)(6), (7), (8), (9), and (15) of this section may be attached to the standard form.

(3) Title. The title of the sworn document may be relocated to the top of the form.

(4) Statement on recording. If the transferee will record the sworn document in the real property records, the transferee may replace "Return to:" with "After recording, return to:" at the top of the form.

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 22, 2020.

TRD-202002472
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Earliest possible date of adoption: August 2, 2020
For further information, please call: (512) 936-7660

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## SUBCHAPTER H. PAYOFF STATEMENTS

### 7 TAC §89.805

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Tax Code, §32.06 and §32.065, and Texas Finance Code, Chapter 351. In addition, Texas Tax Code, §32.06(a-4) authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under that section, and to prescribe the form and content of the sworn document by rule. Texas Finance Code, §351.0021 authorizes the commission to adopt rules implementing and interpreting that section, which describes limitations on post-closing costs. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Tax Code, Chapter 32 and Texas Finance Code, Chapter 351.

*§89.805. Payoff for Property Tax Loan Secured by Multiple Properties.*

(a) Purpose and scope. Under Texas Tax Code, §§32.06(f), 32.06(f-1), and §32.065(b-1), in certain situations where a property tax loan or preexisting mortgage is delinquent or in default, a holder or mortgage servicer of a preexisting lien on a property is entitled to obtain a release of a transferred tax lien, by paying the amount owed under the contract between the property owner and the property tax lender. This section describes how to calculate the amount owed for an individual property where a property tax loan is secured by more than one property. This section applies only to:

(1) a payoff by the mortgage servicer or holder of a recorded preexisting lien due to the delinquency of a property tax loan under Texas Tax Code, §32.06(f);

(2) a payoff by the mortgage servicer or holder of a preexisting first lien due to the delinquency of the obligation secured by a preexisting first lien under Texas Tax Code, §32.06(f-1); and

(3) a payoff by the mortgage servicer of a recorded lien due to default and notice of acceleration of a property tax loan under Texas Tax Code, §32.065(b-1).

(b) Requirement to allow payoff. If a property tax loan is secured by more than one property, a property tax lender must allow a holder or mortgage servicer to obtain a release for an individual property in accordance with Texas Tax Code, §§32.06(f), 32.06(f-1), and §32.065(b-1), by paying the amount owed for the individual property.

(c) Amount owed for individual property.

(1) Calculation of amount owed. A property tax lender must calculate the amount owed for an individual property by adding:

(A) the outstanding principal balance of the loan, multiplied by the attributable percentage for the individual property;

(B) the outstanding interest for the loan, multiplied by the attributable percentage for the individual property;

(C) authorized post-closing costs that are not part of the principal balance, multiplied by the attributable percentage for the individual property, if the costs relate to the property tax loan generally; and

(D) authorized post-closing costs that are not part of the principal balance, if the costs relate specifically to the individual property.

(2) Attributable percentage. To calculate the attributable percentage for an individual property, a property tax lender must divide the total amount paid for the individual property by the total amount paid for all properties in connection with the property tax loan.

(A) A property tax lender must calculate the total amount paid for the individual property by adding:

*(i)* the total amount paid to taxing units or governmental entities for unpaid taxes, penalties, interest, and collection costs for the individual property in connection with the property tax loan, as shown on the tax receipt; and

*(ii)* in the case of a property tax loan that is a refinance, any amount paid for the individual property, as shown on the pre-closing disclosure statement.

(B) A property tax lender must calculate the total amount paid for all properties by adding:

*(i)* the total amount paid to taxing units or governmental entities for unpaid taxes, penalties, interest, and collection costs for all properties in connection with the property tax loan, as shown on the tax receipts; and

*(ii)* in the case of a property tax loan that is a refinance, the amounts paid for all properties as shown on the pre-closing disclosure statement.

(3) Lower payoff amount. A property tax lender may allow a property owner, holder, or servicer to obtain a release for an amount that is lower than the amount described by paragraphs (1) and (2) of this subsection.

(4) Post-closing costs. A property tax lender may include authorized post-closing costs related solely to the individual property in the amount owed for the individual property. Post-closing costs related to other individual properties may not be included. Post-closing costs related generally to the property tax loan may be included if multiplied by the attributable percentage. If the property tax lender has charged a post-closing cost that is not expressly authorized by Texas Finance Code, §351.0021, then the property tax lender may not include the cost in the amount owed, and must refund the cost to the property owner.

(5) Recordkeeping. A property tax lender must maintain documentation showing how it calculated the attributable percentage and the amount owed for the individual property. This documentation must be maintained in the property tax loan transaction file for the pe-

riod described by §89.207 of this title (relating to Files and Records Required).

(6) Lien release fee. In addition to the amount owed for the individual property, a property tax lender may charge a lien release fee described by §89.602 (relating to Fee for Filing Release) for each individual property for which a lien is released.

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 22, 2020.

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Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
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# PART 8. JOINT FINANCIAL REGULATORY AGENCIES

## CHAPTER 155. PAYOFF STATEMENTS

## SUBCHAPTER A. FORM AND DELIVERY [~~REGISTRATION~~]

**7 TAC §155.2**

The Finance Commission (commission), on behalf of the Department of Savings and Mortgage Lending (SML), the Office of the Consumer Credit Commissioner (OCCC), and the Texas Department of Banking (DOB; SML, OCCC, and DOB, collectively, the "joint financial regulatory agencies"), proposes amendments to existing Title 7 Texas Administrative Code (TAC), Part 8, Chapter 155, Subchapter A, §155.2. This proposal and the rule as amended by this proposal are referred to collectively as the "proposed rule."

Background and Purpose

7 TAC, Chapter 155 contains the administrative rules of the joint financial regulatory agencies concerning requirements for the creation and delivery of payoff statements for home loans. The proposed rule arises in part from the joint financial regulatory agencies' periodic review of Chapter 155, conducted pursuant to Government Code, §2001.039. The commission, determining that the reasons for initially adopting the rules contained in Chapter 155 continued to exist, readopted such rules in the January 3, 2020, issue of the *Texas Register* (45 TexReg 162). While readopting the rules, the commission contemporaneously proposed amendments to 7 TAC §155.2 (45 TexReg 33). The amendments proposed at that time were limited to non-substantive formatting changes to reconcile differences between the form published on SML's website and the form embedded in §155.2. However, during the period for public comment to such proposal, the joint financial regulatory agencies received a request from the Texas Land Title Association (commenter) that the payoff statement form be revised to include additional information. Specifically, the commenter requested that, in order for the title company to more easily verify the loan servicer has correctly identified the loan for which the payoff statement was requested, the payoff statement form state the loan number assigned for identification purposes, or if the loan number is not available, the original loan amount. The joint financial regulatory agencies initially determined the comment and proposed revision had merit and that the revision should be considered by the commission for potential adoption. However, the joint financial regulatory agencies further determined that the revisions suggested by the commenter would be best achieved by amending the rule to impose the requirement within the actual text of the rule, in addition to making corresponding changes to the form embedded in the rule. Furthermore, the revisions to the form would be substantive in nature instead of merely non-substantive formatting changes. In consideration of the foregoing, the joint financial regulatory agencies determined it would be prudent to republish the rule to provide additional notice and opportunity for public comment.

SUMMARY OF CHANGES

The proposed rule amends Subchapter A, Registration. A proposed amendment would replace the title of Subchapter A with "Form and Delivery," to better reflect the subchapter's subject matter.

The proposed rule amends §155.2, Payoff Statement Form. Subsection (a) is amended to clarify that a loan servicer may designate a mailing address and a fax number to receive requests for payoff statements. Existing §152.2(b)(3) requires the loan servicer to provide "sufficient information to identify the loan for which the payoff information is provided." §152.2(b)(3) is amended to insert two new subparagraphs requiring that such information include the loan number, or if the loan number is not available, the original amount of the loan. The proposed rule further revises the prescribed form for the payoff statement embedded in §155.2 as an attached graphic. The proposed rule makes corresponding changes to the form to implement the new requirement for the loan number or original loan amount to be included by adding fields for both pieces of information. The proposed rule also makes formatting revisions to the form to make the form consistent with the payoff statement form published by SML on its website. The proposed rule also amends §155.2 to make terminology and other modernization changes to update the rule and improve readability. These changes include: using updated terminology for transmittal by email and fax; and making minor punctuation changes.

Fiscal Impact on State and Local Government

Ernest Garcia, General Counsel of SML, Mirand Diamond, Director of Licensing and Registration for OCCC, and Jesse Moore, Assistant General Counsel for DOB, have determined that for the first five-year period the proposed rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rule. Ernest Garcia of SML, Mirand Diamond of OCCC, and Jesse Moore of DOB further determined that for the first five-year period the proposed rule is in effect, there will be no foreseeable loss in revenue for the state or local governments as a result of enforcing or administering the proposed rule.

Public Benefits

Ernest Garcia of SML, Huffman Lewis, Director of Consumer Protection for OCCC, and Jesse Moore of DOB have determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to have an amended payoff statement form with formatting that is more consistent with the form published by SML on its website. The new requirement to state the origi-

nal loan number or amount of the loan on the form will also promote uniformity among loan servicers in complying with the requirements of existing §155.2(b)(3), thereby promoting familiarity with the form by the public. The uniform provision of identifying information also has the tendency to limit erroneous payoff information when a loan servicer misidentifies the loan for which the payoff statement is meant to be provided, thereby reducing or preventing harm to a member of the public who is a party to a transaction involving a payoff statement.

Probable Economic Costs to Persons Required to Comply with the Proposed Rule

Ernest Garcia of SML, Huffman Lewis of OCCC, and Jesse Moore of DOB have determined that for the first five years the proposed rule is in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rule. A loan servicer may use custom electronic forms in order to fulfill the requirements of existing §155.2. As related *supra,* loan servicers are already required to provide information identifying the loan for which the payoff statement is provided. In meeting existing requirements, loan servicers often include the loan number and the original loan amount, and these loan servicers would not incur any costs in order to comply with the proposed rule. Loan servicers that do not already include the loan number or the original loan amount on their custom electronic forms may be inclined to update such forms to comply with the rule. However, any such costs should only be incurred on a one-time basis and are anticipated to be *de minimis.* Use of custom electronic forms by a loan servicer is not required by the proposed rule, and is discretionary. Moreover, if the proposed rule is adopted, it will include an electronic form the servicer may use to comply with the rule at no cost. Additionally, SML intends to publish a form-fillable version of the form on its website for use at no cost. The text of the new information required by the proposed rule rarely exceeds twenty characters in length. As a result, printed forms preexisting the potential adoption of the proposed rule that do not include the required information may still be used but supplemented with the new required information at no cost. In an effort to discern any potential costs to regulated persons, and to mitigate any such costs, the joint financial regulatory agencies solicited the comments and feedback of industry stakeholders and other interested persons. Specifically, on February 25, 2020, the joint financial regulatory agencies posted a notice on their respective websites with an initial draft of potential amendments concerning the proposed rule. Such notice specifically solicited comments concerning whether or not there would be costs imposed on regulated persons as a result of the potential amendments. The notice also solicited comments concerning whether regulated persons might benefit from or would be harmed by potential delayed implementation of the potential amendments should they be adopted. The joint regulatory agencies received no written comments within the time prescribed by such notice, or otherwise. The foregoing notwithstanding, the commission and the joint financial regulatory agencies invite comments from stakeholders and interested persons who believe there will be costs imposed on regulated persons associated with adoption of the proposed rule, and whether delayed implementation is helpful or necessary.

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, each of the joint financial regulatory agencies is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rule is in effect, the joint financial regulatory agencies have determined the following: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to any of the joint financial regulatory agencies; (4) the proposed rule does not require an increase or decrease in fees paid to the any of the joint financial regulatory agencies; (5) the proposed rule does not create a new regulation (rule); (6) the proposed rule does expand, limit, or repeal an existing regulation (rule). The proposed rule expands an existing rule requiring identifying information for the loan for which a payoff statement is issued by dictating the minimum information required to comply. The proposed rule does not limit or repeal an existing regulation (rule); (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rule. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The proposed rule will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rule. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rule. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Public Comments

Written comments regarding the proposed rule may be submitted by mail to Iain A. Berry, Associate General Counsel for SML, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of, and to implement, Finance Code §343.106(b), which requires the commission to adopt rules governing requests by title insurance companies for payoff information from mortgage servicers related to home loans and the provision of that information, including rules prescribing a standard payoff statement form that must be used by mortgage servicers to provide payoff statements.

This proposal affects the statutes contained in Finance Code, Chapter 343. No other statute is affected by this proposal.

*§155.2. Payoff Statement Form.*

(a) Requests made pursuant to this chapter shall be in writing and submitted to the mortgage servicer by mail, email, [~~electronic~~

~~mail~~] or fax [~~facsimile~~]. If the mortgage servicer has designated a specific mailing [~~physical~~] address, [;] email [~~electronic mail~~] address, fax number, [;] and/or a specific representative to receive requests made pursuant to this chapter, then requests shall be submitted in accordance with such designation. Requests for a payoff statement shall, at a minimum, include the following:

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

(b) Upon receipt of a valid request made under subsection (a) of this section, a mortgage servicer shall provide, in writing, by mail or email [~~electronic mail~~], the payoff statement information for the home loan specified in the request which must be provided on the prescribed payoff statement form, Figure 7 TAC §155.2(c)(6), or in a substantially similar format which contains all elements not indicated as optional on the prescribed payoff statement form. The statement must include the following information:

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

(3) Sufficient information to identify the loan for which the payoff information is provided, including:

(A) the loan number, if available; or

(B) the original amount of the loan, if the loan number is not available.

(c) If applicable, the payoff statement may contain:

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

(6) Other information necessary to provide a clear and concise payoff statement.

Figure: 7 TAC §155.2(c)(6)

[~~Figure: 7 TAC §155.2(c)(6)~~]

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 22, 2020.

TRD-202002485
Iain A. Berry
Associate General Counsel
Joint Financial Regulatory Agencies
Earliest possible date of adoption: August 2, 2020
For further information, please call: (512) 475-1535

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# TITLE 22. EXAMINING BOARDS

## PART 15. TEXAS STATE BOARD OF PHARMACY

### CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

### SUBCHAPTER C. DISCIPLINARY GUIDELINES

**22 TAC §281.65**

The Texas State Board of Pharmacy proposes amendments to §281.65 concerning Schedule of Administrative Penalties. The amendments, if adopted, add an administrative penalty for the violation of failing to access the Prescription Monitoring Program for a patient's information before dispensing opioids, benzodiazepines, barbiturates, or carisoprodol, and update a citation reference.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be appropriate administrative penalties for violations of the laws and rules governing the practice of pharmacy and clearer regulatory language. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz 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 the future legislative appropriations to the agency;

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

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

(6) The proposed amendments do expand an existing regulation by establishing an administrative penalty for a certain violation;

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

(8) The proposed amendments do not positively or adversely affect this state's economy because the proposed amendments have de minimis fiscal implications.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., August 1, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

*§281.65. Schedule of Administrative Penalties.*

The board has determined that the assessment of an administrative penalty promotes the intent of §551.002 of the Act. In disciplinary matters, the board may assess an administrative penalty in addition to any other disciplinary action in the circumstances and amounts as follows:

(1) The following violations by a pharmacist may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failing to provide patient counseling: $1,000;

(B) failing to conduct a drug regimen review or inappropriate drug regimen reviews provided by §291.33(c)(2)(A) of this title (relating to Operational Standards): $1,000;

(C) failing to clarify a prescription with the prescriber: $1,000;

(D) failing to properly supervise or improperly delegating a duty to a pharmacy technician: $1,000;

(E) failing to identify the dispensing pharmacist on required pharmacy records: $500;

(F) failing to maintain records of prescriptions: $500;

(G) failing to respond or failing to provide all requested records within the time specified in a board audit of continuing education records: $100 per hour of continuing education credit not provided;

(H) failing to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: $1,000;

(I) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription: up to $5,000;

(J) dispensing unauthorized prescriptions: up to $5,000;

(K) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature: up to $5,000;

(L) violating a disciplinary order of the Board or a contract under the program to aid impaired pharmacists or pharmacy students under Chapter 564 of the Act: $500;

(M) failing to report or to assure the report of a malpractice claim: $1,000;

(N) practicing pharmacy with a delinquent license: $500;

(O) operating a pharmacy with a delinquent license: $1,000;

(P) allowing an individual to perform the duties of a pharmacy technician without a valid registration: $1,000;

(Q) aiding and abetting the unlicensed practice of pharmacy, if the pharmacist knew or reasonably should have known that the person was unlicensed at the time: $2,500;

(R) unauthorized substitutions: $1,000;

(S) submitting false or fraudulent claims to third parties for reimbursement of pharmacy services: $1,000;

(T) selling, purchasing, or trading, or offering to sell, purchase, or trade of misbranded prescription drugs or prescription drugs beyond the manufacturer's expiration date: $1,000;

(U) selling, purchasing, or trading, or offering to sell, purchase, or trade of prescription drug samples as provided by §281.7(a)(26)[~~§281.7(a)(27)~~] of this title (relating to Grounds for Discipline for a Pharmacist License): $1,000;

(V) failing to keep, maintain or furnish an annual inventory as required by §291.17 of this title (relating to Inventory Requirements): $1,000;

(W) failing to obtain training on the preparation of sterile pharmaceutical compounding: $1,000;

(X) failing to maintain the confidentiality of prescription records: $1,000;

(Y) failing to inform the board of any notification or information required to be reported by the Act or rules: $500;

(Z) failing to operate a pharmacy as provided by §291.11 of this title (relating to Operation of a Pharmacy): $1,000; [~~and~~]

(AA) accessing information submitted to the Prescription Monitoring Program in violation of §481.076 of the Controlled Substances Act: $1,000 - $2,500; and[~~,~~]

(BB) failing to access the Prescription Monitoring Program for a patient's information before dispensing opioids, benzodiazepines, barbiturates, or carisoprodol: $500.

(2) The following violations by a pharmacy may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failing to provide patient counseling: $1,500;

(B) failing to conduct a drug regimen review or inappropriate drug regimen reviews provided by §291.33(c)(2)(A) of this title: $1,500;

(C) failing to clarify a prescription with the prescriber: $1,500;

(D) failing to properly supervise or improperly delegating a duty to a pharmacy technician: $1,500;

(E) failing to identify the dispensing pharmacist on required pharmacy records: $500;

(F) failing to maintain records of prescriptions: $500;

(G) failing to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: $1,000;

(H) following an accountability audit, shortages of prescription drugs: dependent on the quantity involved with a minimum of $1,000;

(I) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription: up to $5,000;

(J) dispensing unauthorized prescriptions: up to $5,000;

(K) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature: up to $5,000;

(L) violating a disciplinary order of the Board: $1,000;

(M) failing to report or to assure the report of a malpractice claim: $1,500;

(N) allowing a pharmacist to practice pharmacy with a delinquent license: $1,000;

(O) operating a pharmacy with a delinquent license: $1,000;

(P) allowing an individual to perform the duties of a pharmacy technician without a valid registration: $3,000;

(Q) failing to comply with the reporting requirements to the Prescription Monitoring Program: $1,000;

(R) aiding and abetting the unlicensed practice of pharmacy, if an employee of the pharmacy knew or reasonably should have known that the person engaging in the practice of pharmacy was unlicensed at the time: $5,000;

(S) unauthorized substitutions: $1,000;

(T) submitting false or fraudulent claims to third parties for reimbursement of pharmacy services: $1,000;

(U) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of misbranded prescription drugs or prescription drugs beyond the manufacturer's expiration date: $1,000;

(V) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of prescription drug samples as provided by §281.8(b)(2) of this title (relating to Grounds for Discipline for a Pharmacy License): $1,000;

(W) failing to keep, maintain or furnish an annual inventory as required by §291.17 of this title: $2,500;

(X) failing to obtain training on the preparation of sterile pharmaceutical compounding: $2,000;

(Y) failing to maintain the confidentiality of prescription records: $1,000;

(Z) failing to inform the board of any notification or information required to be reported by the Act or rules: $1,000;

(AA) failing to operate a pharmacy as specified in §291.11 of this title: $3,000; and

(BB) operating a Class E or Class E-S pharmacy without a Texas licensed pharmacist-in-charge: $1,000.

(3) The following violations by a pharmacy technician may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failing to respond or failing to provide all requested records within the time specified in a board audit of continuing education records: $30 per hour of continuing education credit not provided;

(B) failing to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: $500;

(C) violating a disciplinary Order of the Board: $250;

(D) performing the duties of a pharmacy technician without a valid registration: $250;

(E) failing to obtain training on the preparation of sterile pharmaceutical compounding: $500;

(F) failing to maintain the confidentiality of prescription records: $500;

(G) failing to inform the board of any notification or information required to be reported by the Act or rules: $250; and

(H) accessing information submitted to the Prescription Monitoring Program in violation of §481.076 of the Controlled Substances Act: $500 - $2,000.

(4) Any of the violations listed in this section may be appropriate for disposition by the administrative penalties in this section in conjunction with any other penalties in §281.61 of this title (relating to Definitions of Discipline Authorized).

(5) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty or fine.

(6) The amount, to the extent possible, shall be based on:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(B) the aggravating and mitigating factors in §281.62 of this title (relating to Aggravating and Mitigating Factors);

(C) the amount necessary to deter a future violation; and

(D) any other matter that justice may require.

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 22, 2020.

TRD-202002475
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: August 2, 2020
For further information, please call: (512) 305-8010

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# CHAPTER 291. PHARMACIES
## SUBCHAPTER A. ALL CLASSES OF PHARMACIES

### 22 TAC §291.9

The Texas State Board of Pharmacy proposes amendments to §291.9, concerning Prescription Pick Up Locations. The amendments, if adopted, remove an outdated reference to Class H pharmacies, which no longer exist.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be correct and clear regulatory language. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz 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 the future legislative appropriations to the agency;

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

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

(6) The proposed amendments do not limit or expand an existing regulation because the amendments remove an outdated reference to a class of pharmacy that no longer exists;

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

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., August 1, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

*§291.9. Prescription Pick Up Locations.*

(a) No [~~Except as provided in §291.155 of this title (relating to Limited Prescription Delivery Pharmacy (Class H)),~~ no] person, firm, or business establishment may have, participate in, or permit an arrangement, branch, connection or affiliation whereby prescriptions are solicited, collected, picked up, or advertised to be picked up, from or at any location other than a pharmacy which is licensed and in good standing with the board.

(b) A pharmacist or pharmacy by means of its employee or by use of a common carrier or the U.S. Mail, at the request of the patient, may:

(1) pick up prescription orders at the:

(A) office or home of the prescriber;

(B) residence or place of employment of the person for whom the prescription was issued; or

(C) hospital or medical care facility in which the patient is receiving treatment; and

(2) deliver prescription drugs to the:

(A) office of the prescriber if the prescription is:

*(i)* for a dangerous drug; or

*(ii)* for a single dose of a controlled substance that is for administration to the patient in the prescriber's office;

(B) residence of the person for whom the prescription was issued;

(C) place of employment of the person for whom the prescription was issued, if the person is present to accept delivery; or

(D) hospital or medical care facility in which the patient is receiving treatment.

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 22, 2020.

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Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: August 2, 2020
For further information, please call: (512) 305-8010

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## SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

### 22 TAC §291.121

The Texas State Board of Pharmacy proposes amendments to §291.121, concerning Remote Pharmacy Services. The amendments, if adopted, allow remote pharmacies services to be provided using an automated pharmacy system to be provided at healthcare facilities regulated under Chapter 241 and removes the limitation that the services may only be provided to inpatients of the remote site.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to improve public access to pharmacy services by allowing remote pharmacy services to be provided at more types of healthcare facilities and to more types of patients. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz 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 the future legislative appropriations to the agency;

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

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

(6) The proposed amendments do limit an existing regulation by allowing an additional type of healthcare facility to provide remote pharmacy services using an automated pharmacy system and by removing a restriction on the type of patient to whom the services may be provided;

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

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., August 1, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

*§291.121. Remote Pharmacy Services.*

(a) Remote pharmacy services using automated pharmacy systems.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a facility that is not at the same location as the Class A or Class C pharmacy through an automated pharmacy system as outlined in §562.109 of the Texas Pharmacy Act.

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

(A) Automated pharmacy system--A mechanical system that dispenses prescription drugs and maintains related transaction information.

(B) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container, or quantities of unit dosed drugs, into another cartridge or container for dispensing by a pharmacist using an automated pharmacy system.

(C) Provider pharmacy--The community pharmacy (Class A) or the institutional pharmacy (Class C) providing remote pharmacy services.

(D) Remote pharmacy service--The provision of pharmacy services, including the storage and dispensing of prescription drugs, in remote sites.

(E) Remote site--A facility not located at the same location as a Class A or Class C pharmacy, at which remote pharmacy services are provided using an automated pharmacy dispensing system.

(F) Unit dose--An amount of a drug packaged in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(3) General requirements.

(A) A provider pharmacy may provide remote pharmacy services using an automated pharmacy system to a jail or prison operated by or for the State of Texas, a jail or prison operated by local government or a healthcare facility regulated under Chapter 142, 241, 242, 247, or 252, Health and Safety Code, provided drugs are administered by a licensed healthcare professional working in the jail, prison, or healthcare facility.

~~[(B) A provider pharmacy may only provide remote pharmacy services using an automated pharmacy system to inpatients of the remote site.]~~

(B) [~~(C)~~] A provider pharmacy may provide remote pharmacy services at more than one remote site.

(C) [~~(D)~~] Before providing remote pharmacy services, the automated pharmacy system at the remote site must be tested by the provider pharmacy and found to dispense accurately. The provider pharmacy shall make the results of such testing available to the board upon request.

(D) [~~(E)~~] A provider pharmacy which is licensed as an institutional (Class C) pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title (relating to Definitions, Personnel, Operational Standards, and Records for Class A (Community) Pharmacies) and this section.

(E) [~~(F)~~] The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the automated pharmacy system located at the remote site including supervision of the automated pharmacy system and compliance with this section.

(F) [~~(G)~~] A pharmacist from the provider pharmacy shall be accessible at all times to respond to patient's or other health professionals' questions and needs pertaining to drugs dispensed through the use of the automated pharmacy system. Such access may be through a 24 hour pager service or telephone which is answered 24 hours a day.

(4) Operational standards.

(A) Application for permission to provide pharmacy services using an automated pharmacy system.

*(i)* A Class A or Class C Pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using an automated pharmacy system.

*(ii)* Such application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license.

*(iii)* Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the remote site.

(B) Notification requirements.

*(i)* A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service, or closure of:

*(I)* a remote site where an automated pharmacy system is operated by the pharmacy; or

*(II)* a remote pharmacy service at a remote site.

*(ii)* A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each remote site if controlled substances are maintained within an automated pharmacy system at the facility.

*(iii)* A provider pharmacy shall file a change of location and/or name of a remote site as specified in §291.3 (relating to Notifications) of this title.

(C) Environment/Security.

*(i)* A provider pharmacy shall only store drugs at a remote site within an automated pharmacy system which is locked by key, combination or other mechanical or electronic means so as to prohibit access by unauthorized personnel.

*(ii)* An automated pharmacy system shall be under the continuous supervision of a provider pharmacy pharmacist. To qualify as continuous supervision, the pharmacist is not required to be physically present at the site of the automated pharmacy system if the system is supervised electronically by a pharmacist.

*(iii)* Automated pharmacy systems shall have adequate security and procedures to:

*(I)* comply with federal and state laws and regulations; and

*(II)* maintain patient confidentiality.

*(iv)* Access to the automated pharmacy system shall be limited to pharmacists or personnel who:

*(I)* are designated in writing by the pharmacist-in-charge; and

*(II)* have completed documented training concerning their duties associated with the automated pharmacy system.

*(v)* Drugs shall be stored in compliance with the provisions of §291.15 of this title (relating to Storage of Drugs) and §291.33(f)(2) of this title including the requirements for temperature and handling of outdated drugs.

(D) Prescription dispensing and delivery.

*(i)* Drugs shall only be dispensed at a remote site through an automated pharmacy system after receipt of an original prescription drug order by a pharmacist at the provider pharmacy in a manner authorized by §291.34(b) of this title.

*(ii)* A pharmacist at the provider pharmacy shall control all operations of the automated pharmacy system and approve the release of the initial dose of a prescription drug order. Subsequent doses from an approved prescription drug order may be removed from the automated medication system after this initial approval. Any change made in the prescription drug order shall require a new approval by a pharmacist to release the drug.

*(iii)* A pharmacist at the provider pharmacy shall conduct a drug regimen review as specified in §291.33(c) of this title prior to releasing a prescription drug order to the automated pharmacy system.

*(iv)* Drugs dispensed by the provider pharmacy through an automated pharmacy system shall comply with the labeling or labeling alternatives specified in §291.33(c) of this title.

*(v)* An automated pharmacy system used to meet the emergency medication needs for residents of a remote site must comply with the requirements for emergency medication kits in subsection (b) of this section.

(E) Drugs.

*(i)* Drugs for use in an automated pharmacy system shall be packaged in the original manufacturer's container or be prepackaged in the provider pharmacy and labeled in compliance with the board's prepackaging requirements for the class of pharmacy.

*(ii)* Drugs dispensed from the automated pharmacy system may be returned to the pharmacy for reuse provided the drugs are in sealed, tamper evident packaging which has not been opened.

(F) Stocking an automated pharmacy system.

*(i)* Stocking of drugs in an automated pharmacy system shall be completed by a pharmacist, pharmacy technician, or pharmacy technician trainee under the direct supervision of a pharmacist, except as provided in clause (ii) of this subparagraph.

*(ii)* If the automated pharmacy system uses removable cartridges or containers to hold drugs, the prepackaging of the cartridges or containers shall occur at the provider pharmacy unless provided by an FDA approved repackager. The prepackaged cartridges or containers may be sent to the remote site to be loaded into the machine by personnel designated by the pharmacist-in-charge provided:

*(I)* a pharmacist verifies the cartridge or container has been properly filled and labeled;

*(II)* the individual cartridges or containers are transported to the remote site in a secure, tamper-evident container; and

*(III)* the automated pharmacy system uses barcoding, microchip, or other technologies to ensure that the containers are accurately loaded in the automated pharmacy system.

*(iii)* All drugs to be stocked in the automated pharmacy system shall be delivered to the remote site by the provider pharmacy.

(G) Quality assurance program. A pharmacy that provides pharmacy services through an automated pharmacy system at a remote site shall operate according to a written program for quality assurance of the automated pharmacy system which:

*(i)* requires continuous supervision of the automated pharmacy system; and

*(ii)* establishes mechanisms and procedures to routinely test the accuracy of the automated pharmacy system at a minimum of every six months and whenever any upgrade or change is made to the system and documents each such activity.

(H) Policies and procedures of operation.

*(i)* A pharmacy that provides pharmacy services through an automated pharmacy system at a remote site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

*(I)* a current list of the name and address of the pharmacist-in-charge and personnel designated by the pharmacist-in-charge to have access to the drugs stored in the automated pharmacy system;

*(II)* duties which may only be performed by a pharmacist;

*(III)* a copy of the portion of the written contract or agreement between the pharmacy and the facility which outlines the services to be provided and the responsibilities and accountabilities of each party relating to the operation of the automated pharmacy system in fulfilling the terms of the contract in compliance with federal and state laws and regulations;

*(IV)* date of last review/revision of the policy and procedure manual; and

*(V)* policies and procedures for:

(-a-) security;

(-b-) operation of the automated pharmacy system;

(-c-) preventative maintenance of the automated pharmacy system;

(-d-) sanitation;

(-e-) storage of drugs;

(-f-) dispensing;

(-g-) supervision;

(-h-) drug procurement;

(-i-) receiving of drugs;

(-j-) delivery of drugs; and

(-k-) record keeping.

*(ii)* A pharmacy that provides pharmacy services through an automated pharmacy system at a remote site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

*(iii)* A pharmacy providing remote pharmacy services using an automated pharmacy system shall maintain a written plan for recovery from an event which interrupts the ability of the automated pharmacy system to dispense prescription drugs. The written plan for recovery shall include:

*(I)* planning and preparation for maintaining pharmacy services when an automated pharmacy system is experiencing downtime;

*(II)* procedures for response when an automated pharmacy system is experiencing downtime; and

*(III)* procedures for the maintenance and testing of the written plan for recovery.

(5) Records.

(A) Maintenance of records.

*(i)* Every record required under this section must be:

*(I)* kept by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

*(II)* supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

*(ii)* The provider pharmacy shall maintain original prescription drug orders for drugs dispensed from an automated pharmacy system in compliance with §291.34(b) of this title.

*(iii)* if prescription drug records are maintained in a data processing system, the system shall have a workable (electronic) data retention system which can produce a separate audit trail of drug usage by the provider pharmacy and each remote site for the preceding two years as specified in §291.34(e) of this title.

(B) Prescriptions. Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(C) Records of dispensing. Dispensing records for a prescription drug order shall be maintained by the provider pharmacy in the manner required by §291.34(d) or (e) of this title.

(D) Transaction information.

*(i)* The automated pharmacy system shall electronically record all transactions involving drugs stored in, removed, or dispensed from the system.

*(ii)* Records of dispensing from an automated pharmacy system for a patient shall be maintained by the providing pharmacy and include the:

*(I)* identity of the system accessed;

*(II)* identification of the individual accessing the system;

*(III)* date of transaction;

*(IV)* name, strength, dosage form, and quantity of drug accessed; and

*(V)* name of the patient for whom the drug was accessed.

*(iii)* Records of stocking or removal from an automated pharmacy system shall be maintained by the pharmacy and include the:

*(I)* date;

*(II)* name, strength, dosage form, and quantity of drug stocked or removed;

*(III)* name, initials, or identification code of the person stocking or removing drugs from the system;

*(IV)* name, initials, or identification code of the pharmacist who checks and verifies that the system has been accurately filled;

(E) Patient medication records. Patient medication records shall be created and maintained by the provider pharmacy in the manner required by §291.34(c) of this title.

(F) Inventory.

*(i)* A provider pharmacy shall:

*(I)* keep a record of all drugs sent to and returned from a remote site separate from the records of the provider pharmacy and from any other remote site's records; and

*(II)* keep a perpetual inventory of controlled substances and other drugs required to be inventoried under §291.17 of this title (relating to Inventory Requirements for All Classes of Pharmacies) that are received and dispensed or distributed from each remote site.

*(ii)* As specified in §291.17 of this title, a provider pharmacy shall conduct an inventory at each remote site. The following is applicable to this inventory.

*(I)* The inventory of each remote site and the provider pharmacy shall be taken on the same day.

*(II)* The inventory of each remote site shall be included with, but listed separately from, the drugs of other remote sites and separately from the drugs of the provider pharmacy.

(b) Remote pharmacy services using emergency medication kits.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C

pharmacy in a facility that is not at the same location as the Class A or Class C pharmacy through an emergency medication kit as outlined in §562.108 of the Texas Pharmacy Act.

(2) Definitions. The following words and terms, when used in this subsection, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings defined in the Act or §291.31 of this title.

(A) Automated pharmacy system--A mechanical system that dispenses prescription drugs and maintains related transaction information.

(B) Emergency medication kits--Controlled substances and dangerous drugs maintained by a provider pharmacy to meet the emergency medication needs of a resident:

*(i)* at an institution licensed under Chapter 242 or 252, Health and Safety Code; or

*(ii)* at an institution licensed under Chapter 242, Health and Safety Code and that is a veterans home as defined by the §164.002, Natural Resources Code, if the provider pharmacy is a United States Department of Veterans Affairs pharmacy or another federally operated pharmacy.

(C) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container, or quantities of unit dosed drugs, into another cartridge or container for dispensing by a pharmacist using an emergency medication kit.

(D) Provider pharmacy--The community pharmacy (Class A), the institutional pharmacy (Class C), the non-resident (Class E) pharmacy located not more than 20 miles from an institution licensed under Chapter 242 or 252, Health and Safety Code, or the United States Department of Veterans Affairs pharmacy or another federally operated pharmacy providing remote pharmacy services.

(E) Remote pharmacy service--The provision of pharmacy services, including the storage and dispensing of prescription drugs, in remote sites.

(F) Remote site--A facility not located at the same location as a Class A, Class C, Class E pharmacy or a United States Department of Affairs pharmacy or another federally operated pharmacy, at which remote pharmacy services are provided using an emergency medication kit.

(3) General requirements.

(A) A provider pharmacy may provide remote pharmacy services using an emergency medication kit to an institution regulated under Chapter 242, or 252, Health and Safety Code.

(B) A provider pharmacy may provide remote pharmacy services at more than one remote site.

(C) A provider pharmacy shall not place an emergency medication kit in a remote site which already has a kit from another provider pharmacy except as provided by paragraph (4)(B)(iii) of this subsection.

(D) A provider pharmacy which is licensed as an institutional (Class C) or a non-resident (Class E) pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title and this section.

(E) The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the emergency medication kit located at the remote site including supervision of the emergency medication kit and compliance with this section.

(4) Operational standards.

(A) Application for permission to provide pharmacy services using an emergency medication kit.

*(i)* A Class A, Class C, or Class E Pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using an emergency medication kit.

*(ii)* Such application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license.

*(iii)* Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the remote site.

(B) Notification requirements.

*(i)* A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service, or closure of:

*(I)* a remote site where an emergency medication kit is operated by the pharmacy; or

*(II)* a remote pharmacy service at a remote site.

*(ii)* A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each remote site if controlled substances are maintained within an emergency medication kit at the facility.

*(iii)* If more than one provider pharmacy provides an emergency kit to a remote site, the provider pharmacies must enter into a written agreement as to the emergency medications supplied by each pharmacy. The provider pharmacies shall not duplicate drugs stored in the emergency medication kits. The written agreement shall include reasons why an additional pharmacy is required to meet the emergency medication needs of the residents of the institution.

*(iv)* A provider pharmacy shall file a change of location and/or name of a remote site as specified in §291.3 of this title.

(C) Environment/Security.

*(i)* Emergency medication kits shall have adequate security and procedures to:

*(I)* prohibit unauthorized access;

*(II)* comply with federal and state laws and regulations; and

*(III)* maintain patient confidentiality.

*(ii)* Access to the emergency medication kit shall be limited to pharmacists and licensed healthcare personnel employed by the facility.

*(iii)* Drugs shall be stored in compliance with the provisions of §291.15 and §291.33(f)(2) of this title including the requirements for temperature and handling outdated drugs.

(D) Prescription dispensing and delivery.

*(i)* Drugs in the emergency medication kit shall be accessed for administration to meet the emergency medication needs of a resident of the remote site pursuant to an order from a practitioner. The prescription drug order for the drugs used from the emergency medication kit shall be forwarded to the provider pharmacy in a manner authorized by §291.34(b) of this title.

*(ii)* The remote site shall notify the provider pharmacy of each entry into an emergency medication kit. Such notification shall meet the requirements of paragraph (5)(D)(ii) of this subsection.

(E) Drugs.

*(i)* The contents of an emergency medication kit:

*(I)* may consist of dangerous drugs and controlled substances; and

*(II)* shall be determined by the consultant pharmacist, pharmacist-in-charge of the provider pharmacy, medical director, and the director of nurses and limited to those drugs necessary to meet the resident's emergency medication needs. For the purpose of this subsection, this shall mean a situation in which a drug cannot be supplied by a pharmacy within a reasonable time period.

*(ii)* When deciding on the drugs to be placed in the emergency medication kit, the consultant pharmacist, pharmacist-in-charge of the provider pharmacy, medical director, and the director of nurses must determine, select, and record a prudent number of drugs for potential emergency incidents based on:

*(I)* clinical criteria applicable to each facility's demographics;

*(II)* the facility's census; and

*(III)* the facility's healthcare environment.

*(iii)* A current list of the drugs stored in each remote site's emergency medication kit shall be maintained by the provider pharmacy and a copy kept with the emergency medication kit.

*(iv)* An automated pharmacy system may be used as an emergency medication kit provided the system limits emergency access to only those drugs approved for the emergency medication kit.

*(v)* Drugs for use in an emergency medication kit shall be packaged in the original manufacturer's container or prepackaged in the provider pharmacy and labeled in compliance with the board's prepackaging requirements for the class of pharmacy.

(F) Stocking emergency medication kits.

*(i)* Stocking of drugs in an emergency medication kit shall be completed at the provider pharmacy or remote site by a pharmacist, pharmacy technician, or pharmacy technician trainee under the direct supervision of a pharmacist, except as provided in clause (ii) of this subparagraph.

*(ii)* If the emergency medication kit is an automated pharmacy system which uses bar-coding, microchip, or other technologies to ensure that the containers or unit dose drugs are accurately loaded, the prepackaging of the containers or unit dose drugs shall occur at the provider pharmacy unless provided by a FDA approved repackager. The prepackaged containers or unit dose drugs may be sent to the remote site to be loaded into the machine by personnel designated by the pharmacist-in-charge provided:

*(I)* a pharmacist verifies the container or unit dose drug has been properly filled and labeled;

*(II)* the individual containers or unit dose drugs are transported to the remote site in a secure, tamper-evident container; and

*(III)* the automated pharmacy system uses bar-coding, microchip, or other technologies to ensure that the containers or unit dose drugs are accurately loaded in the automated pharmacy system.

*(iii)* All drugs to be stocked in the emergency medication kit shall be delivered to the remote site by the provider pharmacy.

(G) Policies and procedures of operation.

*(i)* A provider pharmacy that provides pharmacy services through an emergency medication kit at a remote site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

*(I)* duties which may only be performed by a pharmacist;

*(II)* a copy of the written contract or agreement between the pharmacy and the facility which outlines the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of the contract in compliance with federal and state laws and regulations;

*(III)* date of last review/revision of the policy and procedure manual; and

*(IV)* policies and procedures for:

(-a-) security;

(-b-) operation of the emergency medication kit;

(-c-) preventative maintenance of the automated pharmacy system if the emergency medication kit is an automated pharmacy system;

(-d-) sanitation;

(-e-) storage of drugs;

(-f-) dispensing;

(-g-) supervision;

(-h-) drug procurement;

(-i-) receiving of drugs;

(-j-) delivery of drugs; and

(-k-) record keeping.

*(ii)* A pharmacy that provides pharmacy services through an emergency medication kit at a remote site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

*(iii)* A pharmacy providing remote pharmacy services using an emergency medication kit which is an automated pharmacy system shall maintain a written plan for recovery from an event which interrupts the ability of the automated pharmacy system to provide emergency medications. The written plan for recovery shall include:

*(I)* planning and preparation for maintaining pharmacy services when an automated pharmacy system is experiencing downtime;

*(II)* procedures for response when an automated pharmacy system is experiencing downtime; and

*(III)* procedures for the maintenance and testing of the written plan for recovery.

(5) Records.

(A) Maintenance of records.

*(i)* Every record required under this section must be:

*(I)* kept by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

*(II)* supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

*(ii)* The provider pharmacy shall maintain original prescription drug orders for drugs dispensed from an emergency medication kit in compliance with §291.34(b) of this title.

(B) Prescriptions. Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(C) Records of dispensing. Dispensing records for a prescription drug order shall be maintained by the provider pharmacy in the manner required by §291.34(d) or (e) of this title.

(D) Transaction information.

*(i)* A prescription drug order shall be maintained by the provider pharmacy as the record of removal of a drug from an emergency medication kit for administration to a patient.

*(ii)* The remote site shall notify the provider pharmacy electronically or in writing of each entry into an emergency medication kit. Such notification may be included on the prescription drug order or a separate document and shall include the name, strength, and quantity of the drug removed, the time of removal, and the name of the person removing the drug.

*(iii)* A separate record of stocking, removal, or dispensing for administration from an emergency medication kit shall be maintained by the pharmacy and include the:

*(I)* date;

*(II)* name, strength, dosage form, and quantity of drug stocked, removed, or dispensed for administration;

*(III)* name, initials, or identification code of the person stocking, removing, or dispensing for administration, drugs from the system;

*(IV)* name, initials, or identification code of the pharmacist who checks and verifies that the system has been accurately filled; and

*(V)* unique prescription number assigned to the prescription drug order when the drug is administered to the patient.

(E) Inventory.

*(i)* A provider pharmacy shall:

*(I)* keep a record of all drugs sent to and returned from a remote site separate from the records of the provider pharmacy and from any other remote site's records; and

*(II)* keep a perpetual inventory of controlled substances and other drugs required to be inventoried under §291.17 of this title, that are received and dispensed or distributed from each remote site.

*(ii)* As specified in §291.17 of this title, a provider pharmacy shall conduct an inventory at each remote site. The following is applicable to this inventory.

*(I)* The inventory of each remote site and the provider pharmacy shall be taken on the same day.

*(II)* The inventory of each remote site shall be included with, but listed separately from, the drugs of other remote sites and separately from the drugs of the provider pharmacy.

(c) Remote pharmacy services using telepharmacy systems.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a healthcare facility that is not at the same location as a Class A or Class C pharmacy through a telepharmacy system as outlined in §562.110 of the Texas Pharmacy Act.

(2) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings defined in the Act or §291.31 of this title.

(A) Provider pharmacy--

*(i)* a Class A pharmacy that provides pharmacy services through a telepharmacy system at a remote dispensing site or at a healthcare facility that is regulated by this state or the United States; or

*(ii)* a Class C pharmacy that provides pharmacy services though a telepharmacy system at a healthcare facility that is regulated by this state or the United States.

(B) Remote dispensing site--a location licensed as a telepharmacy that is authorized by a provider pharmacy through a telepharmacy system to store and dispense prescription drugs and devices, including dangerous drugs and controlled substances.

(C) Remote healthcare site--a healthcare facility regulated by this state or the United States that is a:

*(i)* rural health clinic regulated under 42 U.S.C. Section 1395x(aa);

*(ii)* health center as defined by 42 U.S.C. Section 254b;

*(iii)* healthcare facility located in a medically underserved area as determined by the United States Department of Health and Human Services;

*(iv)* healthcare facility located in a health professional shortage area as determined by the United States Department of Health and Human Services; or

*(v)* a federally qualified health center as defined by 42 U.S.C. Section 1396d(I)(2)(B).

(D) Remote pharmacy service--The provision of pharmacy services, including the storage and dispensing of prescription drugs, drug regimen review, and patient counseling, at a remote site.

(E) Remote site--a remote healthcare site or a remote dispensing site.

(F) Still image capture--A specific image captured electronically from a video or other image capture device.

(G) Store and forward--A video or still image record which is saved electronically for future review.

(H) Telepharmacy system--A system that monitors the dispensing of prescription drugs and provides for related drug use review and patient counseling services by an electronic method which shall include the use of the following types of technology:

*(i)* audio and video;

*(ii)* still image capture; and

*(iii)* store and forward.

(3) General requirements.

(A) A provider pharmacy may provide remote pharmacy services using a telepharmacy system at a:

*(i)* remote healthcare site; or[;]

*(ii)* remote dispensing site.

(B) A provider pharmacy may not provide remote pharmacy services at a remote healthcare site if a Class A or Class C pharmacy that dispenses prescription drug orders to out-patients is located in the same community, unless the remote healthcare site is a federally qualified health center as defined by 42 U.S.C. Section 1396d(I)(2)(B). For the purposes of this subsection a community is defined as:

*(i)* the census tract in which the remote site is located, if the remote site is located in a Metropolitan Statistical Area (MSA) as defined by the United States Census Bureau in the most recent U.S. Census; or

*(ii)* within 10 miles of the remote site, if the remote site is not located in a MSA.

(C) A provider pharmacy may not provide remote pharmacy services at a remote dispensing site if a Class A pharmacy is located within 22 miles by road of the remote dispensing site.

(D) If a Class A or Class pharmacy is established in a community in which a remote healthcare site has been located, the remote healthcare site may continue to operate.

(E) If a Class A pharmacy is established within 22 miles by road of a remote dispensing site that is currently operating, the remote dispensing site may continue to operate at that location.

(F) Before providing remote pharmacy services, the telepharmacy system at the remote site must be tested by the provider pharmacy and found to operate properly. The provider pharmacy shall make the results of such testing available to the board upon request.

(G) A provider pharmacy which is licensed as a Class C pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title and this section.

(H) A provider pharmacy can only provide pharmacy services at no more than two remote dispensing sites.

(4) Personnel.

(A) The pharmacist-in-charge of the provider pharmacy is responsible for all operations at the remote site including supervision of the telepharmacy system and compliance with this section.

(B) The provider pharmacy shall have sufficient pharmacists on duty such that each pharmacist may supervise no more two remote sites that are simultaneously open to provide services.

(C) The following duties shall be performed only by a pharmacist at the provider pharmacy:

*(i)* receiving an oral prescription drug order;

*(ii)* interpreting the prescription drug order;

*(iii)* verifying the accuracy of prescription data entry;

*(iv)* selecting the drug product to be stored and dispensed at the remote site;

*(v)* interpreting the patient's medication record and conducting a drug regimen review;

*(vi)* authorizing the telepharmacy system to print a prescription label at the remote site;

*(vii)* performing the final check of the dispensed prescription to ensure that the prescription drug order has been dispensed accurately as prescribed; and

*(viii)* counseling the patient.

(5) Operational standards.

(A) Application to provide remote pharmacy services using a telepharmacy system.

*(i)* A Class A or class C Pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using a telepharmacy system.

*(ii)* Such application shall be resubmitted every two years in conjunction with the renewal of the provider pharmacy's license.

*(iii)* On approval of the application, the provider pharmacy will be sent a license for the remote site, which must be displayed at the remote site.

*(iv)* If the average number of prescriptions dispensed each day at a remote dispensing site is open for business is more than 125 prescriptions, as calculated each calendar year, the remote dispensing site shall apply for a Class A pharmacy license as specified in §291.1 of this title (relating to Pharmacy License Application).

(B) Notification requirements.

*(i)* A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service, or closure of a remote site where a telepharmacy system is operated by the pharmacy.

*(ii)* A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each remote site, if controlled substances are maintained.

*(iii)* A provider pharmacy shall file a change of location and/or name of a remote site as specified in §291.3 of this title.

(C) Environment/Security.

*(i)* A remote site shall be under the continuous supervision of a provider pharmacy pharmacist at all times the site is open to provide pharmacy services. To qualify as continuous supervision, the pharmacist is not required to be physically present at the remote site and shall supervise electronically through the use of the following types of technology:

*(I)* audio and video;

*(II)* still image capture; and

*(III)* store and forward.

*(ii)* Drugs shall be stored in compliance with the provisions of §291.15 and §291.33(f)(2) of this title including the requirements for temperature and handling of outdated drugs.

*(iii)* Drugs for use in the telepharmacy system at a remote healthcare site shall be stored in an area that is:

*(I)* separate from any other drugs used by the healthcare facility; and

*(II)* locked by key, combination or other mechanical or electronic means, so as to prohibit access by unauthorized personnel.

*(iv)* Drugs for use in the telepharmacy system at a remote dispensing site shall be stored in an area that is locked by key, combination, or other mechanical or electronic means, so as to prohibit access by unauthorized personnel.

*(v)* Access to the area where drugs are stored at the remote site and operation of the telepharmacy system shall be limited to:

*(I)* pharmacists employed by the provider pharmacy;

*(II)* licensed healthcare providers, if the remote site is a remote healthcare site; and

*(III)* pharmacy technicians;

*(vi)* Individuals authorized to access the remote site and operate the telepharmacy system shall:

*(I)* be designated in writing by the pharmacist-in-charge; and

*(II)* have completed documented training concerning their duties associated with the telepharmacy pharmacy system.

*(vii)* Remote sites shall have adequate security and procedures to:

*(I)* comply with federal and state laws and regulations; and

*(II)* maintain patient confidentiality.

(D) Prescription dispensing and delivery.

*(i)* A pharmacist at the provider pharmacy shall conduct a drug regimen review as specified in §291.33(c) of this title prior to delivery of the dispensed prescription to the patient or patient's agent.

*(ii)* The dispensed prescription shall be labeled at the remote site with the information specified in §291.33(c) of this title.

*(iii)* A pharmacist at the provider pharmacy shall perform the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed. This final check shall be accomplished through a visual check using electronic methods.

*(iv)* A pharmacist at the provider pharmacy shall counsel the patient or patient's agent as specified in §291.33(c) of this title. This counseling may be performed using electronic methods. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

*(v)* If the remote site has direct access to the provider pharmacy's data processing system, only a pharmacist or pharmacy technician may enter prescription information into the data processing system.

*(vi)* Drugs which require reconstitution through the addition of a specified amount of water may be dispensed by the remote site only if a pharmacy technician, pharmacy technician trainee, or licensed healthcare provider reconstitutes the product.

*(vii)* A telepharmacy system located at a remote dispensing site may not dispense a schedule II controlled substance.

*(viii)* Drugs dispensed at the remote site through a telepharmacy system shall only be delivered to the patient or patient's agent at the remote site.

(E) Quality assurance program. A pharmacy that provides remote pharmacy services through a telepharmacy system at a remote site shall operate according to a written program for quality assurance of the telepharmacy system which:

*(i)* requires continuous supervision of the telepharmacy system at all times the site is open to provide remote pharmacy services; and

*(ii)* establishes mechanisms and procedures to routinely test the operation of the telepharmacy system at a minimum of every six months and whenever any upgrade or change is made to the system and documents each such activity.

(F) Policies and procedures.

*(i)* A pharmacy that provides pharmacy services through a telepharmacy system at a remote site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

*(I)* a current list of the name and address of the pharmacist-in-charge and personnel designated by the pharmacist-in-charge to have:

(-a-) have access to the area where drugs are stored at the remote site; and

(-b-) operate the telepharmacy system;

*(II)* duties which may only be performed by a pharmacist;

*(III)* if the remote site is located at a remote healthcare site, a copy of the written contact or agreement between the provider pharmacy and the healthcare facility which outlines the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of the contract or agreement in compliance with federal and state laws and regulations;

*(IV)* date of last review/revision of policy and procedure manual; and

*(V)* policies and procedures for:

(-a-) security;
(-b-) operation of the telepharmacy system;
(-c-) sanitation;
(-d-) storage of drugs;
(-e-) dispensing;
(-f-) supervision;
(-g-) drug and/or device procurement;
(-h-) receiving of drugs and/or devices;
(-i-) delivery of drugs and/or devices; and
(-j-) recordkeeping.

*(ii)* A pharmacy that provides remote pharmacy services through a telepharmacy system at a remote site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

*(iii)* A pharmacy providing remote pharmacy services through a telepharmacy system shall maintain a written plan for recovery from an event which interrupts the ability of a pharmacist to electronically supervise the telepharmacy system and the dispensing of prescription drugs at the remote site. The written plan for recovery shall include:

*(I)* a statement that prescription drugs shall not be dispensed at the remote site, if a pharmacist is not able to electronically supervise the telepharmacy system and the dispensing of prescription drugs;

*(II)* procedures for response when a telepharmacy system is experiencing downtime; and

*(III)* procedures for the maintenance and testing of the written plan for recovery.

(6) Additional operational standards for remote dispensing sites.

(A) A pharmacist employed by a provider pharmacy shall make at least monthly on-site visits to a remote site. The remote site shall maintain documentation of the visit.

(B) A pharmacist employed by a provider pharmacy shall be physically present at a remote dispensing site when the pharmacist is providing services requiring the physical presence of the pharmacist, including immunizations.

(C) A remote dispensing site shall be staffed by an on-site pharmacy technician who is under the continuous supervision of a pharmacist employed by the provider pharmacy.

(D) All pharmacy technicians at a remote dispensing site shall be counted for the purpose of establishing the pharmacist-pharmacy technician ratio of the provider pharmacy which, notwithstanding Section 568.006 of the Act, may not exceed three pharmacy technicians for each pharmacist providing supervision.

(E) A pharmacy technician working at a remote dispensing site must:

*(i)* have worked at least one year at a retail pharmacy during the three years preceding the date the pharmacy technician begins working at the remote dispensing site; and

*(ii)* have completed a training program on the proper use of a telepharmacy system.

(F) A pharmacy technician at a remote dispensing site may not perform sterile or nonsterile compounding. However, a pharmacy technician may prepare commercially available medications for dispensing, including the reconstitution of orally administered powder antibiotics.

(7) Records.

(A) Maintenance of records.

*(i)* Every record required under this section must be:

*(I)* accessible by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

*(II)* supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

*(ii)* The remote site shall maintain original prescription drug orders for medications dispensed from a remote site using a telepharmacy system in the manner required by §291.34(b) of this title and the provider pharmacy shall have electronic access to all prescription records.

*(iii)* If prescription drug records are maintained in a data processing system, the system shall have a workable (electronic) data retention system which can produce a separate audit trail of drug usage by the provider pharmacy and by each remote site for the preceding two years as specified in §291.34(e) of this title.

(B) Prescriptions. Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(C) Patient medication records. Patient medication records shall be created and maintained at the remote site or provider pharmacy in the manner required by §291.34(c) of this title. If such records are maintained at the remote site, the provider pharmacy shall have electronic access to those records.

(D) Inventory.

*(i)* A provider pharmacy shall:

*(I)* keep a record of all drugs ordered and dispensed by a remote site separate from the records of the provider pharmacy and from any other remote site's records;

*(II)* keep a perpetual inventory of all controlled substances that are received and dispensed or distributed from each remote site. The perpetual inventory shall be reconciled, by a pharmacist employed by the provider pharmacy, at least monthly.

*(ii)* As specified in §291.17 of this title. A provider pharmacy shall conduct an inventory at each remote site. The following is applicable to this inventory.

*(I)* The inventory of each remote site and the provider pharmacy shall be taken on the same day.

*(II)* The inventory of each remote site shall be included with, but listed separately from, the drugs of other remote sites and separately from the drugs at the provider pharmacy.

*(III)* A copy of the inventory of the remote site shall be maintained at the remote site.

(d) Remote pharmacy services using automated storage and delivery systems.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a facility that is not at the same location as the Class A or Class C pharmacy through an automated storage and delivery system.

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

(A) Automated storage and delivery system--A mechanical system that delivers dispensed prescription drugs to patients at a remote delivery site and maintains related transaction information.

(B) Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(C) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(D) Provider pharmacy--The community pharmacy (Class A) or the institutional pharmacy (Class C) providing remote pharmacy services.

(E) Remote delivery site--A location at which remote pharmacy services are provided using an automated storage and delivery system.

(F) Remote pharmacy service--The provision of pharmacy services, including the storage and delivery of prescription drugs, in remote delivery sites.

(3) General requirements for a provider pharmacy to provide remote pharmacy services using an automated storage and delivery system to deliver a previously verified prescription that is dispensed by the provider pharmacy to a patient or patient's agent.

(A) The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the automated storage and delivery system located at the remote delivery site including supervision of the automated storage and delivery system and compliance with this section.

(B) The patient or patient's agent shall receive counseling via a direct link to audio or video communication by a Texas licensed pharmacist who has access to the complete patient medication record (patient profile) maintained by the provider pharmacy prior to the release of any new prescription released from the system.

(C) A pharmacist shall be accessible at all times to respond to patients' or other health professionals' questions and needs pertaining to drugs delivered through the use of the automated storage and delivery system. Such access may be through a 24 hour pager service or telephone which is answered 24 hours a day.

(D) The patient or patient's agent shall be given the option whether to use the system.

(E) An electronic notice shall be provided to the patient or patient's agent at the remote delivery site with the following information:

*(i)* the name and address of the pharmacy that verified the previously dispensed prescription; and

*(ii)* a statement that a pharmacist is available 24 hours a day, 7 days a week through the use of telephonic communication.

(F) Drugs stored in the automated storage and distribution system shall be stored at proper temperatures, as defined in the USP/NF and §291.15 of this title (relating to Storage of Drugs).

(G) A provider pharmacy may only provide remote pharmacy services using an automated storage and delivery system to patients at a board-approved remote delivery site.

(H) A provider pharmacy may provide remote pharmacy services at more than one remote delivery site.

(I) Before providing remote pharmacy services, the automated storage and delivery system at the remote delivery site must be tested by the provider pharmacy and found to deliver accurately. The provider pharmacy shall make the results of such testing available to the board upon request.

(J) A provider pharmacy which is licensed as an institutional (Class C) pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title (relating to Definitions, Personnel, Operational Standards, and Records for Class A (Community) Pharmacies) and this section.

(4) Operational standards.

(A) Application to provide remote pharmacy services using an automated storage and delivery system.

*(i)* A community (Class A) or institutional (Class C) pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using an automated storage and delivery system.

*(ii)* Such application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license.

*(iii)* Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the provider pharmacy.

(B) Notification requirements.

*(i)* A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service.

*(ii)* A provider pharmacy shall comply with appropriate controlled substance registrations for each remote delivery site if dispensed controlled substances are maintained within an automated storage and delivery system at the facility.

*(iii)* A provider pharmacy shall file an application for change of location and/or name of a remote delivery site as specified in §291.3 of this title (relating to Notifications).

(C) Environment/Security.

*(i)* A provider pharmacy shall only store dispensed drugs at a remote delivery site within an automated storage and delivery system which is locked by key, combination or other mechanical or electronic means so as to prohibit access by unauthorized personnel.

*(ii)* Access to the automated storage and delivery system shall be limited to pharmacists, and pharmacy technicians or pharmacy technician trainees under the direct supervision of a pharmacist who:

*(I)* are designated in writing by the pharmacist-in-charge; and

*(II)* have completed documented training concerning their duties associated with the automated storage and delivery system.

*(iii)* Drugs shall be stored in compliance with the provisions of §291.15 (relating to Storage of Drugs) and §291.33(c)(8) (relating to Returning Undelivered Medication to Stock) of this title, including the requirements for temperature and the return of undelivered medication to stock.

*(iv)* the automated storage and delivery system must have an adequate security system, including security camera(s), to prevent unauthorized access and to maintain patient confidentiality.

(D) Stocking an automated storage and delivery system. Stocking of dispensed prescriptions in an automated storage and delivery system shall be completed under the supervision of a pharmacist.

(E) Quality assurance program. A pharmacy that provides pharmacy services through an automated storage and delivery system at a remote delivery site shall operate according to a written program for quality assurance of the automated storage and delivery system which:

*(i)* requires continuous supervision of the automated storage and delivery system; and

*(ii)* establishes mechanisms and procedures to routinely test the accuracy of the automated storage and delivery system at a minimum of every six months and whenever any upgrade or change is made to the system and documents each such activity.

(F) Policies and procedures of operation.

*(i)* A pharmacy that provides pharmacy services through an automated storage and delivery system at a remote delivery site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

*(I)* a current list of the names and addresses of the pharmacist-in-charge and all personnel designated by the pharmacist-in-charge to have access to the dispensed drugs stored in the automated storage and delivery system;

*(II)* duties which may only be performed by a pharmacist;

*(III)* a copy of the portion of the written contract or lease agreement between the pharmacy and the remote delivery site location which outlines the services to be provided and the responsibilities and accountabilities of each party relating to the operation of the automated storage and delivery system in fulfilling the terms of the contract in compliance with federal and state laws and regulations;

*(IV)* date of last review/revision of the policy and procedure manual; and

*(V)* policies and procedures for:

(-a-) security;

(-b-) operation of the automated storage and delivery system;

(-c-) preventative maintenance of the automated storage and delivery system;

(-d-) sanitation;

(-e-) storage of dispensed drugs;

(-f-) supervision;

(-g-) delivery of dispensed drugs; and

(-h-) record keeping.

*(ii)* A pharmacy that provides pharmacy services through an automated storage and delivery system at a remote delivery site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

*(iii)* A pharmacy providing remote pharmacy services using an automated storage and delivery system shall maintain a written plan for recovery from an event which interrupts the ability of the automated storage and delivery system to deliver dispensed [~~dispense~~] prescription drugs. The written plan for recovery shall include:

*(I)* planning and preparation for maintaining pharmacy services when an automated storage and delivery system is experiencing downtime;

*(II)* procedures for response when an automated storage and delivery system is experiencing downtime; and

*(III)* procedures for the maintenance and testing of the written plan for recovery.

(5) Records.

(A) Maintenance of records.

*(i)* Every record required under this section must be:

*(I)* kept by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

*(II)* supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

*(ii)* The provider pharmacy shall have a workable (electronic) data retention system which can produce a separate audit trail of drug delivery and retrieval transactions at each remote delivery site for the preceding two years.

(B) Transaction information.

*(i)* The automated storage and delivery system shall electronically record all transactions involving drugs stored in, removed, or delivered from the system.

*(ii)* Records of delivery from an automated storage and delivery system for a patient shall be maintained by the provider pharmacy and include the:

*(I)* identity of the system accessed;

*(II)* identification of the individual accessing the system;

*(III)* date of transaction;

*(IV)* prescription number, drug name, strength, dosage form;

*(V)* number of prescriptions retrieved;

*(VI)* name of the patient for whom the prescription was retrieved;

*(VII)* name of prescribing practitioner; and

*(VIII)* name of pharmacist responsible for consultation with the patient, if required, and documentation that the consultation was performed.

*(iii)* Records of stocking or removal from an automated storage and delivery system shall be maintained by the pharmacy and include the:

*(I)* date;

*(II)* prescription number;

*(III)* name of the patient;

*(IV)* drug name;

*(V)* number of dispensed prescription packages stocked or removed;

*(VI)* name, initials, or identification code of the person stocking or removing dispensed prescription packages from the system; and

*(VII)* name, initials, or identification code of the pharmacist who checks and verifies that the system has been accurately filled;

(C) the pharmacy shall make the automated storage and delivery system and any records of the system, including testing records, available for inspection by the board; and

(D) the automated storage and delivery system records a digital image of the individual accessing the system to pick-up a prescription and such record is maintained by the pharmacy for two years.

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

Filed with the Office of the Secretary of State on June 22, 2020.

TRD-202002477
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: August 2, 2020
For further information, please call: (512) 305-8010

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## SUBCHAPTER H. OTHER CLASSES OF PHARMACY

### 22 TAC §291.153

The Texas State Board of Pharmacy proposes amendments to §291.153 concerning Central Prescription Drug or Medication Order Processing Pharmacy (Class G). The amendments, if adopted, remove the requirement for a Class G pharmacy to have a sink exclusive of restroom facilities, and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to remove unnecessary requirements and provide clearer regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz 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 the future legislative appropriations to the agency;

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

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

(6) The proposed amendments do limit an existing regulation by removing a requirement;

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

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., August 1, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

*§291.153. Central Prescription Drug or Medication Order Processing Pharmacy (Class G).*

(a) Purpose.

(1) The purpose of this section is to provide standards for a centralized prescription drug or medication order processing pharmacy.

(2) Any facility established for the primary purpose of processing prescription drug or medication drug orders shall be licensed as a Class G pharmacy under the Act. A Class G pharmacy shall not store bulk drugs[~~,~~] or dispense a prescription drug order. Nothing in this subsection shall prohibit an individual pharmacist employee, individual pharmacy technician employee, or individual pharmacy technician trainee employee who is licensed in Texas from remotely accessing the pharmacy's electronic database [~~data base~~] from a location other than a licensed pharmacy in order to process prescription or medication drug orders, provided the pharmacy establishes controls to protect the privacy and security of confidential records, and the Texas-licensed pharmacist, pharmacy technician, or pharmacy technician trainee does not engage in the receiving of written prescription or medication orders or the maintenance of prescription or medication drug orders at the non-licensed remote location.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set out in the Act.

(1) Centralized prescription drug or medication order processing--The processing of [~~a~~] prescription drug or medication orders by a Class G pharmacy on behalf of another pharmacy, a health care provider, or a payor. Centralized prescription drug or medication order processing does not include the dispensing of a prescription drug but includes any of the following:

(A) receiving, interpreting, or clarifying prescription drug or medication [~~drug~~] orders;

(B) data entering and transferring of prescription drug or medication order information;

(C) performing drug regimen review;

(D) obtaining refill and substitution authorizations;

(E) verifying accurate prescription data entry;

(F) interpreting clinical data for prior authorization for dispensing;

(G) performing therapeutic interventions; and

(H) providing drug information concerning a patient's prescription.

(2) Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or, if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. Each Class G pharmacy shall have one pharmacist-in-charge who is employed on a full-time basis, who may be the pharmacist-in-charge for only one such pharmacy.

(B) Responsibilities. The pharmacist-in-charge shall have responsibility for the practice of pharmacy at the pharmacy for which he or she is the pharmacist-in-charge. The pharmacist-in-charge may advise the owner on administrative or operational concerns. The pharmacist-in-charge shall have responsibility for, at a minimum, the following:

*(i)* educating and training pharmacy technicians and pharmacy technician trainees;

*(ii)* maintaining records of all transactions of the Class G pharmacy required by applicable state and federal laws and regulations [~~sections~~];

*(iii)* adhering to policies and procedures regarding the maintenance of records in a data processing system such that the data processing system is in compliance with Class G pharmacy requirements; and

*(iv)* legally operating the pharmacy, including meeting all inspection and other requirements of all state and federal laws or regulations [~~sections~~] governing the practice of pharmacy.

(2) Owner. The owner of a Class G pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(A) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(B) establishing policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(3) Pharmacists.

(A) General.

*(i)* The pharmacist-in-charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the Class G pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

*(ii)* All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities.

*(iii)* Pharmacists are solely responsible for the direct supervision of pharmacy technicians and pharmacy technician trainees and for designating and delegating duties, other than those listed in subparagraph (B) of this paragraph, to pharmacy technicians and pharmacy technician trainees. Each pharmacist shall be responsible for any delegated act performed by pharmacy technicians and pharmacy technician trainees under his or her supervision.

*(iv)* Pharmacists shall directly supervise pharmacy technicians and pharmacy technician trainees who are entering prescription data into the pharmacy's data processing system by one of the following methods.

*(I)* Physically present supervision. A pharmacist shall be physically present to directly supervise a pharmacy technician or pharmacy technician trainee who is entering prescription order or medication order data into the data processing system. Each prescription or medication order entered into the data processing system shall be verified at the time of data entry.

*(II)* Electronic supervision. A pharmacist may electronically supervise a pharmacy technician or pharmacy technician trainee who is entering prescription order or medication order data into the data processing system provided the pharmacist:

(-a-) [~~the pharmacist~~] has the ability to immediately communicate directly with the technician/trainee;

(-b-) has immediate access to any original document containing prescription or medication order information or other information related to the dispensing of the prescription or medication order. Such access may be through imaging technology provided the pharmacist has the ability to review the original, hardcopy documents if needed for clarification; and

(-c-) verifies the accuracy of the data entered information prior to the release of the information to the system for storage.

*(III)* Electronic verification of data entry by pharmacy technicians or pharmacy technician trainees. A pharmacist may electronically verify the data entry of prescription information into a data processing system provided:

(-a-) the pharmacist has the ability to immediately communicate directly with the technician/trainee;

(-b-) the pharmacist electronically conducting the verification is either a:

(-1-) Texas licensed pharmacist; or

(-2-) pharmacist employed by a Class E pharmacy that has the same owner as the Class G pharmacy where the pharmacy technicians/trainees are located, or that has entered into a written contract or agreement with the Class G pharmacy[,] which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations;

(-c-) the pharmacy establishes controls to protect the privacy and security of confidential records; and

(-d-) the pharmacy keeps permanent records of prescriptions electronically verified for a period of two years.

*(v)* All pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(B) Duties. Duties which may only be performed by a pharmacist are as follows:

*(i)* receiving oral prescription drug or medication orders and reducing these orders to writing, either manually or electronically;

*(ii)* interpreting prescription drug or medication orders;

*(iii)* selecting drug products;

*(iv)* verifying the data entry of the prescription drug or medication order information at the time of data entry prior to the release of the information to a Class A, Class C, or Class E pharmacy for dispensing;

*(v)* communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment, the pharmacist deems significant, as specified in §291.33(c) of this title (relating to Operational Standards);

*(vi)* communicating to the patient or the patient's agent on his or her request information concerning any prescription drugs dispensed to the patient by the pharmacy;

*(vii)* assuring that a reasonable effort is made to obtain, record, and maintain patient medication records; and

*(viii)* interpreting patient medication records and performing drug regimen reviews.

(4) Pharmacy Technicians and Pharmacy Technician Trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Duties.

*(i)* Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in paragraph (3)(B) of this subsection.

*(ii)* A pharmacist may delegate to pharmacy technicians and pharmacy technician trainees any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

*(I)* a pharmacist verifies the accuracy of all acts, tasks, and functions performed by pharmacy technicians and pharmacy technician trainees;

*(II)* pharmacy technicians and pharmacy technician trainees are under the direct supervision of and responsible to a pharmacist; and

*(iii)* Pharmacy technicians and pharmacy technician trainees may perform only nonjudgmental technical duties associated with the preparation of prescription drugs, as follows:

*(I)* initiating and receiving refill authorization requests; and

*(II)* entering prescription or medication order data into a data processing system.

(C) Ratio of on-site pharmacists to pharmacy technicians and pharmacy technician trainees. A Class G pharmacy may have a ratio of on-site pharmacists to pharmacy technicians and pharmacy technician trainees of 1:8 provided:

*(i)* at least seven are pharmacy technicians and not pharmacy technician trainees; and

*(ii)* the pharmacy has written policies and procedures regarding the supervision of pharmacy technicians and pharmacy technician trainees.

(5) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows.

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician, or a certified pharmacy technician, if the technician maintains current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the board.

(B) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(C) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(D) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

(d) Operational Standards.

(1) General requirements.

(A) A Class A, Class C, or Class E Pharmacy may outsource prescription drug or medication order processing to a Class G pharmacy provided the pharmacies:

*(i)* have:

*(I)* the same owner; or

*(II)* entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations; and

*(ii)* share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to perform a non-dispensing function.

(B) A Class G pharmacy shall comply with the provisions applicable to the class of pharmacy contained in [~~either~~] §§291.31 - 291.35 of this title (relating to Definitions, Personnel, Operational Standards, Records, and Official Prescription Requirements in a Class A (Community) Pharmacy [~~Pharmacies~~]), [~~or~~] §§291.72 - 291.75 of this title (relating to Definitions, Personnel, Operational Standards, and Records in a Class C (Institutional) Pharmacy), or §§291.102 - 291.105 of this title (relating to Definitions, Personnel, Operational Standards, and Records in a Class E (Non-Resident) Pharmacy) to the extent applicable for the specific processing activity and this section including:

*(i)* duties which must be performed by a pharmacist; and

*(ii)* supervision requirements for pharmacy technicians and pharmacy technician trainees.

(2) Licensing requirements.

(A) A Class G pharmacy shall register with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(B) A Class G pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(C) A Class G pharmacy which changes location and/or name shall notify the board of the change within 10 days and file for an amended license as specified in §291.3 of this title.

(D) A Class G pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change, following the procedures in §291.3 of this title.

(E) A Class G pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(F) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance and renewal of a license and the issuance of an amended license.

(G) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(3) Environment.

(A) General requirements.

*(i)* The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be in good operating condition.

*(ii)* The pharmacy shall be properly lighted and ventilated.

*(iii)* The pharmacy is not required to have a sink exclusive of restroom facilities.

(B) Security.

*(i)* Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drug records.

*(ii)* Pharmacies shall employ appropriate measures to ensure that security of prescription drug records is maintained at all times to prohibit unauthorized access.

(4) Policy and Procedures. A policy and procedure manual shall be maintained by the Class G pharmacy and be available for inspection. The manual shall:

(A) outline the responsibilities of each of the pharmacies;

(B) include a list of the name, address, telephone numbers, and all license/registration numbers of the pharmacies involved in centralized prescription drug or medication order processing; and

(C) include policies and procedures for:

*(i)* protecting the confidentiality and integrity of patient information;

*(ii)* maintaining appropriate records to identify the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician who performed any processing;

*(iii)* complying with federal and state laws and regulations;

*(iv)* operating a continuous quality improvement program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems; and

*(v)* annually reviewing the written policies and procedures and documenting such review.

(e) Records.

(1) every record required to be kept under the provisions of this section shall be:

(A) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the board [~~Texas State Board of Pharmacy~~]. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) The pharmacy shall maintain appropriate records which identify, by prescription drug or medication order, the name(s), initials, or identification code(s) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs a processing function for a prescription drug or medication order. Such records may be maintained:

(A) separately by each pharmacy and pharmacist; or

(B) in a common electronic file as long as the records are maintained in such a manner that the data processing system can produce a printout which lists the functions performed by each pharmacy and pharmacist.

(3) In addition, the pharmacy shall comply with the record keeping requirements applicable to the class of pharmacy to the extent applicable for the specific processing activity and this section.

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

Filed with the Office of the Secretary of State on June 22, 2020.

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Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: August 2, 2020
For further information, please call: (512) 305-8010

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# PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

## CHAPTER 361. ADMINISTRATION
## SUBCHAPTER A. GENERAL PROVISIONS

### 22 TAC §361.6

The Texas State Board of Plumbing Examiners (Board) proposes amendments to 22 Texas Administrative Code §361.6.

BACKGROUND AND PURPOSE

The Board sets license fees in amounts that are reasonable and necessary to cover the cost of administering Occupations Code, Chapter 1301. The amendments to §361.6, if adopted, would reduce the fees imposed by the Board for an individual licensed by the Board as a Master Plumber to acquire and maintain a Responsible Master Plumber (RMP) designation. The RMP designation is required in order for a Master Plumber to operate a plumbing company and contract with the public to perform plumbing work. A Master Plumber seeking designation as an RMP must take additional training and coursework, and while holding the designation, maintain commercial general liability insurance. The amendments, if adopted, would remove potential barriers to licensure for Master Plumbers who may wish to es-

tablish a plumbing company. Fees for Journeyman and Master Plumber licenses in Texas are already significantly lower than the national average of licensing authorities in other jurisdictions. The current fees for the RMP designation are also lower than the national average for a contractor license, the functional equivalent of the RMP designation in other jurisdictions. The amendments, if adopted, would further lower applicable license fees and remove potential barriers to licensure.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lisa G. Hill, Executive Director, has determined that for the first five-year period the rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rule. The Executive Director has further determined that for the first five-year period the rule is in effect, there will not be a foreseeable loss in revenue for local governments as a result of enforcing or administering the rule amendment. The Executive Director has further determined that for the first five-year period the rule is in effect, there will be a foreseeable loss in revenue for the state as a result of enforcing or administering the rule. Fees collected by the Board are transferred to the state's general revenue fund. Had the amended rule been in effect throughout fiscal year 2019, the Board would have collected approximately $948,000 fewer licensing fees during that time. In consideration of the foregoing, and assuming the licensee population for Master Plumbers holding a Responsible Master Plumber designation remains static, and the number of late renewals is relatively stable, it is anticipated that adoption of the rule would result in a loss of revenue to state in that amount in each of the first five years the rule is in effect.

PUBLIC BENEFITS / COSTS TO REGULATED PERSONS

The Executive Director has determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to provide for the potential establishment of new plumbing companies to address the ever-growing demand for plumbing contractors, thereby potentially reducing costs to Texas consumers for such services.

The Executive Director has further determined that for the first five years the rule is in effect, there are no substantial costs anticipated for persons required to comply with the rule.

ONE-FOR-ONE RULE ANALYSIS

Given the rule does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, the Board asserts proposal and adoption of the rule is not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed amendments are in effect, the agency has determined the following: (1) the rule does not create or eliminate a government program; (2) implementation of the rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule does not require an increase but rather imposes a decrease in fees paid to the agency; (5) the rule does not create a new regulation; (6) The rule does expand, limit, or repeal an existing regulation. The rule limits an existing regulation imposing a license fee on regulated persons by reducing the amount of certain of those fees; (7) the rule does not increase or decrease the number individuals subject to the rule's requirements; and (8) the rule does not negatively affect the state's economy and has the potential to positively affect the state's economy by encouraging the proliferation of plumbing companies in the state, thereby potentially leading to increased commercial activity for plumbing services.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Executive Director has determined that no local economies are substantially affected by the rule, and, as such, the Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESSES, AND RURAL COMMUNITIES

The Executive Director has determined that the rule will not have an adverse effect on small or micro-businesses, or rural communities, because there are no substantial costs to persons who are required to comply with the rule. As a result, the Board asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

The Board has determined that there are no private real property interests affected by the rule; thus, the Board asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by said §2001.0225, is not required.

PUBLIC COMMENTS

Written comments regarding the amendments may be submitted by mail to Lisa G. Hill at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line "Public Comment - RMP Fees" All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law). Amended §361.6 is proposed under the authority of, and to implement, Occupations Code §1301.253, which requires the Board to set fees in amounts that are reasonable and necessary to cover the cost of administering the Plumbing License Law.

This proposal affects the Plumbing License Law. No other statute is affected by this proposal.

*§361.6. Fees.*

(a) (No change.)

(b) The Board has established the following fees:

(1) Initial Licenses, Endorsements and Registrations.

(A) Responsible Master Plumber License--$300 [~~$420~~];

(B) - (R) (No change.)

(2) (No change.)

(3) Renewals.

(A) Responsible Master Plumber License--$300 [$420];

(B) - (T) (No change.)

(4) Other Fees.

(A) Late renewal.

*(i)* Responsible Master Plumber License:

*(I)* less than 90 days--one-half renewal fee--$150 [$210];

*(II)* more than 90 days--renewal fee--$300 [$420];

*(ii) - (xx)* (No change.)

(B) - (H) (No change.)

(c) Methods of payment.

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

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

Filed with the Office of the Secretary of State on June 16, 2020.

TRD-202002403
Lisa G. Hill
Executive Director
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: August 2, 2020
For further information, please call: (512) 936-5226

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# TITLE 34. PUBLIC FINANCE

## PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

### CHAPTER 75. HAZARDOUS PROFESSION DEATH BENEFITS

**34 TAC §§75.1 - 75.3**

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 75, concerning Hazardous Profession Death Benefits, by amending §75.1 (Filing of Claims) and §75.2 (Additional Benefit Claims), and adding new rule §75.3 (Adjustments to Payments).

ERS is a constitutional trust fund established as set forth in Article XVI, §67, Texas Constitution, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Texas Administrative Code, §61.1*et seq.* ERS administers benefits payable to the survivors of certain law enforcement and other emergency-related first responders who are killed in the line of duty, as provided by Chapter 615, Texas Government Code.

Section 75.1, concerning Filing of Claims, and §75.2, concerning Additional Benefit Claims are proposed to be amended to provide that the Executive Director's designee whose responsibility it is to administer Chapter 615 benefits may receive and process claims and request additional information in order to accurately and effectively process such claims. In addition, the rules are proposed to be amended to require that certain workers' compensation claims information related to Chapter 615 claims filed with ERS be provided to the Executive Director or designee because the information relates to the claim for benefits.

Section 75.3, concerning Adjustments to Payments, is proposed to be added to comply with the requirements of Chapter 1181 (H.B. 3635), Acts of the 86th Legislature, Regular Session, 2019. H.B. 3635 amended Tex. Gov't Code §615.022 to require ERS, beginning on September 1, 2020, and on each September 1 thereafter, to adjust the lump sum benefit payable to eligible survivors by an amount recommended by the system's actuary that is equal to the percentage change in the Consumer Price Index for All Urban Consumers for the previous calendar year.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rule will be in effect:

--the proposed rule amendments will not create or eliminate a government program;

--implementation of the proposed rule amendments will not require the creation of new employee positions or eliminate existing employee positions;

--implementation of the proposed rule amendments will require an increase or decrease in future legislative appropriations to the agency;

--the proposed rule amendments will not require an increase or decrease in fees paid to the agency;

--the proposed rule amendments will create a new rule or regulation;

--the proposed rule amendments will expand an existing rule or regulation;

--the proposed rule amendments will not increase or decrease the number of individuals subject to the rule's applicability; and

--the proposed rule amendments will not positively or adversely affect the state's economy.

Ms. Robin Hardaway, Director of Customer Benefits, has determined that to her knowledge for the first five-year period the rule is in effect, there will be fiscal implications for state government as a result of enforcing or administering the rule. Because the rule and the enabling legislation require adjusting a benefit according to the Consumer Price Index for All Urban Consumers, future appropriations to pay for the benefit could be increased depending on the annual calculations recommended by the system's actuary for ERS' adoption. Local governments, local economies and small businesses, micro-businesses, or rural communities will not be affected. There are no known anticipated economic effects to persons who are required to comply with the rules as proposed; and the proposed rule amendments do not impose a cost on regulated persons. The proposed rule amendments do not constitute a taking.

Ms. Hardaway also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of adopting, amending, and complying with the rules would be to provide a standard method to adjust lump sum death benefits in accordance with applicable law. In addition, the proposed amendments permit ERS to more effectively evaluate and

administer claims for the survivors of first responders, and to obtain additional available information to evaluate such claims.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at *paula.jones@ers.texas.gov.* The deadline for receiving comments is August 3, 2020, at 10:00 a.m.

The amendment is proposed under Texas Government Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules for the administration of the funds of the retirement system and the transaction of any other business by the board, and Tex. Gov't Code §615.022, which requires ERS to adopt rules to implement that statute.

No other statutes are affected by the proposed amendments.

*§75.1. Filing of Claims.*

(a) Claims for benefits under Texas Government Code, Chapter 615, may be initiated by the deceased employee's department, any applicant for benefits, if an adult, or by the representative of any minor children for whom benefits are being claimed.

(b) No claim for benefits on behalf of a child born after the death of the law enforcement officer or fire fighter will be paid, unless it is accompanied by a certificate of the attending physician that the child was conceived during the decedent's lifetime.

(c) The following documents or copies of the documents shall be submitted in an application for benefits under Texas Government Code, Chapter 615, unless the executive director or designee waives their submission:

(1) a sworn statement from the person making the claim giving the date of death, the name and address of the surviving spouse, if there is one, and the names, addresses, and birth dates of all surviving children of the decedent. If the decedent left no surviving spouse or children, the names and addresses of surviving parents of the decedent shall be provided. The names and addresses of any persons caring for minors who may be eligible for benefits shall be given;

(2) a certified copy of the death certificate;

(3) a certified copy of the autopsy report, only if requested by the system;

(4) a copy of the marriage certificate showing marriage between the surviving spouse and the deceased;

(5) a certified copy of the birth certificate of each surviving child of the deceased;

(6) affidavits from any witnesses detailing the facts of the fatality;

(7) certified copies of any investigative reports;

(8) a sworn statement from the employer or authorized representative of the department detailing the facts and circumstances of the fatality, and any information relied upon in making the sworn statement. The employer's or department representative's sworn statement must also include facts showing that, at the time of the fatal injury, the deceased held a position covered by the terms of Texas Government Code, Chapter 615, and that the death resulted from a personal injury sustained in the line of duty, as provided by Government Code §615.021;

(9) a copy of the decedent's birth certificate, if benefits are being claimed for parents;

(10) a certification from the appropriate authority as follows:

(A) if the decedent was a paid law enforcement officer, as defined in Texas Government Code, §615.003(1), a certification from the Texas Commission on Law Enforcement Officer Standards and Education that the decedent was a commissioned peace officer certified by that commission;

(B) if the decedent was a paid fireman, as defined in Texas Government Code, §615.003(10) or §615.003(11), a certification from the Commission on Fire Protection Personnel Standards and Education that the decedent was certified by that commission, or a certification from the head of the state agency or political or legal subdivision of the state for whom the decedent worked that aircraft crash and rescue fire fighting were the decedent's principal duties at the time of his or her death;

(C) if the decedent was a member of an organized volunteer fire department, as defined in Texas Government Code, §615.003(12), a certification from the head of the organized volunteer fire department that the decedent was a member of an organized volunteer fire department that conducts a minimum of two drills each month, with each drill being at least two hours long, and decedent rendered fire fighting services without remuneration;

(D) if the decedent was a paid probation officer, as defined in Texas Government Code, §615.003(2), a certification from the district judge or district judges who appointed the decedent or for whom the decedent worked that the decedent had the qualifications and duties set out in the Texas Code of Criminal Procedure, Article 42.12, §10, 1965, as amended;

(E) if the decedent was a paid parole officer, as defined in Texas Government Code, §615.003(3), a certification from the executive director of the Board of Pardons and Paroles that the decedent was an officer of the division of parole supervision and had the qualifications and duties set out in the Texas Code of Criminal Procedure, Article 42.12, §§26-29, 1965, as amended;

(F) if the applicant alleges that the decedent was within the protected class defined as supervisory personnel in a county jail in Texas Government Code, §615.003(7), a certification by the sheriff that the decedent was appointed as jailer or guard of a county jail and performed a security, custody, or supervisory function over the admittance, confinement, or discharge of prisoners, and a certification from the Texas Commission on Law Enforcement Officer Standards and Education that the decedent was certified by that commission;

(G) if the applicant alleges that the decedent was within the protected class defined as performing emergency medical services or operation of an ambulance in Texas Government Code, §615.003(13), a certification by the Texas Department of Health that the decedent was certified as at least an "emergency care attendant;"

(H) if the applicant alleges that the decedent was within the protected class defined as a chaplain in Texas Government Code, §615.003(14), a certification by the firefighting unit, law enforcement agency, Texas Department of Criminal Justice, or a political subdivision of this state that the decedent was employed or formally designated as a chaplain.

(11) all newspaper or other media accounts, if any, of the fatality; [~~and~~]

(12) a copy of the income tax return filed by the decedent in the year prior to death, if benefits are being claimed for surviving children; and [.]

(13) copies of all documents submitted by or on behalf of the decedent or the decedent's beneficiary and all notices of decisions related to a workers' compensation claim, if a workers' compensation claim has been made related to the illness or injury that resulted in the decedent's death.

(d) The executive director or designee may require any additional information or affidavits as are necessary to establish the validity of the claim.

(e) Payment on behalf of a minor child will be made only to a surviving natural parent with custody of the child, to a surviving adoptive parent with custody of the child, or to a court-appointed guardian of the child's estate.

*§75.2. Additional Benefit Claims.*

(a) In addition to the documents required under §75.1 of this chapter, the following documents shall be submitted in an application for benefits under Texas Government Code, Chapter 615, Subchapter F, unless the executive director or designee waives their submission:

(1) a sworn statement from the person making the claim that:

(A) the decedent, on the date of death, was not receiving and was not eligible to receive an annuity under an employee retirement plan;

(B) the surviving spouse, if any, of the decedent has not remarried;

(C) the surviving spouse, if any, of the decedent is not retired and is not eligible to retire under an employee retirement plan; and

(D) the surviving spouse, if any, of the decedent is not receiving and is not eligible to receive social security benefits; and

(2) an itemized statement of funeral expenses incurred, if the application includes a claim for payment of funeral expenses.

(b) Except as provided in Subsection (c) of this section, an annuity payable to a surviving spouse who is eligible for benefits under Texas Government Code, Chapter 615, Subchapter F, shall be computed as provided by Texas Government Code §814.105 as if the decedent, on the date of death:

(1) was employed by the Texas Department of Public Safety at the lowest salary provided by the General Appropriations Act for a peace officer position, if the decedent held a peace officer position on the date of death, or by the Texas Department of Criminal Justice at the lowest salary provided by the General Appropriations Act for a custodial personnel position, if the decedent held a custodial personnel position on the date of death;

(2) had accrued 10 years of service credit in the applicable position; and

(3) was eligible to retire without regard to any age requirement.

(c) In lieu of the amount computed under Subsection (b), an annuity shall be paid in the amount the decedent would have been eligible to receive under the decedent's employee retirement plan if the decedent had been eligible to retire at the age and with the service attained on the last day of the month of the decedent's death if:

(1) the person making the claim requests payment of the amount computed under this subsection before any payment computed under Subsection (b) is made;

(2) an authorized representative of the employee retirement plan in which the decedent was a participant certifies the amount computed under this subsection; and

(3) the amount computed under this subsection is greater than the amount computed under Subsection (b).

(d) The reduction factors applied to a death benefit plan administered by the system shall be applied in the same manner to an annuity computed under either Subsection (b) or Subsection (c) of this section.

(e) As a condition of receipt of an annuity under Texas Government, Chapter 615, Subchapter F, an eligible surviving spouse shall agree to annually certify the spouse's eligibility under Subparagraphs (1)(B), (1)(C), and (1)(D) of Subsection (a) of this section and to notify the system of any change in circumstances affecting the spouse's continued eligibility. Failure to comply with this requirement or to provide the agreed certification is a basis for suspension of annuity payments until such time as compliance occurs.

(f) The amount reimbursed for funeral expenses under Texas Government Code, Chapter 615, Subchapter F, shall not exceed the lesser of $6,000 or the amount of funeral expenses actually incurred.

(g) The executive director or designee may require additional information or affidavits as necessary to establish the validity of any claim under this section.

*§75.3. Adjustments to Payments.*

Beginning on September 1, 2020, and on each September 1 thereafter, any lump sum payment payable to eligible survivors under Section 615.022(d), Texas Government Code, shall be adjusted annually by an amount equal to the percentage change in the Consumer Price Index for All Urban Consumers for the previous calendar year. The annual adjustment will be an amount as recommended by the system's consulting actuary for the system's consideration and approval.

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 19, 2020.

TRD-202002457
Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: August 2, 2020
For further information, please call: (877) 275-4377

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# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 15. TEXAS FORENSIC SCIENCE COMMISSION

### CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

### SUBCHAPTER A. ACCREDITATION

**37 TAC §651.7**

The Texas Forensic Science Commission ("Commission") proposes an amendment to 37 Texas Administrative Code §651.7 which describes forensic disciplines exempt from accreditation

requirements. The amendment removes the modifying phrase "including bloodstain pattern analysis and trajectory determination" from the term "crime scene reconstruction," because the term "crime scene reconstruction" is now defined in better detail elsewhere in the Commission rules (§651.202, Definitions). The Commission recently defined the term "crime scene reconstruction" in §651.202 to clarify which types of crime scene activities are considered forensic analysis. The new definition renders the modifying phrase "including bloodstain pattern analysis and trajectory determination" unnecessary, because these activities are covered by the new definition provided in §651.202. The proposed amendment is nonsubstantive. The amendment is necessary to reflect adoptions made by the Commission at its June 12, 2020, quarterly meeting. The amendment is made in accordance with the Commission's accreditation authority under Code of Criminal Procedure, Article 38.01 §4-d, and the Commission's rulemaking authority under Article 38.01 §3-a.

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendment 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. There will be no anticipated effect on local employment or the local economy as a result of the proposal. The Commission recently defined the term "crime scene reconstruction" in Texas Administrative Code §651.202 to clarify which types of crime scene activities are considered forensic analysis. The new definition renders the modifying phrase "including bloodstain pattern analysis and trajectory determination" unnecessary, because these activities are covered by the new definition provided in §651.202. The amendment does not expand the Commission's regulatory authority over entities, individuals or types of forensic analyses subject to accreditation or licensing requirements by the Commission.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendment does not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be better clarity for forensic analysts with regard to the types of crime scene activities exempt from accreditation requirements.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f). Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendment will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person or laboratory who is required to comply with the rule as proposed. The amendment removes a modifying phrase from a term defined in better detail elsewhere in the Commission rules (§651.202, Definitions). The amendment is non-substantive, and does not expand the Commission's regulatory authority over entities, individuals or types of forensic analyses subject to accreditation or licensing requirements by the Commission.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, 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 the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendment will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. The amendment removes a modifying phrase from a term defined in better detail elsewhere in the Commission rules (§651.202, Definitions). The amendment does not expand the Commission's regulatory authority over entities, individuals or types of forensic analyses subject to accreditation or licensing requirements by the Commission.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by August 4, 2020, to be considered by the Commission.

Statutory Authority. The amendment is proposed under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and §4-d(b) and (c), which authorize the Commission to adopt rules providing, modifying, or removing accreditation exemptions.

Cross reference to statute. The proposal affects 37 Texas Administrative Code §651.7.

*§651.7. Forensic Disciplines Exempt from Commission Accreditation Requirements by Administrative Rule.*

(a) The Commission has exempted the following categories of forensic analysis from the accreditation requirement by administrative rule:

(1) sexual assault examination of a person;

(2) forensic anthropology, entomology, or botany;

(3) environmental testing;

(4) facial or traffic accident reconstruction;

(5) serial number restoration;

(6) polygraph examination;

(7) voice stress, voiceprint, or similar voice analysis;

(8) statement analysis;

(9) forensic odontology for purposes of human identification or age assessment, not to include bite mark comparison related to patterned injuries;

(10) testing and/or screening conducted for sexually transmitted diseases;

(11) fire scene investigation, including but not limited to cause and origin determinations;

(12) forensic photography;

(13) non-criminal paternity testing;

(14) non-criminal testing of human or nonhuman blood, urine, or tissue, including but not limited to workplace/employment drug testing;

(15) a crime scene investigation team (whether or not associated with an accredited laboratory) engaged in the location, identification, collection or preservation of physical evidence and the activity is not integral to an expert examination or test;

(16) crime scene reconstruction[, ~~including bloodstain pattern analysis and trajectory determination~~];

(17) confirmatory testing of a human specimen in a laboratory certified by the Centers for Medicare and Medicaid Services of the Department of Health and Human Services (HHS/CMS) under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) for the purposes of referring, offering, or making available treatment or monitoring, conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles, and the results of such testing are subsequently entered into evidence in an action to revise or revoke the terms of an individual's community supervision or parole;

(18) document examination, including document authentication, physical comparison, and product determination; or

(19) other evidence processing or handling that is excluded under §651.2(2) of this title (relating to Definitions).

(b) A request for exemption shall be submitted in writing to the Commission

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

Filed with the Office of the Secretary of State on June 18, 2020.

TRD-202002434
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Earliest possible date of adoption: August 2, 2020
For further information, please call: (512) 784-0037

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## CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

The Texas Forensic Science Commission ("Commission") proposes adding new 37 Texas Administrative Code §651.106, to describe the existing process by which accreditation may be reinstated after revocation by the Commission, and proposes conforming amendments to 37 Texas Administrative Code §651.10, which describes the term of Commission accreditation. The proposal also amends §§651.101 - 651.105 to clarify the sources, grounds, and procedures for crime laboratory accreditation-related complaints and reviews by the Commission. The proposed amendments clarify and codify existing procedures. The amendments and additions are necessary to reflect adoptions made by the Commission at its June 12, 2020, quarterly meeting and were made in accordance with the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, and crime laboratory accreditation authority under Code of Criminal Procedure, Article 38.01 §4-d(b).

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendments and new rule are in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no anticipated effect on local employment or the local economy as a result of the proposal. The amendments further describe the procedures for accreditation-related action by the Commission including withdrawal of crime laboratory accreditation, and provide the corresponding appeal process for accreditation actions by the Commission. The new rule describes the process by which accreditation may be reinstated. The changes and additions do not expand the Commission's regulatory authority or have any fiscal impact on crime laboratories subject to accreditation requirements by the Commission, but rather provide a more detailed and transparent description of existing procedures for accreditation compliance actions by the Commission and corresponding due process procedures pursuant to Government Code, Chapter 2001.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendments and new rule do not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has also determined that for each year of the first five years the proposed amendments and new rule are in effect, the anticipated public benefit will be increased transparency regarding the Commission's procedures for accreditation actions and corresponding administrative due process procedures to which crime laboratories are entitled when the Commission takes an adverse accreditation action. There are no anticipated costs, as the proposed amendments clarify and codify existing procedures.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f). Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendments and new rule will not have an adverse economic effect on any small or micro business, because there are no anticipated economic costs to any person or crime laboratory who is required to comply with the rules as proposed. The changes and additions do not expand the Commission's regulatory authority or place any additional financial burden on crime laboratories subject to accreditation requirements by the Commission, but rather describe existing procedures for accreditation compliance actions by the Commission and corresponding administrative due process procedures available pursuant to Government Code, Chapter 2001.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, 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 the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendments and new rule will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. The amendments and new rule describe the existing procedures for accreditation-related actions by the Commission and the process by which a crime laboratory may appeal an accreditation decision or action by the Commission. The amendments do not change the level of oversight by

the Commission with respect to any crime laboratory subject to accreditation requirements by the Commission.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by August 4, 2020, to be considered by the Commission.

## SUBCHAPTER A. ACCREDITATION

### 37 TAC §651.10

Statutory Authority. The amendments are proposed under Code of Criminal Procedure, Article 38.01 §§3-a and 4-d(b). Article 38.01 §3-a directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-d(b) directs the Commission to adopt rules establishing and ensuring compliance with the accreditation process.

Cross reference to statute. The proposal affects 37 Texas Administrative Code §651.10 and §§651.101-105, and adds rule §651.106.

*§651.10. Accreditation Term.*

(a) Normal term. The normal term for Commission accreditation:

(1) begins on the date of issuance of the initial Commission accreditation letter; and

(2) extends until withdrawn by the recognized accrediting body or by the Commission under §651.11 of this subchapter (relating to Automatic Withdrawal of Commission Accreditation) or under §651.104 of this chapter (relating to Withdrawal of Commission Accreditation).

(b) Provisional term.

(1) A laboratory that applies for accreditation from a recognized accrediting body may apply to the Commission for provisional accreditation in accordance with §651.9 of this subchapter (relating to Provisional Commission Accreditation) for a term not to exceed one year from the date the Commission issues the accreditation unless formally extended for good cause by the Commission.

(2) If a currently accredited laboratory is in the process of renewing or replacing its accreditation from a recognized accrediting body, prior to the end of its term, and applies for provisional Commission accreditation, the term of that provisional accreditation may not exceed six (6) months.

(c) Limited term. A laboratory, including an out of state, federal, or private laboratory, may request Commission accreditation for a term less than the term normally available under this subchapter.

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

Filed with the Office of the Secretary of State on June 18, 2020.

TRD-202002432
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Earliest possible date of adoption: August 2, 2020
For further information, please call: (512) 784-0037

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## SUBCHAPTER B. ACCREDITATION-RELATED ACTIONS AND PROCEDURE FOR HEARING AND APPEAL [~~COMPLAINTS, SPECIAL REVIEW, AND ADMINISTRATIVE ACTION~~]

### 37 TAC §§651.101 - 651.106

Statutory Authority. The amendments and new rule are proposed under Code of Criminal Procedure, Article 38.01 §§3-a and 4-d(b). Article 38.01 §3-a directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-d(b) directs the Commission to adopt rules establishing and ensuring compliance with the accreditation process.

Cross reference to statute. The proposal affects 37 Texas Administrative Code §651.10 and §§651.101 - 105, and adds rule §651.106.

*§651.101. Complaint Process.*

(a) Question or complaint. If the Commission learns of a fact or[~~,~~] circumstance, or receives a third-party complaint regarding [~~that raises a question about~~] the reliability of [~~integrity or trustworthiness~~] a laboratory, or the validity of [~~a~~] a procedure, examination, or test conducted by the laboratory since the date of application for Commission accreditation, the Commission may take any of the following actions:

(1) if a complaint has been filed, communicate further with the complainant [~~source of the complaint~~] to assess whether [~~the appropriateness of~~] further action is merited;

(2) refer the matter to the laboratory's director for evaluation, audit, correction, or other appropriate action;

(3) initiate an audit under §651.102 of this title (relating to Commission [~~Unscheduled~~] Audit);

(4) issue a letter to the laboratory:

(A) requesting [~~demanding~~] an immediate response and explanation of the matter;

(B) requiring [~~demanding~~] that the laboratory permit or arrange for an immediate inspection or audit of the matter; or

(C) explaining the action to be taken by the Commission in the matter;

(5) notify or refer the matter to a law enforcement agency or prosecutor with jurisdiction and recommend appropriate criminal action;

(6) refer the matter to a district judge and recommend appropriate action to convene a court of inquiry under Code of Criminal Procedure, Chapter 52; and

(7) any other actions deemed appropriate by the Commission.

(b) Source and scope. A question or complaint may be raised by any source, including an individual, entity, or audit or an investigation by the Commission pursuant to §651.301(a)(3) or (b) of this chapter. The scope of any action taken or proposed by the Commission under this section shall be determined by the Commission, based on the nature of the question or complaint.

(c) Records. The Commission may maintain a public record of a laboratory's accreditation or approval status.

(1) The Commission may maintain on the public record a notation of an action taken under this subchapter, including a question, complaint, or audit.

(2) A question, complaint, or audit is public information when in the possession of the Commission, except as provided by Texas Code of Criminal Procedure Article 38.01 §10.

*§651.102. Commission [~~Unscheduled~~] Audit.*

(a) If the Commission determines [~~that~~] there is reasonable cause to believe [~~that~~] a laboratory has failed to maintain quality assurance standards as provided under the laboratory's specific policy required by its recognized accrediting body or the FBI DNA Quality Assurance Audit Document, or has engaged in conduct raising questions about the reliability or validity of the forensic analysis performed in the laboratory, or has violated any rule in this chapter, the Commission may take appropriate action, including one or more of the following:

(1) direct the laboratory to conduct an internal audit and implement appropriate corrective action;

(2) order the laboratory to obtain, at its own expense, a special external audit by an auditor approved by the Commission and the laboratory's recognized accrediting body and provide that report to the Commission within a reasonable time frame determined by the Commission [~~not to exceed 60 days from the date of the order~~];

(3) notify the laboratory that further [~~testing~~] forensic analysis is not approved by Commission;

(4) initiate an evaluation of continued accreditation under Subchapter A of this chapter (relating to Accreditation); or

(5) any other actions deemed appropriate by the Commission.

(b) An audit under this subchapter shall comply with minimum standards for audits or inspections as established by the Commission.

(c) The Commission may at any reasonable time enter the premises or audit the records, reports, procedures, or other quality assurance matters of a crime [~~an accredited~~] laboratory that is accredited or seeking accreditation [~~at any reasonable time to conduct an inspection or audit~~] under this chapter.

(d) A laboratory, facility, or entity that must be accredited under Code of Criminal Procedure, Article 38.01 §4-d shall, as part of the accreditation process, agree to consent to any request for cooperation by the Commission that is made as part of the exercise of the Commission's duties under this subchapter.

(e) The Commission may require a laboratory, facility, or entity required to be accredited under Code of Criminal Procedure, Article 38.01 §4-d to pay any costs incurred for accrediting, inspecting, or auditing to ensure compliance with the accreditation process.

*§651.103. Corrective Action Plan.*

(a) If a laboratory is subject to a Commission [~~an unscheduled~~] audit that has resulted in an adverse [~~a~~] finding by the Commission [~~of non-compliance~~], the laboratory shall propose a corrective action plan and submit the plan to the Commission within 30 days from the date that the laboratory receives the audit results. If the laboratory has been notified that further forensic analysis [~~testing~~] is suspended [~~not approved~~], the plan should identify the date that the laboratory intends to reinstate approved forensic analysis [~~testing~~].

(b) A proposed corrective action plan under this section must fully address each adverse [~~non-compliance~~] finding and identify appropriate corrective action. [~~that meets or exceeds the standards:~~

[~~(1) required by the laboratory's recognized accrediting body; and~~]

[~~(2) approved by the Commission~~]

(c) The Commission shall promptly review a proposed corrective action plan and take the following action:

(1) approve the corrective plan [~~if it meets the requirements of this section~~]; or

(2) decline to approve the corrective plan and identify necessary revisions to the plan.

(d) The Commission shall notify the laboratory in writing of approval or disapproval of the audit response. If not approved [~~disapproved~~], the Commission shall notify the laboratory of required corrective action, and the laboratory shall implement the corrective action in a timely manner specified in the notification, except as provided by subsection (e) of this section.

(e) A laboratory shall implement and complete an approved corrective action plan described in subsection (d) of this section, unless the laboratory demonstrates good cause for extension to the Commission before the due date for completion.

*§651.104. Withdrawal of Commission Accreditation.*

(a) Withdrawal for Violation. The Commission by a majority vote of a quorum of Commission members, may withdraw accreditation for a laboratory, discipline, or subdiscipline if the laboratory:

(1) violates this chapter;

(2) fails to respond meaningfully within five business days to a letter issued by the Commission under this subchapter;

(3) fails to timely submit to an audit required under this subchapter; or

(4) fails to allow or substantially interferes with an inspection or audit conducted under this subchapter.

(b) Withdrawal Pursuant to a Finding or Recommendation from an Audit or Commission Investigation. The Commission by a majority vote of a quorum of Commission members, may withdraw accreditation for a laboratory, discipline, or subdiscipline if the Commission determines the integrity, reliability, or validity of the laboratory, discipline, or forensic analysis can no longer be ensured pursuant to a finding or recommendation that resulted from:

(1) an audit conducted under §651.102 of this subchapter (relating to Commission Audit); or

(2) an investigation by the Commission pursuant to Code of Criminal Procedure, Article 38.01 §4.

*§651.105. Procedure for Hearing on and Appeal of an Adverse Final Accreditation Decision or Final Accreditation Action [~~Review~~]by the Commission.*

(a) Notice of Commission Action and Procedure for Opportunity for Hearing and Participation. [~~Reconsideration. A laboratory that has been ordered to take action under this subchapter may request reconsideration by the Commission in writing within 15 days of the order.~~]

(1) Notice. The Commission shall, within ten (10) business days, provide written notice to a crime laboratory of the basis of any final accreditation decision or final accreditation action by the Commission adverse to a crime laboratory accredited or seeking accreditation by the Commission under this subchapter.

(2) Appeals. A crime laboratory that is accredited or seeking accreditation by the Commission under this subchapter may ap-

peal any adverse final accreditation decision or final accreditation action taken by the Commission by submitting the Notice of Accreditation Appeal form as provided on the Commission's website. Notice of Accreditation Appeal forms must be submitted within thirty (30) days of the date the Commission's notice described in paragraph (1) of this subsection is received by the crime laboratory, or the right to appeal the decision and right to a hearing shall be waived and the decision or action by the Commission stands.

(3) State Office of Administrative Hearings. Final accreditation decisions, final accreditation actions, and final investigative reports issued pursuant to the Commission's accreditation authority under Code of Criminal Procedure, Article 38.01 §4-d are governed by Chapter 2001, Government Code. A hearing under this section shall be conducted by an administrative law judge of the State Office of Administrative Hearings.

(4) State Office of Administrative Hearings procedural rules governed by Chapter 2001, Government Code apply to the extent not inconsistent with Commission rules in this subchapter.

(5) Proposals for decision issued by a State Office of Administrative Hearings judge shall be considered by the Commission to be proposals for final decision and either adopted, changed or reversed by the Commission to the extent permitted by Chapter 2001, Government Code.

(b) Notice of Hearing; Contents. The Commission shall provide timely notice of any scheduled hearing before the State Office of Administrative Hearings related to an action taken by the Commission to the person or party against which the action is taken. The notice must include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) either:

(A) a short, plain statement of the factual matters asserted; or

(B) an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the Commission.

(c) Notice of Hearing; Limited Statement. If the Commission is unable to state factual matters in detail at the time notice is served, an initial notice may be limited to a statement of the issues involved. A more definite and detailed statement of the facts shall be furnished not less than seven (7) days before the date set for the hearing.

(d) Right to Counsel. Each party in a contested case is entitled to the assistance of counsel. The Commission is not responsible for any legal fees. A party may expressly waive the right to assistance of counsel.

(e) Interpreters for Deaf or Hearing Impaired Parties and Witnesses.

(1) In contested cases, the Commission shall provide an interpreter whose qualifications are approved by the Texas Department of Assistive and Rehabilitative Services to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired.

(2) In this section, "deaf or hearing impaired" means having a hearing impairment, whether or not accompanied by a speech impairment, that inhibits comprehension of the proceedings or communication with others.

(f) Informal Disposition of Contested Case. Unless precluded by law, an informal disposition may be made of a contested case by:

(1) stipulation;

(2) agreed settlement;

(3) consent order; or

(4) default.

~~[(b) Reinstatement. An accredited laboratory that has had Commission accreditation withdrawn automatically under §651.11 of this title (relating to Automatic Withdrawal of Commission Accreditation) may have its accreditation reinstated by the Commission if the laboratory shows that it presently meets or exceeds the quality assurance standards required by the laboratory's recognized accrediting body.]~~

*§651.106. Reinstatement of Commission Accreditation.*

(a) An accredited laboratory that has had Commission accreditation withdrawn automatically under §651.11 of this title (relating to Automatic Withdrawal of Commission Accreditation) may have its accreditation reinstated by the Commission if the laboratory shows that it presently meets or exceeds the quality assurance standards required by the laboratory's recognized accrediting body.

(b) An accredited laboratory that has had Commission accreditation withdrawn under §651.104 of this title (relating to Withdrawal of Commission Accreditation) may have its accreditation reinstated by the Commission if the laboratory:

(1) shows that it presently meets and exceeds the quality assurance standards required by the laboratory's recognized accrediting body;

(2) demonstrates resolution or pending resolution of all non-compliances or other issues identified by the Commission; and

(3) the Commission or its Designee determines that issues identified with respect to the integrity, reliability, or validity of the forensic analysis, discipline, or subdiscipline for which accreditation was withdrawn were resolved by the laboratory to the extent possible.

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

Filed with the Office of the Secretary of State on June 18, 2020.

TRD-202002433
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Earliest possible date of adoption: August 2, 2020
For further information, please call: (512) 784-0037

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## SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

### 37 TAC §§651.207, 651.208, 651.220, 651.221

The Texas Forensic Science Commission ("Commission") proposes amendments to 37 Texas Administrative Code §651.207 describing the requirements for forensic analyst and forensic technician licensure and §651.208 describing the requirements

for renewal of a forensic analyst or technician license. The Commission further proposes amendments to §651.220 which describes the option for an uncommon forensic analysis license issued for purposes of ensuring the availability of uncommon forensic analysis, timeliness of forensic analysis, and/or service to counties with limited access to forensic analysis. The proposed amendments to §651.207 and §651.220 remove the distinction between in-state and out-of-state laboratories and establish a universally applied *de minimis* casework threshold for license category determination. Under the Commission's current blanket (as revised *de minimis)* rule, a laboratory only qualified if the laboratory was not located in Texas. The amendments apply to all laboratories regardless of geographic location and update qualifying criteria to achieve greater consistency and parity among laboratories regardless of geographic location.

The proposed amendments to §651.207 also authorize and set an exam fee of $50 for forensic analysts practicing in unaccredited forensic disciplines who make a voluntary choice to take the exam. This is the same exam fee charged for forensic analysts retesting after the first three attempts.

The proposed amendments to §651.208 remove the limitation on the number of journal articles a forensic analyst may count towards his or her total credit for continuing forensic education in a license cycle. The current limit on journal articles is 8 of 24 total required credit hours per two-year license cycle, and the proposed rule change removes this limit. The Commission makes this change in light of the current COVID-19 pandemic that has resulted in travel and gathering restrictions preventing analysts from fulfilling their continuing forensic education requirements at in-person or live trainings, many of which have been cancelled. The Commission plans to reinstate the requirement for live training modalities during the next license cycle if the large gathering restrictions are lifted or if analysts are provided access to traditional forensic training conferences and meetings via alternative digital platforms.

Finally, new rule §651.221 moves an existing provision (permitting an out-of-state laboratory to obtain a license for certain purposes) for clarity. It also extends the rule to apply to any laboratory regardless of geographical location. The new rule does not change the requirements for a laboratory to obtain this type of license.

The amendments are necessary to reflect adoptions made by the Commission at its June 12, 2020, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a.

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, 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. The proposed amendments do not impose any costs on state or local entities.

With respect to the addition of the $50 exam fee for forensic analysts voluntarily taking the general forensic analyst licensing exam, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. The proposed amendments do not require any individual practicing in a discipline not subject to accreditation requirements to obtain a license or otherwise impose any costs on state or local entities. The fee is charged to individuals not regulated by the Commission's licensing program who choose to take the exam voluntarily to increase their own professional credentialing.

With respect to the removal of the limitation on the number of journal articles that may count towards fulfillment of continuing forensic education in a given license cycle, the Commission expects no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. The proposed amendment does not impose any direct costs on state or local entities. Instead, the rule permits forensic analysts to apply any number of hours spent reading journal articles towards fulfillment of their continuing forensic education that might otherwise be spent at live trainings, potentially reducing costs to individuals regulated by the Commission.

With respect to the addition of rule §651.221, no fiscal impact to state or local governments is expected. The new rule moves an existing provision to a different section of the rules for clarity.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed rules do not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has also determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit with respect to the *de minimis* licensure changes will be greater consistency in requirements for all forensic analysts subject to the State's licensing rules. With respect to the addition of the $50 voluntary exam fee, the anticipated public benefit is affording the option for individuals not subject to Commission licensing requirements to voluntarily take the licensing exam. With respect to the removal of the limitation on journal articles, individuals subject to the Commission's licensing requirements will be able to apply more of their time spent reading journal articles towards their total continuing forensic education hours in a license cycle, thereby reducing some of the time required at live forensic trainings. With respect to new rule §651.221 separating the existing provision that permits an out-of-state laboratory to obtain a license for purposes of ensuring the availability of uncommon forensic analysis, timeliness of forensic analysis, and/or service to counties with limited access to forensic analysis, from the blanket or *de minimis* provision. The public benefit is better clarity in the types of license categories offered by the Commission. No public costs are anticipated.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed rules will have a minimal to neutral economic impact on any small or micro business. The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than $6 million in annual gross receipts. With respect to the *de minimis* licensing program established in §651.207 and §651.220, all of the crime laboratories or forensic analysts subject to the increased fee requirements in

the proposal are currently located outside of Texas. In fact, one of the purposes of the rule is to reduce any unintended adverse impact on small private laboratories subject to these rules by ensuring greater consistency in fee structure based on the amount of Texas casework a laboratory performs, rather than imposing different requirements based on geographic location. With respect to the $50 exam fee change in §651.207, the fee is for anyone who voluntarily chooses to take the examination for professional development purposes.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, 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 the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposal does not (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) create a new regulation; or (5) increase or decrease the number of individuals subject to the rule's applicability. However, the proposal does (1) require an increase in fees currently paid to the Commission by out-of-state crime laboratories performing forensic services in Texas criminal cases; and (2) adjusts for consistency the requirements of an existing blanket-license regulation for out-of-state crime laboratories performing forensic services in Texas criminal cases. The rule amendments require individual forensic analysts performing interpreting analyst activities who were formerly licensed under the blanket rule to now be fully licensed forensic analysts. Under the new rules, *de minimis*-licensed laboratories pay the same cost per individual interpreting analyst as Texas licensees are required to pay under the current rule. The rules are necessary to ensure the integrity and reliability of forensic science in Texas criminal cases and to achieve greater consistency and parity between what is required of forensic analysts and technicians working Texas criminal cases regardless of their geographic location.

With respect to the $50 voluntary exam fee, the removal of the limitation on the number of journal articles that count towards continuing forensic education, and moving the uncommon forensic analysis provision, the Commission expects no government growth impact as a result of the changes. The changes do not impose any new requirements or increase regulation for individuals or entities subject to the Commission's licensing rules.

Requirement for Rule Increasing Costs to Regulated Persons. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that, with respect to the changes creating the *de minimis* laboratory license option, the proposal increases the fee for a forensic analyst license for "interpreting analysts" employed at a *de minimis*-licensed laboratory. Under the new rules, *de minimis*-licensed laboratories pay the same cost per individual interpreting analyst as Texas licensees are required to pay under the current rule. Current requirements for out-of-state blanket-licensed forensic analysts, including licensing fees, were initially imposed to meet the statutory deadline for implementation of the 84th Texas Legislature's mandate to create a forensic analyst licensing program in Texas and to avoid any disruption in outsourced forensic services to the criminal justice system. At the inception of the licensing program, the Commission planned to later equate the requirements for out-of-state forensic analysts with the requirements for in-state forensic analysts, including licensing fees, coursework requirements and exam requirements. After implementation of the initial rules of the licensing program, the Commission assessed the appropriate level of oversight for out-of-state crime laboratory analysts subject to Texas licensing rules in an effort to balance the need for testing capacity with the need for consistency and parity in licensing requirements for analysts and technicians working on Texas criminal cases, regardless of their geographic location. Moreover, the Commission is tasked with improving the integrity and reliability of forensic science in the Texas criminal justice system, a task vital to protecting the health, safety, and welfare of the residents of this state. As part of that initiative, the Commission made adjustments to the rules to ensure consistency and equal treatment of analysts and laboratories engaged in Texas casework regardless of geographic location.

With respect to the $50 voluntary exam fee, the removal of the limitation on the number of journal articles that count towards continuing forensic education, and moving the uncommon forensic analysis provision, the Commission expects no government growth impact as a result of the changes. The changes do not impose any new costs to individuals or entities subject to the Commission's licensing rules.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by August 4, 2020, to be considered by the Commission.

Statutory Authority. The rule is proposed under Code of Criminal Procedure, Article 38.01 §§3-a and 4-a. Article 38.01 §3-a directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a which directs the Commission to adopt rules establishing the requirements for forensic analyst licensure.

Cross reference to statute. The proposal affects 37 Texas Administrative Code §§651.207, 651.208 and 651.220 and adds new rule 37 Texas Administrative Code §651.221.

*§651.207. Forensic Analyst Licensing Requirements Including License Term, Fee and Procedure for Denial of Application and Reconsideration.*

(a) Issuance. The Commission may issue an individual's Forensic Analyst License under this section.

(b) Application. Before being issued a Forensic Analyst License, an applicant shall:

(1) demonstrate that he or she meets the definition of Forensic Analyst set forth in this subchapter;

(2) complete and submit to the Commission a current Forensic Analyst License Application form;

(3) pay the required fee(s) as applicable:

(A) Initial Application fee of $220 for Analysts and $150 for Technicians/Screeners;

(B) Biennial renewal fee of $200 for Analysts and $130 for Technicians/Screeners;

(C) Temporary License fee of $100;

(D) Provisional License fee of $110 for Analysts and $75 for Technicians/Screeners;

(E) License Reinstatement fee of $220;

(F) De Minimis [~~Blanket~~] License fee of $200 [~~$100~~] per ten (10) licenses; [~~and/or~~]

(G) Uncommon Forensic Analysis License fee of $200 per ten (10) licenses; and/or

(H) [~~(G)~~] Special Exam Fee of $50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts or voluntarily taking the exam under the Unaccredited Forensic Discipline Exception described in subsection (g)(5)(C) of this section; and

(4) provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(c) Minimum Education Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a baccalaureate or advanced degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(2) Seized Drugs Technician. An applicant for a Forensic Analyst License limited to the seized drug technician category must have a minimum of an associate's degree or equivalent.

(3) Toxicology (Toxicology Analyst (Alcohol Only, Non-interpretive), Toxicology Analyst (General, Non-interpretive), Toxicologist (Interpretive)). An applicant for a Forensic Analyst License in toxicology must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(4) Toxicology Technician. An applicant for a Forensic Analyst License limited to the toxicology technician category must have a minimum of an associate's degree or equivalent.

(5) Forensic Biology (DNA Analyst, Forensic Biology Screener, Nucleic Acids other than Human DNA Analyst, Forensic Biology Technician). An applicant for any category of forensic biology license must have a baccalaureate or advanced degree in a chemical, physical, biological science or forensic science from an accredited university.

(6) Firearm/Toolmark Analyst. An applicant for a Forensic Analyst License in firearm/toolmark analysis must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(7) Firearm/Toolmark Technician. An applicant for a Forensic Analyst License limited to firearm/toolmark technician must have a minimum of a high school diploma or equivalent degree.

(8) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university. A Materials (Trace) Analyst performing only impression evidence analyses must have a minimum of a high school diploma or equivalent degree.

(9) Materials (Trace) Technician. An applicant for a Forensic Analyst License limited to materials (trace) technician must have a minimum of a high school diploma or equivalent degree.

(10) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(11) If an applicant does not meet the minimum education qualifications outlined in this section, the procedure in subsection (f) or (j) of this section applies.

(d) Specific Coursework Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to the chemistry coursework, an applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Toxicology. An applicant for a Forensic Analyst License in toxicology must fulfill required courses as appropriate to the analyst's role and training program as described in the categories below:

(A) Toxicology Analyst (Alcohol Only, Non-interpretive). A toxicology analyst who conducts, directs or reviews the alcohol analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university.

(B) Toxicology Analyst (General, Non-interpretive). A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry and two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive science courses that may include Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science, Spectroscopic Analysis, Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology.

(C) Toxicologist (Interpretive). A toxicologist who provides interpretive opinions regarding human performance related to the results of toxicological tests (alcohol and general) for court or investigative purposes must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry (Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science or Spectroscopic Analysis) and one three-semester credit hour (or equivalent) college-level courses in interpretive science (Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology).

(D) An applicant for a toxicology license for any of the categories outlined in subparagraphs (A) - (C) of this paragraph must have a three-semester credit hour (or equivalent) college-level statistics

course from an accredited university or a program approved by the Commission.

(3) DNA Analyst. An applicant for a Forensic Analyst License in DNA analysis must demonstrate he/she has fulfilled the specific requirements of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing effective September 1, 2011. An applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(4) Firearm/Toolmark Analyst. An applicant must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(5) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) for one or more of the chemical analysis categories of analysis (chemical determination, physical/chemical comparison, gunshot residue analysis, and fire debris and explosives analysis) must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to chemistry coursework for the chemical analysis categories, all materials (trace) license applicants must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. An applicant for a Forensic Analyst License in materials (trace) limited to impression evidence is not required to fulfill any specific college-level coursework requirements other than the statistics requirement.

(6) Exemptions from specific coursework requirements. The following categories of licenses are exempted from coursework requirements:

(A) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements.

(B) An applicant for a Forensic Analyst License limited to forensic biology screening, nucleic acids other than human DNA and/or Forensic Biology Technician is not required to fulfill the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing or any other specific college-level coursework requirements.

(e) Requirements Specific to Forensic Science Degree Programs. For a forensic science degree to meet the Minimum Education Requirements set forth in this section, the forensic science degree program must be either accredited by the Forensic Science Education Programs Accreditation Commission (FEPAC) or if not accredited by FEPAC, it must meet the minimum curriculum requirements pertaining to natural science core courses and specialized science courses set forth in the FEPAC Accreditation Standards.

(f) Waiver of Specific Coursework Requirements and/or Minimum Education Requirements for Lateral Hires, Promoting Analysts and Current Employees. Specific coursework requirements and minimum education requirements are considered an integral part of the licensing process; all applicants are expected to meet the requirements of the forensic discipline(s) for which they are applying or to offer sufficient evidence of their qualifications as described below in the absence of specific coursework requirements or minimum education requirements. The Commission Director or Designee may waive one or more of the specific coursework requirements or minimum education requirements outlined in this section for an applicant who:

(1) has five or more years of credible experience in an accredited laboratory in the forensic discipline for which he or she seeks licensure; or

(2) is certified by one or more of the following nationally recognized certification bodies in the forensic discipline for which he or she seeks licensure;

(A) The American Board of Forensic Toxicology;

(B) The American Board of Clinical Chemistry;

(C) The American Board of Criminalistics;

(D) The International Association for Identification; or

(E) The Association of Firearm and Toolmark Examiners; and

(3) provides written documentation of laboratory-sponsored training in the subject matter areas addressed by the specific coursework requirements.

(4) An applicant must request a waiver of specific coursework requirements and/or minimum education requirements at the time the application is filed.

(5) An applicant requesting a waiver from specific coursework requirements and/or minimum education requirements shall file any additional information needed to substantiate the eligibility for the waiver with the application. The Commission Director or Designee shall review all elements of the application to evaluate waiver request(s) and shall grant a waiver(s) to qualified applicants.

(g) General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a Forensic Analyst License must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam or Modified General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their laboratory director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam more than three times, the applicant must pay a $50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(E) Expiration of Provisional License if Special Dispensation Exam Unsuccessful. If the 90-day period during which special dispensation is granted expires before the applicant successfully

completes the exam requirement, the applicant's provisional license expires.

(2) Modified General Forensic Analyst Licensing Exam. Technicians in any discipline set forth in this subchapter may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(3) Examination Requirements for Promoting Technicians. If a technician passes the modified General Forensic Analyst Licensing Exam and later seeks a full Forensic Analyst License, the applicant must complete the portions of the General Forensic Analyst Exam that were not tested on the modified exam.

(4) Credit for Pilot Exam. If an individual passes the Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this section should he or she later become subject to the licensing requirements and eligible for a Forensic Analyst License.

(5) Eligibility for General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam.

(A) Candidates for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam must be employees of a crime laboratory accredited under Texas law to be eligible to take the exam.

(B) Student Examinee Exception. A student is eligible for the General Forensic Analyst Licensing Exam one time if the student:

*(i)* is currently enrolled in an accredited university as defined in §651.202 of this subchapter (relating to Definitions);

*(ii)* has completed sufficient coursework to be within 24 semester hours of completing the requirements for graduation at the accredited university at which the student is enrolled; and

*(iii)* designates an official university representative who will proctor and administer the exam at the university for the student.

(C) Unaccredited Forensic Discipline Exception. An Employee of a crime laboratory accredited under Texas law that performs forensic analysis in a forensic discipline not subject to accreditation or licensing requirements by the Commission is eligible for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam if the analyst is authorized to perform independent casework in one of the following forensic disciplines:

*(i)* forensic anthropology;

*(ii)* crime scene reconstruction;

*(iii)* latent print examination;

*(iv)* digital evidence (including computer forensics, audio, or imaging);

*(v)* breath specimen testing under Transportation Code, Chapter 724, limited to analysts who perform breath alcohol calibrations; and

*(vi)* document examination, including document authentication, physical comparison, and product determination.

(h) Proficiency Testing Requirement.

(1) An applicant must be routinely proficiency-tested in accordance with and on the timeline set forth by the laboratory's accrediting body proficiency testing requirements.

(2) A signed certification by the laboratory's authorized representative that the applicant has satisfied the applicable proficiency testing requirements of the laboratory's accrediting body as of the date of the analyst's application must be provided on the Proficiency Testing Certification form provided by the Commission. For applicants not yet required to be proficiency tested pursuant to the timeline set forth by the accrediting body, the laboratory's authorized representative shall so certify on the form provided by the Commission.

(i) License Term and Fee.

(1) A Forensic Analyst License shall expire two years from the date the applicant is granted a license.

(2) Application Fee. An applicant or licensee shall pay the following fee(s) as applicable:

(A) Initial Application fee of $220 for Analysts and $150 for Technicians/Screeners;

(B) Biennial renewal fee of $200 for Analysts and $130 for Technicians/Screeners;

(C) Temporary License fee of $100;

(D) Provisional License fee of $110 for Analysts and $75 for Technicians/Screeners;

(E) License Reinstatement fee of $220; [~~or~~]

(F) De Minimis [~~Blanket~~] License fee of $200 [~~$100~~] per ten (10) licenses; or [~~.~~]

(G) Uncommon Forensic Analysis License fee of $200 per ten (10) licenses.

(3) An applicant who is granted a provisional license and has paid the required fee will not be required to pay an additional initial application fee if the provisional status is removed within one year of the date the provisional license is granted.

(j) Procedure for Denial of Application and Reconsideration.

(1) Application Review. The Commission Director or Designee must review each completed application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter.

(2) Denial of Application. The Commission, through its Director or Designee, may deny an application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the application.

(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.

*§651.208. Forensic Analyst and Forensic Technician License Renewal.*

(a) Renewal. The Commission may renew an individual's Forensic Analyst or Forensic Technician License up to 90 days before to the expiration of the individual's two-year license term.

(b) Expiration. A Forensic Analyst or Forensic Technician License or renewed Forensic Analyst or Forensic Technician License expires two years from the date the initial application was granted.

(c) Effective date. A renewed Forensic Analyst or Forensic Technician License takes effect on the date the licensee's previous license expires.

(d) Application. An applicant for a Forensic Analyst or Forensic Technician License renewal shall complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Renewal Application provided by the Commission, pay the required fee, attach documentation of fulfillment of Continuing Forensic Education requirements set forth in this section, provide an updated copy of the Commission's Proficiency Testing Certification form signed by the licensee's authorized laboratory representative, and complete the mandatory online legal and professional responsibility update described in this section.

(e) Continuing Forensic Education Including Mandatory Legal and Professional Responsibility Update:

(1) Forensic Analyst and Forensic Technician Licensees must complete a Commission-sponsored mandatory legal and professional responsibility update by the expiration of each two-year license cycle as provided by the Commission. Forensic Technicians are not required to complete any other continuing forensic education requirements listed in this section.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

(3) All forensic analysts shall be required to satisfy the following Continuing Forensic Education Requirements:

(A) Completion of twenty-four (24) continuing forensic education hours per 2-year license cycle.

[~~(B) Eight (8) hours of the twenty-four (24) hours may be peer-reviewed journal articles - one peer-reviewed journal article equals one hour.~~]

(B) [~~(C)~~] Sixteen (16) hours of the twenty-four (24) must be discipline-specific training, peer-reviewed journal articles, and/or conference education hours; if a licensee is licensed in multiple forensic disciplines, at least 8 hours of discipline-specific training in each forensic discipline are required.

(C) [~~(D)~~] The remaining eight (8) hours may be general forensic training , peer-reviewed journal articles, and/or conference education hours that include hours credited for the mandatory legal and professional responsibility training.

(4) Continuing forensic education programs will be offered and/or designated by the Commission and will consist of independent, online trainings, readings, and participation in recognized state, regional, and national forensic conferences and workshops.

(5) Approved continuing forensic education hours are applied for credit on the date the program and/or training is delivered.

(f) If an applicant fails to fulfill any or all of the requirements pertaining to license renewal, continuing forensic education and the mandatory legal and professional responsibility update, the applicant may apply to the Commission for special dispensation on a form to be provided on the Commission's website. Upon approval by the Commission, the applicant may be allowed an extension of time to fulfill remaining continuing forensic education requirements.

*§651.220. Laboratory License for De Minimis Texas Casework [~~Blanket License for Out-of-State Laboratories for Purpose of Ensuring the Availability of Uncommon Forensic Analyses, Timeliness of Forensic Analyses, and/or Service to Counties with Limited Access to Forensic Analysis~~].*

(a) A laboratory [~~located outside the State of Texas~~] may apply to the Commission for a *De Minimis* Texas Casework License [~~blanket license~~] on behalf of its laboratory personnel. [~~who perform forensic analyses primarily outside of Texas but whose Texas cases fall within one of the following categories:~~] The Licensing Advisory Committee and/or the Commission Director or Designee shall review each application and make a determination regarding whether to grant a license under this section based on the criteria set forth in subsection (c) of this section. Any laboratory that is denied a request for a license under this section may appeal the decision to the full Commission.

[~~(1) The Texas customer requests a type of forensic analysis that is not widely available in accredited forensic laboratories; or~~

~~(2) The request is necessary to ensure the availability of timely forensic analyses in counties for which access to forensic analyses is limited; and~~

~~(3) The laboratory's workflow process is organized in such a manner that the temporary license criteria are impractical or inapplicable to the forensic analysts performing the analyses in question; and~~

~~(4) Obtaining a forensic analyst license for the individuals engaged in the testing in question would be so burdensome as to restrict the out-of-state laboratory's ability to offer forensic analyses in Texas.~~]

(b) Laboratory *De Minimis* Texas Casework License Term. A laboratory *De Minimis* Texas Casework License and corresponding licenses granted under this section shall expire two (2) years from the date of issuance. [~~A blanket license granted under this section shall apply to all forensic analyses performed by up to 10 (ten) forensic analysts in the laboratory per year.~~]

(c) Texas Casework Threshold. The Commission may grant a *De Minimis* Texas Casework License to a laboratory that demonstrates in an application published by the Commission that the laboratory's Texas casework constitutes less than 10% of its overall volume of casework during the five calendar years preceding the application (calculated as a rolling average for each individual laboratory site or location) to be re-evaluated at each expiration of the two-year license term. In the absence of historical data, the best available data shall be used to determine whether a laboratory has exceeded or is expected to exceed the 10% threshold. [~~The laboratory shall submit an application for a blanket license to the Commission, pay the requisite blanket license fee as set forth in this subchapter, and submit a certification on a form provided by the Commission, stating laboratory employees performing forensic analyses for Texas cases have:~~

~~(1) reviewed the Code of Professional Responsibility in this subchapter; and~~

~~(2) completed all training materials related to *Brady v. Maryland* discovery obligations and the Michael Morton Act (Tex. Code Crim. Proc. art. 39.14) as provided by the Commission.~~]

(d) *De Minimis* License for Individual Non-Interpreting Analysts and Technicians. With the exception of any "interpreting analysts" as defined in subsection (g)(1) of this section, all analysts and technicians employed by a laboratory determined by the Commission to meet the criteria for a De Minimis Texas Casework License shall be licensed upon fulfillment of the following requirements of the employing laboratory: [~~A blanket license granted under this section shall expire one (1) year from the date of issuance.~~]

(1) submit to Commission staff a list of the names of each individual analyst or technician who is licensed under the *De Minimis* provision indicating the forensic discipline(s) for which each analyst or technician is qualified to perform independent casework; and

(2) certify on a form provided by the Commission that each individual named:

(A) works under the supervision of a fully licensed forensic analyst when performing work for Texas criminal cases;

(B) has read and understands the Code of Professional Responsibility in this subchapter;

(C) has completed all training materials related to *Brady v. Maryland* discovery obligations and the Michael Morton Act (Code of Criminal Procedure, Article 39.14) as provided by the Commission; and

(D) has participated in the Mandatory Legal and Professional Responsibility Training described in §651.208(e)(1) - (2) of this subchapter (relating to Forensic Analyst and Forensic Technician License Renewal).

(e) Disclosures Required by *De Minimis* Texas Casework Licensed Laboratories. Laboratories licensed under this section must comply with all disclosure obligations required under this chapter. [~~The Licensing Advisory Committee and/or the Commission Director or Designee shall review each blanket license application and make a determination regarding whether to grant a license under this section based on the criteria set forth in (a)(1) - (4) of this section. Any laboratory that is denied a request for blanket license may appeal the decision to the full Commission.~~]

(f) Change in Scope of *De Minimis* Licensee Work. Where the scope of an individual licensed under the *De Minimis* provision changes to include interpreting analyst activities as defined in subsection (g)(1) of this section, the employing laboratory must notify the Commission within seven (7) days of the change, and the licensee must apply to become fully licensed before performing interpreting analyst activities.

(g) Interpreting Analysts. Laboratories granted a *De Minimis* Texas Casework License shall fully license all "interpreting analysts" as defined in paragraph (1) of this subsection pursuant to the components described in §651.207 of this subchapter (relating to Forensic Analyst Licensing Requirements, Including License Term, Fee and Procedure for Denial of Application and Reconsideration).

(1) Interpreting Analyst Definition. However named, an "interpreting analyst" uses his or her scientific expertise and judgment to interpret data resulting from an expert examination or test and provides information to the trier of fact either by signing a report or testifying in a criminal action. Interpreting analysts have significant decision-making authority regarding the progress, evaluation, and conclusion of forensic analyses and are qualified to both perform independent casework and technically review the work of other analysts. An interpreting analyst exercises judgment in casework and may be called to testify regarding the results of forensic analysis, including not only the steps involved in the physical processing of the evidence, but also the potential significance of information obtained from the examination or test.

(2) Technical Reviewers. Technical reviewers who perform technical reviews of an interpreting analyst's casework are considered interpreting analysts.

(3) Requirements for Interpreting Analysts Previously Licensed under the Blanket Provision. An interpreting analyst licensed prior to August 24, 2020, under the original out-of-state crime laboratory blanket licensing program, must comply with the specific coursework and minimum education requirements that were in effect prior to January 1, 2019.

(h) Licensee Transfers to Laboratories Physically Located in Texas. An individual forensic analyst or technician licensed prior to August 24, 2020, under the original out-of-state crime laboratory blanket license program or the superseding *De Minimis* Texas casework license program who transfers employment to an accredited crime laboratory physically located in Texas within one year of departing employment from the laboratory through which the licensee originally obtained his or her blanket or *De Minimis* license shall comply with the requirements in place at the time the analyst's initial license was granted.

(i) Fees. A laboratory with analysts and/or technicians licensed under the *De Minimis* Texas casework program shall pay the requisite license fee for each of the laboratory's forensic analysts and technicians licensed under the *De Minimis* program and the full forensic analyst or technician license fees for each of the laboratory's interpreting analysts as set forth in this subchapter.

*§651.221. Laboratory License for Purpose of Ensuring the Availability of Uncommon Forensic Analysis, Timeliness of Forensic Analysis, and/or Service to Counties with Limited Access to Forensic Analysis.*

(a) Application. A laboratory may apply to the Commission for a license under this section on a form provided by the Commission. The Commission's Licensing Advisory Committee, and/or the Commission Director or Designee shall review each application and make a determination regarding whether to grant a laboratory license under this section where the laboratory demonstrates:

(1) a Texas customer requests a type of forensic analysis that is not widely available in accredited forensic laboratories; or

(2) the request is necessary to ensure the availability of timely forensic analyses in counties for which access to forensic analyses is limited.

(b) Uncommon Forensic Analysis License for Individual Analysts and Technicians. All forensic analysts and technicians employed by a laboratory determined by the Commission's Licensing Advisory Committee, and/or the Commission Director or Designee to meet the criteria for a license under this section shall be licensed upon fulfillment of the following requirements of the licensed laboratory:

(1) submit to Commission staff a list of the names of each individual analyst or technician to be licensed indicating the forensic discipline(s) for which each analyst or technician is qualified to perform independent casework; and

(2) certify on a form provided by the Commission that each individual named:

(A) has read and understands the Code of Professional Responsibility in this subchapter;

(B) has completed all training materials related to *Brady v. Maryland* discovery obligations and the Michael Morton Act (Code of Criminal Procedure, Article 39.14) as provided by the Commission; and

(C) has participated in the Mandatory Legal and Professional Responsibility Training described in §651.208(e)(1) - (2) of this subchapter (relating to Forensic Analyst and Forensic Technician License Renewal).

(c) Disclosures Required by Uncommon Forensic Analyses, Timeliness of Forensic Analyses, and/or Service to Counties with Limited Access to Forensic Analysis Licensed Laboratories. Laboratories licensed under this section must comply with all disclosure obligations required under this chapter.

(d) License Term. A laboratory license and corresponding licenses granted under this section shall expire two (2) years from the date of issuance.

(e) Fees. A laboratory licensed under this section must pay the requisite license fee for uncommon forensic analyses for all of the laboratory's licensed forensic analysts and technicians as set forth in this subchapter.

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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Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
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For further information, please call: (512) 784-0037

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**37 TAC §651.219**

The Texas Forensic Science Commission ("Commission") proposes an amendment to 37 Texas Administrative Code §651.219 which outlines the Commission's Code of Professional Responsibility for Forensic Analysts, Forensic Technicians, and Crime Laboratory Management ("Code"). The amended rule removes the distinction to clarify that the Code applies to forensic science-related professional activities engaged in by a licensee regardless of geographic location. The amendment is necessary to reflect adoptions made by the Commission at its June 12, 2020, quarterly meeting. The amendment is made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §§3-a and 4-(a).

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendment is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal. The amendment does not change the Commission's oversight authority with respect to conduct of Commission-licensed forensic analysts.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendment does not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be increased clarity with respect to the expectations for professional conduct for Texas-licensed forensic analysts.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendment will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person or laboratory who is required to comply with the rule as proposed.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, 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 the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendment will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. The amended rule clarifies that expectations under the Code apply to forensic science-related professional activities engaged in by the licensee regardless of geographic location. The amendments do not change the Commission's authority with respect to forensic analysts in the State.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by August 4, 2020, to be considered by the Commission.

Statutory Authority. The amendment is proposed under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-(a), which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license.

Cross reference to statute. The adoption affects 37 Texas Administrative Code §651.219.

*§651.219. Code of Professional Responsibility.*

(a) Code of Professional Responsibility for Forensic Analysts, Forensic Technicians, and Crime Laboratory Management Subject to the Jurisdiction of the Texas Forensic Science Commission. The Code of Professional Responsibility ("Code") for forensic analysts, forensic technicians, and crime laboratory management defines a framework for promoting integrity and respect for the scientific process and encouraging transparency in forensic analysis [~~in Texas~~]. Forensic analysts, forensic technicians, and crime laboratory management subject to the Commission's jurisdiction are expected to abide by this Code in all forensic science-related professional activities regardless of the geographic location where the activities are performed. Because certain components of the Code are best suited to individual forensic analysts

or technicians while others are best suited to crime laboratory management, the Code is divided into two sections.

(b) Each forensic analyst shall:

(1) Accurately represent his/her education, training, experience, and areas of expertise.

(2) Commit to continuous learning in the forensic disciplines and stay abreast of new findings, equipment and techniques to maintain professional competency.

(3) Promote validation and incorporation of new technologies, guarding against the use of non-valid methods in casework and the misapplication of validated methods.

(4) Avoid tampering, adulteration, loss, or unnecessary consumption of evidentiary materials.

(5) Avoid participation in any case where there are personal, financial, employment-related or other conflicts of interest.

(6) Conduct thorough, fair and unbiased examinations, leading to independent, impartial, and objective opinions and conclusions.

(7) Make and retain full, contemporaneous, clear and accurate written records of all examinations and tests conducted and conclusions drawn, in sufficient detail to allow meaningful review and assessment by an independent person competent in the field.

(8) Base conclusions on procedures supported by sufficient data, standards and controls, not on political pressure or other outside influence.

(9) Not offer opinions or conclusions that are outside one's expertise.

(10) Prepare reports in clear terms, distinguishing data from interpretations and opinions, and disclosing any relevant limitations to guard against making invalid inferences or misleading the judge or jury.

(11) Not issue reports or other records, or withhold information from reports for strategic or tactical litigation advantage.

(12) Present accurate and complete data in reports, oral and written presentations and testimony based on good scientific practices and valid methods.

(13) Testify in a manner which is clear, straightforward and objective, and avoid phrasing testimony in an ambiguous, biased or misleading manner.

(14) Retain any record, item or object related to a case, such as work notes, data, and peer or technical review information due to potential evidentiary value and pursuant to the laboratory's retention policy.

(15) Communicate honestly and fully with all parties (investigators, prosecutors, defense attorneys, and other expert witnesses), unless prohibited by law.

(16) Document and notify management or quality assurance personnel of adverse events, such as an unintended mistake or a breach of ethical, legal, scientific standards, or questionable conduct.

(17) Ensure reporting, through proper management channels, to all impacted scientific and legal parties of any adverse event that affects a previously issued report or testimony.

(c) Members of crime laboratory management shall:

(1) Encourage a quality-focused culture that embraces transparency, accountability and continuing education while resisting individual blame or scapegoating.

(2) Provide opportunities for forensic analysts to stay abreast of new scientific findings, technology and techniques while guarding against the use of non-valid methods in casework, the misapplication of validated methods or improper testimony regarding a particular analytical method or result.

(3) Maintain case retention and management policies and systems based on the presumption that there is potential evidentiary value for any information related to a case, including work notes, analytical and validation data, and peer or technical review.

(4) Provide clear communication and reporting systems through which forensic analysts may report to management non-conformities in the quality system and other adverse events, such as an unintended mistake or a breach of ethical, legal, scientific standards, or questionable conduct.

(5) Make timely and full disclosure to the Texas Forensic Science Commission of any non-conformance that may rise to the level of professional negligence or professional misconduct.

(6) Provide copies of all substantive communications with the laboratory's national accrediting body to the Commission.

(7) For any laboratory that performs forensic analysis on behalf of the State of Texas, develop and follow a written forensic disclosure compliance policy for the purpose of ensuring the laboratory's compliance with article 39.14 of the Texas Code of Criminal Procedure.

(8) Ensure the laboratory's forensic disclosure policy provides clear instructions for identifying and disclosing any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the laboratory. The policy should explicitly address how to inform potentially affected recipients of any non-conformances or breaches of law or ethical standards that may adversely affect either a current case or a previously issued report or testimony.

(9) Inform all forensic analysts working on behalf of the laboratory that they may report allegations of professional negligence or professional misconduct to the Texas Forensic Science Commission without fear of adverse employment consequences.

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. PROCEDURE FOR PROCESSING COMPLAINTS AND LABORATORY SELF-DISCLOSURES

**37 TAC §651.302, §651.309**

The Texas Forensic Science Commission ("Commission") proposes amendment of 37 Texas Administrative Code §651.302 relating to definitions to add a definition for the term "final investigative report" for clarity. New rule 37 Texas Administrative Code §651.309 is proposed to describe the existing process by which a person or party may appeal a final investigative report by the Commission. The new rule is necessary to reflect adoptions made by the Commission at its June 12, 2020 quarterly meeting and is made in accordance with the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §§3-a, and investigative authority under Code of Criminal Procedure, Article 38.01 §4(a).

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the new rule is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no anticipated effect on local employment or the local economy as a result of the proposal. The new rule describes the existing procedures by which a person or party may appeal a final investigative report by the Commission. The added definition of "final investigative report" provides better clarity regarding which type of action by the Commission may be appealed pursuant to new rule §651.309. The additions do not expand the Commission's regulatory authority or have any fiscal impact on crime laboratories or forensic analysts subject to the Commission's jurisdiction, but rather provide a more complete description of existing appeal procedures for investigative reports by the Commission pursuant to Government Code, Chapter 2001.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the new rule nor the added definition impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has also determined that for each year of the first five years the new rule is in effect, the anticipated public benefit will be increased clarity and transparency regarding the rights afforded to individuals not licensed by the Commission and entities performing forensic analysis as that term is defined in Article 38.01 of the Code of Criminal Procedure with respect to final investigative reports by the Commission. The rule specifically describes the right to appeal final investigative reports by the Commission and related procedures. The amendment adding a definition for "final investigative reports" further clarifies which type of investigative action by the Commission may be appealed pursuant to the new procedures proposed herein. The Commission previously published a description of the investigative process, including specific procedures regarding notification to affected parties and the opportunity for parties to respond. However, current rules pertaining to the investigative process do not specify how individuals not licensed by the Commission and entities performing forensic analysis as that term is defined in Article 38.01 of the Code of Criminal Procedure may appeal a final investigative report by the Commission if desired. The new rule provides specific Commission procedures for Government Code, Chapter 2001's provision that affords interested parties the opportunity for notice, hearing, participation and appeal of an agency action by the Commission in the form of a final investigative report.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed new rule and added definition will not have an adverse economic effect on any small or micro business, because there are no anticipated economic costs to any person, entity or crime laboratory who is subject to the Commission's investigative jurisdiction. The additions do not expand the Commission's regulatory authority or place any additional financial burden on entities or individuals subject to an investigation by the Commission, but rather provide a description of the existing appeal process for final investigative reports by the Commission.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, 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 the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed new rule will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. The new rule and added definition describe and clarify the process by which a person or party may appeal a final investigative report by the Commission. The amendments do not change the level of oversight by the Commission with respect to any crime laboratory, individual or entity subject to the Commission's investigative jurisdiction.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by August 4, 2020 to be considered by the Commission.

Statutory Authority. The new rule is proposed under Code of Criminal Procedure, Article 38.01 §§3-a and 4(a). Article 38.01 §3-a directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4(a) directs the Commission to investigate allegations of professional negligence or professional misconduct.

Cross reference to statute. The proposal amends 37 Texas Administrative Code §651.302 and adds 37 Texas Administrative Code §651.309.

*§651.302. Definitions.*

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

(1) Accredited field of forensic science--means a specific forensic method or methodology validated or approved by the Commission under Article 38.01, Code of Criminal Procedure §4-d as part of the accreditation process for crime laboratories.

(2) Crime laboratory--has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(3) Forensic analysis--has the meaning assigned by Article 38.01, Code of Criminal Procedure.

(4) Forensic pathology--includes that portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

(5) Accredited laboratory--includes a public or private laboratory or other entity that conducts forensic analysis as defined in Article 38.35, Code of Criminal Procedure and is accredited by a national accrediting body recognized by the Commission and listed in §651.4 of this title (relating to List of Recognized Accrediting Bodies).

(6) Physical evidence--has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(7) Professional misconduct--means the forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow a standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice.

(8) Professional negligence--means the forensic analyst or crime laboratory, through a material act or omission, negligently failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the negligent act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was negligent if the forensic analyst or crime laboratory should have been but was not aware of an accepted standard of practice.

(9) For purposes of these definitions, the term "standard of practice" includes any of the activities engaged in by a "forensic analyst" as those activities are defined in Article 38.01, Code of Criminal Procedure. "Forensic analyst" means a person who on behalf of a crime laboratory accredited under Article 38.01, Code of Criminal Procedure technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory.

(10) The term "would substantially affect the integrity of the results of a forensic analysis" does not necessarily require that a criminal case be impacted or a report be issued to a customer in error. The term includes acts or omissions that would call into question the integrity of the forensic analysis, the forensic analyst or analysts, or the crime laboratory as a whole regardless of the ultimate outcome in the underlying criminal case.

(11) "Final investigative report" means a required, written report issued by the Commission pursuant to Article 38.01, Code of Criminal Procedure §4(b).

*§651.309. Procedure for Hearing on and Appeal of a Final Investigative Report by the Commission Regarding an Individual Not Licensed Under this Chapter or an Entity that Performs Forensic Analysis as the Term is Defined in Article 38.01, Code of Criminal Procedure.*

(a) Notice of Commission Final Investigative Report and Procedure for Opportunity for Hearing and Participation.

(1) Notice. The Commission shall, within ten (10) business days of issuance of any final investigative report as the term is defined in §651.302 of this subchapter (relating to Definitions), provide a copy of the final investigative report to any person or party that is the subject of the investigative report by the Commission.

(2) Appeals by a Commission License Holder. Final investigative reports or actions adverse to a license holder licensed under subchapter C of this chapter (relating to Forensic Analyst Licensing Program) are governed by the rules of the Judicial Branch Certification Commission in accordance with the procedure provided in §651.216(d) of this chapter (relating to Disciplinary Action).

(3) Appeals by an Individual not Licensed under this Chapter or an Entity that Performs Forensic Analysis as the Term is Defined in Article 38.01, Code of Criminal Procedure. Any person or party that is the subject of an investigation by the Commission under this subchapter and is not licensed by the Commission pursuant to subchapter C of this chapter (relating to Forensic Analyst Licensing Program) may appeal any final investigative report by the Commission as the term is defined in §651.302 of this subchapter by submitting the Notice of Investigative Appeal form as provided on the Commission's website. Notice of Investigative Appeal forms must be submitted within thirty (30) days of the date the Commission's notice described in subsection (a)(1) of this section is received by the person or party, or the right to a hearing shall be waived and the final investigative report by the Commission stands.

(4) State Office of Administrative Hearings. Final investigative reports by the Commission issued pursuant to the Commission's investigative authority under Code of Criminal Procedure, Article 38.01 §4(b) that concern an individual not licensed under this chapter or an entity that performs forensic analysis as the term is defined in Article 38.01, Code of Criminal Procedure are governed by Chapter 2001, Government Code. A hearing under this section shall be conducted by an administrative law judge of the State Office of Administrative Hearings.

(5) State Office of Administrative Hearings procedural rules governed by Chapter 2001, Government Code apply to the extent not inconsistent with Commission rules in this subchapter.

(6) Proposals for decision issued by a State Office of Administrative Hearings judge shall be considered by the Commission to be proposals for final decision and either adopted, changed or reversed by the Commission to the extent permitted by Chapter 2001, Government Code.

(b) Notice of Hearing; Contents. The Commission shall provide timely notice of any scheduled hearing before the State Office of Administrative Hearings related to a final investigative report by the Commission to the person or party against which the final investigative report is issued. The notice must include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) either;

(A) a short, plain statement of the factual matters asserted; or

(B) an attachment that incorporates by references the factual matters asserted in the appeal, complaint or petition filed with the Commission.

(c) Notice of Hearing; Limited Statement. If the Commission is unable to state factual matters in detail at the time notice is served, an initial notice may be limited to a statement of the issues involved. A more definite and detailed statement of the facts shall be furnished not less than seven (7) days before the date set for the hearing.

(d) Right to Counsel. Each party in a contested case is entitled to the assistance of counsel. The Commission is not responsible for any legal fees. A party may expressly waive the right to assistance of counsel.

(e) Interpreters for Deaf or Hearing Impaired Parties and Witnesses.

(1) In contested cases, the Commission shall provide an interpreter whose qualifications are approved by the Texas Department of Assistive and Rehabilitative Services to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired.

(2) In this section, "deaf or hearing impaired" means having a hearing impairment, whether or not accompanied by a speech impairment, that inhibits comprehension of the proceedings or communication with others.

(f) Informal Disposition of Contested Case. Unless precluded by law, an informal disposition may be made of a contested case by:

(1) stipulation;

(2) agreed settlement;

(3) consent order; or

(4) default.

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

Filed with the Office of the Secretary of State on June 18, 2020.

TRD-202002431
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Earliest possible date of adoption: August 2, 2020
For further information, please call: (512) 784-0037

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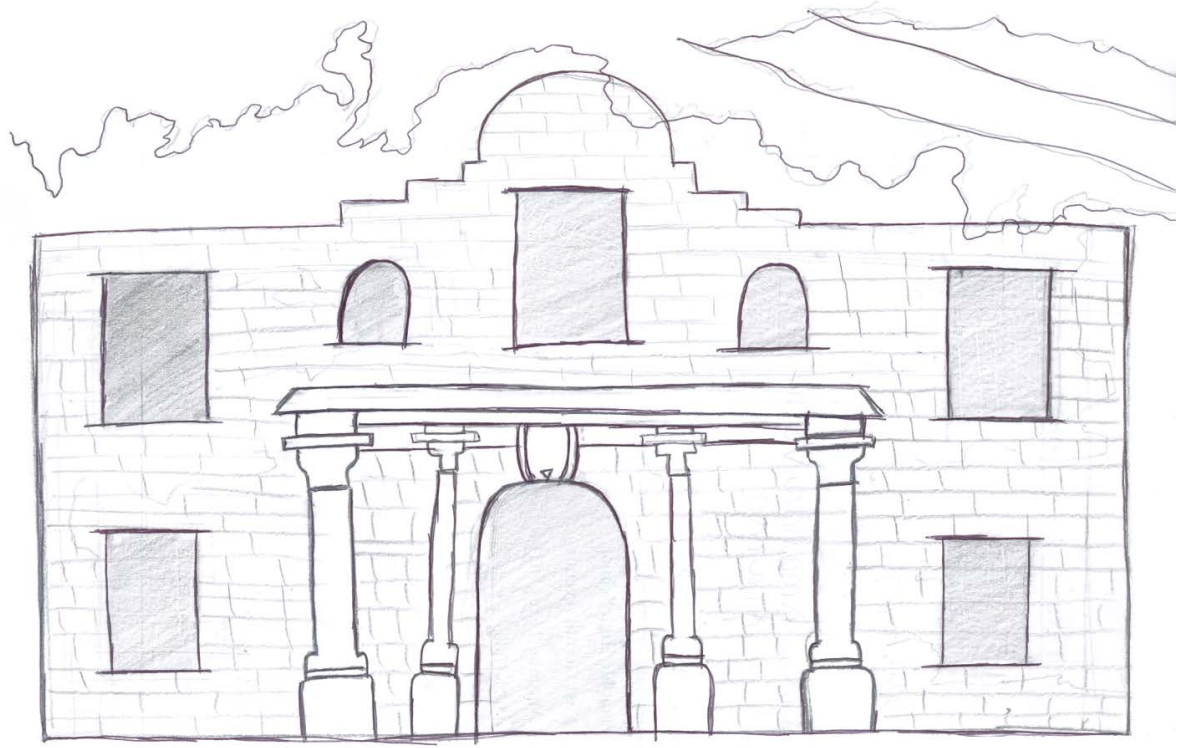

# WITHDRAWN RULES

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 7. BANKING AND SECURITIES

### PART 8. JOINT FINANCIAL REGULATORY AGENCIES

### CHAPTER 155. PAYOFF STATEMENTS

### SUBCHAPTER A. REGISTRATION

**7 TAC §155.2**

The Joint Financial Regulatory Agencies withdraw the proposed amendment to §155.2, which appeared in the January 3, 2020, issue of the *Texas Register* (45 TexReg 33).

Filed with the Office of the Secretary of State on June 22, 2020.

TRD-202002484
Iain A. Berry
Associate General Counsel
Joint Financial Regulatory Agencies
Effective date: June 22, 2020
For further information, please call: (512) 475-1535

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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 7. BANKING AND SECURITIES

## PART 2. TEXAS DEPARTMENT OF BANKING

### CHAPTER 33. MONEY SERVICES BUSINESSES

**7 TAC §33.27**

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendment to §33.27, concerning fees that must be paid in connection with a proposed change of control of a money transmission or currency exchange business. The amended rule is adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2787). The amended rule will not be republished.

House Bill 2458, which was passed in the 86th Regular Session of the Texas Legislature, removed all statutory references to licensed depository agents of the Texas Bullion Depository. In August 2019, the department recommended amendments to multiple rules within Title 7, Texas Administrative Code Chapter 33 to implement HB 2458 by deleting all references to depository agents. The language proposed and approved for deletion in §33.27 inadvertently included all of subsection (g), concerning fees that are required for change of control applications submitted by all money services businesses, not just for applications submitted by depository agents. The Finance Commission approved the amendments for publication in the *Texas Register,* and the amendments were published August 30, 2019. No comments were received during the 30-day comment period. The amendments were adopted on the consent agenda at the Finance Commission meeting on October 18, 2019, and became effective on November 7, 2019. This action is necessary to reinstate the portion of §33.27 that was inadvertently deleted in that prior rule action.

The department received no comments regarding the proposed amendment.

The amendment is adopted under Texas Finance Code (Finance Code), §151.102, which provides that the commission may adopt rules to administer and enforce Chapter 151, including rules necessary or appropriate to recover the cost of maintaining and operating the department and the cost of administering and enforcing this chapter and other applicable law by imposing and collecting proportionate and equitable fees and costs for notices, applications, examinations, investigations, and other actions required to achieve the purposes of the chapter.

Finance Code, §151.605(c)(3), is affected by the amended 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 22, 2020.

TRD-202002463
Catherine Reyer
General Counsel
Texas Department of Banking
Effective date: July 12, 2020
Proposal publication date: May 1, 2020
For further information, please call: (512) 475-1301

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## PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

### CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

### SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

**7 TAC §77.73**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments to 7 Texas Administrative Code (TAC) §77.73. The rule is adopted with changes to the text published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2788) and is republished to reflect such changes. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rule will not be republished as a proposed rule for comment.

Reasoned Justification

7 TAC §77.73 governs when a state savings bank must perform an appraisal or evaluation of real estate it acquires in satisfaction or partial satisfaction of indebtedness. The amendments raise the threshold for which a state savings bank may elect to perform an evaluation in lieu of a formal appraisal by a certified or licensed appraiser. Specifically, the amendments allow a state savings bank to conduct an evaluation on real property valued at $500,000 or less, raising the existing threshold amount from $250,000. The amendments are made in response to similar amendments adopted jointly by the United States Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve (Board), and the Federal Deposit Insurance Corporation (FDIC; the OCC, Board, and FDIC, collectively, the federal banking agencies; the amendments, collectively, the federal amendments) to their regulations at 12

C.F.R. §§34.44, 225.64, and 323.3, respectively. The department incorporates by reference the reasoned justification by the federal banking agencies in adopting the federal amendments, published in the *Federal Register* (Real Estate Appraisals, 84 Fed. Reg. 53,579 (October 8, 2019)). The federal amendments became effective on January 1, 2020. Until the federal amendments were adopted, the previous federal appraisal/evaluation threshold amount of $250,000 for residential real estate stood unchanged since 1994. Until now, the similar requirements of existing §77.73, meanwhile, have not changed since January 6, 2011. As was aptly discussed by the federal banking agencies in adopting the federal amendments, since 1994, residential real estate prices have risen significantly. In adopting the federal amendments, the federal banking agencies cited data from the Standard & Poor's Case-Shiller Home Price Index (Case-Shiller), estimating that a residential property sold for $250,000 on June 30, 1994 would have sold for $643,750 on March 31, 2019. Meanwhile, according to data from the Federal Housing Finance Agency (FHFA), a residential property sold for $250,000 on June 30, 1994 would have sold for $621,448 in March 2019. The federal banking agencies also reviewed how the 1994 $250,000 appraisal/evaluation threshold amount compared to general measures of inflation according to the Consumer Price Index (CPI) and concluded that $250,000 of consumer cost as of July 1, 1994 would equate to a relative consumer cost of $429,240 as of March 2019. The federal banking agencies also considered estimates for the most recent low point in housing prices in 2011 and determined that a residential property sold for $250,000 on June 30, 1994 would have sold for $445,152 if instead sold on December 31, 2011, according to Case Shiller, and $414,629, according to the FHFA. Under the CPI, meanwhile, a consumer cost of $250,000 on July 1, 1994 would equate to a relative consumer cost of $379,997 in December 2011. Depending on its loans and investments, a state savings bank could acquire real estate subject to the rule that is located in Texas or outside of the state. However, the majority of regulated state savings banks have branches strictly in Texas with operations concentrated in Texas. As a result, for additional context, the department also considered available datasets specific to Texas. According to the FHFA's data specific to the entirety of Texas, a home sold for $250,000 on June 30, 1994 would have sold for $735,950 on December 31, 2019; and, on December 31, 2011, $441,025. According to the Case-Shiller index specific to the Dallas, Texas metropolitan statistical area (the only dataset of Case-Shiller pertaining to Texas), a home sold for $250,000 in January of 2000 (the oldest available data point) would have sold for $482,025 in December 2019. The department also considered the Texas A&M Real Estate Center's Texas Home Price Index (HPI), which measures home price appreciation within nine metropolitan statistical areas around Texas. The HPI datasets have different initial report dates for each metropolitan statistical area (MSA), none of which relates back to 1994. As a result, the department performed a hybrid analysis of HPI's data and of FHFA's data specific to each MSA (or the closest proximity thereto) by first calculating the estimated appreciation of costs from June 30, 1994 to the initial report date for each of the HPI's MSAs utilizing the FHPA's data, and then carrying that figure forward utilizing the HPI's appreciation figures. Both the FHFA and HPI utilize a geometric modeling format but, according to the Texas A&M Real Estate Center, the HPI tends to have a flatter curve due to differences in the underlying data from which the modeling is performed (the FHPA is limited to data from conventional loans while the HPI is not so limited). As a result, when considering the following results, the farther back in time the HPI data extends, the flatter and less appreciated the result, and, conversely, a more recent start date of HPI data resulted in higher appreciation figures due to increased reliance on FHPA data. The results of the department's hybrid analysis of how much a home initially sold in Texas on June 30, 1994 for $250,000 would have sold for on December 31, 2019, are as follows: (i) Amarillo MSA (oldest HPI data point March 31, 2004) - $448,106; (ii) Austin/Round Rock MSA (oldest HPI data point March 31, 1999) - $573,592; (iii) Dallas/Fort Worth/Arlington MSA (oldest HPI data point March 31, 2005) - $522,020; (iv) Dallas/Plano/Irving MSA (oldest HPI data point March 31, 2005) - $536,889; (v) El Paso MSA (oldest HPI data point March 31, 2004) - $407,030; (vi) Fort Worth/Arlington MSA (oldest data point March 31, 2005) - $523,425; (vii) Houston/The Woodlands/Sugar Land MSA (oldest HPI data point March 31, 2000) - $493,827; (viii) San Antonio/New Braunfels MSA (oldest HPI data point March 31, 2013) - $525,153; (ix) Sherman/Denison MSA (oldest HPI data point March 31, 2014) - $609,033. Meanwhile, analysis of data concerning commercial real estate prices shows similar increases in value. Specifically, according to national data from the Federal Reserve Commercial Real Estate Price Index, a commercial property that sold for $250,000 as of June 30, 1994 would be expected to sell for approximately $760,000 as of December 2016, and the average price of that property during the low-point of the 2008 financial crisis in March 2010 was $423,000. Taking the foregoing into consideration, the department concurs with the federal banking agencies in concluding that raising the appraisal/evaluation threshold is appropriate, and compliance with the amended rule should not result in unsafe or unsound banking practices by state savings banks.

Summary of Public Comments

Publication of the Department's proposal to amend 7 TAC §77.73 recited a deadline of 30 days in which to receive public comments, or May 31, 2020. A public hearing in accordance with Government Code §2001.029 was not required. The Department received one comment made on behalf of the Independent Bankers Association of Texas (IBAT) indicating it was in favor of the amendments as initially proposed. The changes made on adoption afford a state savings bank even greater flexibility to perform evaluations in lieu of formal appraisals, and should further reduce appraisal costs for state savings banks.

Statutory Authority

Amended 7 TAC §77.73 is adopted under the authority of Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings banks. Amended 7 TAC §77.73 is also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate state savings banks and to protect public investment in state savings banks, including for those specific subject matters outlined in paragraphs (4), (11), and (16) of that subsection.

Adoption of 7 TAC §77.73 affects the statutes administered and enforced by the department's commissioner with respect to state savings banks, contained in Finance Code, Subtitle C. No other statute is affected.

*§77.73. Investment in Banking Premises and Other Real Estate Owned.*

(a) No savings bank, without prior written consent of the Commissioner, shall invest an amount in excess of its capital in fixed assets,

including land, improvements, furniture and fixtures, and other depreciable assets, and capital leases.

(b) No savings bank shall acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings bank, or for the use of the bank in future expansion of its banking facilities.

(c) Real estate acquired for the future expansion of a savings bank's facilities not improved and occupied as banking facilities within five (5) years from the date of its acquisition shall be sold or otherwise disposed of. Existing bank facilities shall be sold or otherwise disposed of within five (5) years of the date the real estate ceases to be used for banking purposes. The commissioner may, for good cause shown, grant an extension of time for the sale or disposition of the real estate, as described in this subsection.

(d) Real estate acquired in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings bank shall be held by a savings bank for no more than five years, unless the commissioner extends in writing the holding period for such property.

(e) Subject to subsection (f) of this section, when real estate is acquired in accordance with subsection (d) of this section, a state savings bank must substantiate the market value of the real estate by obtaining an appraisal within 90 days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is $500,000 or less. The commissioner may, for good cause shown, grant an extension of time for obtaining an appraisal or evaluation (as appropriate), as described in this subsection.

(f) An additional appraisal or evaluation is not required when a savings bank acquires real estate in accordance with subsection (d) of this section, if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the real estate and the appraisal or evaluation is less than one (1) year old.

(g) An evaluation shall be made on all real estate acquired in accordance with subsection (d) of this section at least once a year. An appraisal shall be made at least once every three years on real estate with a recorded book value in excess of $500,000.

(h) Notwithstanding any other provision of this section, the commissioner may require an appraisal of real estate if the commissioner considers an appraisal necessary to address safety and soundness concerns.

(i) An appraisal or evaluation made in accordance with this section must be performed in accordance with the standards described by the Federal Deposit Insurance Corporation in 12 C.F.R., Part 323, Subpart A or the Federal Reserve System in 12 C.F.R., Part 225, Subpart G, as applicable.

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 22, 2020.

TRD-202002483
Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Effective date: July 12, 2020
Proposal publication date: May 1, 2020
For further information, please call: (512) 475-1535

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# PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

## CHAPTER 90. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS

The Finance Commission of Texas (commission) adopts amendments to §90.104 (relating to Non-Standard Contract Filing Procedures), §90.202 (relating to Contract Provisions), §90.203 (relating to Model Clauses), §90.204 (relating to Permissible Changes), §90.302 (relating to Contract Provisions), §90.303 (relating to Model Clauses), §90.304 (relating to Permissible Changes), §90.404 (relating to Permissible Changes), §90.504 (relating to Permissible Changes), and §90.604 (relating to Permissible Changes), in 7 TAC, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

The commission adopts the amendments without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2791). The amended rules will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of the amendments to 7 TAC Chapter 90 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 90 was published in the *Texas Register* on January 31, 2020 (45 TexReg 775). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the rule text draft. The OCCC appreciates the thoughtful input provided by stakeholders.

The amendments are intended to clarify requirements for submitting a non-standard plain language contract, and to provide additional model clauses that licensees may use in contracts for regulated loans under Texas Finance Code, Chapter 342, Subchapter E or F.

The amendments to §90.104(c) provide clarity on the process for submitting a non-standard plain language contract for a regulated loan. These amendments specify that the contract must be submitted in accordance with the OCCC's instructions, and that PDF submissions must be text-searchable, must meet a size requirement, and may not be locked in a manner that prohibits comparison of different versions of the contracts. These amendments are intended to enable OCCC staff to efficiently and effectively review non-standard plain language contract submissions. If a PDF submission is not text-searchable (e.g., scanned paper contract or image-only PDF), or if the PDF has security restrictions that prohibit comparison, this prevents OCCC staff from efficiently and effectively reviewing contracts.

Amendments at §90.202(22) and §90.302(22) specify that the contract for a Subchapter E or Subchapter F loan may include a credit reporting clause. Amendments at §90.203(28) and §90.303(23) include the text of the model credit reporting clause. This text is based on Model Notice B-1 in the Consumer Financial Protection Bureau's Regulation V, 12 C.F.R. pt. 1022, app'x B, which states: "We may report information about your

account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report." Amendments also add this clause to the model Subchapter E and Subchapter F model contracts attached as figures to §90.204 and §90.304.

In §90.203(b)(7), amendments update rate bracket amounts for loans under Subchapter E. These amounts are updated annually in the Texas Credit Letter, as provided by Texas Finance Code, §341.203 and §342.201. The updated dollar amounts in the amendments are the amounts that will be in effect starting July 1, 2020, as described in the February 4, 2020, issue of the Texas Credit Letter. In addition, an amendment at §90.203(b)(7)(A) specifies that the clauses in paragraph (A) are for transactions using the add-on method and the scheduled installment earnings method.

Amendments to §90.204, §90.304, §90.404, §90.504, and §90.604 add the phrase "Model Contracts" to the rule titles. These rules include model plain language contracts as attached figures. The amendments to the rule titles will help readers locate model contracts.

## SUBCHAPTER A. GENERAL PROVISIONS

### 7 TAC §90.104

The amendments are adopted under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 341 and 342.

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

Filed with the Office of the Secretary of State on June 19, 2020.

TRD-202002451
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Effective date: July 9, 2020
Proposal publication date: May 1, 2020
For further information, please call: (512) 936-7660

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## SUBCHAPTER B. SECURED CONSUMER INSTALLMENT LOANS (SUBCHAPTER E)

### 7 TAC §§90.202 - 90.204

The amendments are adopted under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 341 and 342.

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

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Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
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Proposal publication date: May 1, 2020
For further information, please call: (512) 936-7660

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## SUBCHAPTER C. SIGNATURE LOANS (SUBCHAPTER F)

### 7 TAC §§90.302 - 90.304

The amendments are adopted under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 341 and 342.

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

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Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Effective date: July 9, 2020
Proposal publication date: May 1, 2020
For further information, please call: (512) 936-7660

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## SUBCHAPTER D. SECOND LIEN HOME EQUITY LOANS (SUBCHAPTER G)

### 7 TAC §90.404

The amendments are adopted under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 341 and 342.

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

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Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7660

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## SUBCHAPTER E. SECOND LIEN PURCHASE MONEY LOANS (SUBCHAPTER G)

### 7 TAC §90.504

The amendments are adopted under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 341 and 342.

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

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Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Effective date: July 9, 2020
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For further information, please call: (512) 936-7660

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## SUBCHAPTER F. SECOND LIEN HOME IMPROVEMENT CONTRACTS (SUBCHAPTER G)

### 7 TAC §90.604

The amendments are adopted under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 341 and 342.

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

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# TITLE 16. ECONOMIC REGULATION

## PART 1. RAILROAD COMMISSION OF TEXAS

## CHAPTER 3. OIL AND GAS DIVISION

### 16 TAC §3.30

The Railroad Commission of Texas adopts amendments to §3.30, relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ), with changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1290). The rule will be republished. The amendments are adopted to implement changes made by House Bill 2230 and House Bill 2771 from the 84th and 86th Texas Legislative Sessions, respectively. The adopted amendments also update the definition of underground source of drinking water. The Commission received no comments on the proposed amendments.

The memorandum of understanding (MOU) between the TCEQ and the RRC was last amended in May 2012. Amendments in subsection (a)(4) and subsection (g) update the applicable dates of MOU amendments. The proposed effective date of May 11, 2020, in subsection (g) was changed to reflect the date of RRC adoption of the proposed amendments. The new effective date is July 15, 2020.

House Bill 2230 (84th Legislature, 2015) enacted Texas Water Code, Section 27.026, to allow dual authorization of Class II and Class V injection wells 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. House Bill 2230 allows the TCEQ to authorize by individual permit, by general permit, or by rule, a Class V injection well for the disposal of such brine or DWTR in a Class II well permitted by the RRC. New subsection (e)(4)(E) implements the dual authority granted by House Bill 2230.

House Bill 2771 (86th Legislature, 2019) amended Texas Water Code, Section 26.131, to transfer to TCEQ the RRC's responsibilities relating to regulation of discharges into surface water in the state, as defined in 30 TAC §307.3(70) (relating to Definitions and Abbreviations), of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production and development of oil, natural gas, or geothermal resources. House Bill 2771 authorizes the transfer of responsibilities from the RRC to the TCEQ after TCEQ receives approval from the

United States Environmental Protection Agency (EPA) to supplement or amend TCEQ's Texas Pollutant Discharge Elimination System (TPDES) program to include authority over these discharges. House Bill 2771 also establishes September 1, 2021, as the deadline for TCEQ to submit its request to the EPA to supplement or amend the TPDES program to include delegation of National Pollutant Discharge Elimination System (NPDES) permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent.

Amendments implementing House Bill 2771 are found in subsection (b)(1)(B), (b)(2)(B), and (d)(12)(A). The definition of "produced water" in subsection (b)(1)(B)(i) is based on TCEQ's definition of that term as published in the January 10, 2020, issue of the *Texas Register* in proposed amendments to 30 TAC §305.541.

Amendments in subsection (e)(1) correct references to the TCEQ Small Business and Environmental Assistance (SBEA) Division, which is now the TCEQ External Relations Division.

Finally, amendments in §3.30(e)(7)(B)(ii) update the definition of "underground source of drinking water" to reference the definition in 40 Code of Federal Regulations §146.3.

The RRC adopts the amendments to 16 TAC §3.30 under: (1) Texas Water Code §26.131, which transfers the responsibilities relating to regulation of discharges of produced water, hydrostatic test water and gas plant effluent into surface water in the state from the RRC to the TCEQ; (2) Texas Water Code Chapter 27, which authorizes the RRC to adopt and enforce rules relating to injection wells and, specifically, Texas Water Code §27.026, as amended by House Bill 2230 (84th Legislature, 2015), which requires the RRC and TCEQ by rule to amend the MOU to implement the statutory changes related to disposal of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals (DWTR); (3) Texas Natural Resources Code, §81.052, which authorizes the RRC to adopt all necessary rules for governing persons and their operations under the jurisdiction of the RRC; and (4) Texas Natural Resources Code, §85.201, which authorizes the RRC to make and enforce rules for the conservation of oil and gas and prevention of waste of oil and gas.

Statutory authority: Water Code §§26.131 and 27.026, and Natural Resources Code §§81.052 and 85.201.

Cross reference to statute: Water Code Chapters 26 and 27; Natural Resources Code Chapters 81 and 85.

*§3.30. 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 House Bill 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.

*(i)* Under Texas Health and Safety Code, §361.003(34), solid waste under the jurisdiction of the TCEQ is defined to include "garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities."

*(ii)* Under Texas Health and Safety Code, §361.003(34), the definition of solid waste excludes "material which results from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code. . . ."

*(iii)* Under Texas Health and Safety Code, §361.003(34), the definition of solid waste includes the following until the United States Environmental Protection Agency (EPA) delegates its authority under the Resource Conservation and Recovery Act, 42 United States Code (U.S.C.) §6901, et seq., (RCRA) to the RRC: "waste, substance or material that results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the EPA. . . ."

*(iv)* After delegation of RCRA authority to the RRC, the definition of solid waste (which defines TCEQ's jurisdiction) will not include 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. The term natural gas or natural gas liquids processing plant refers to a plant the primary function of which is the extraction of natural gas liquids from field gas or fractionation of natural gas liquids. The term does not include a separately located natural gas treating plant for which the primary function is the removal of carbon dioxide, hydrogen sulfide, or other impurities from the natural gas stream. A separator, dehydration unit, heater treater, sweetening unit, compressor, or similar equipment is considered a part of a natural gas or natural gas liquids processing plant only if it is located at a plant the primary function of which is the extraction of natural gas liquids from field gas or fractionation of natural gas liquids. Further, a pressure maintenance or repressurizing plant is a plant for processing natural gas for reinjection (for reservoir pressure maintenance or repressurization) in a natural gas recycling project. A compressor station along a natural gas pipeline system or a pump station along a crude oil pipeline system is not a pressure maintenance or repressurizing plant.

(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 storm water 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 30 TAC §331.11 (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 §3.8(a)(30) of this title (relating to Water Protection) and at 30 TAC §335.1 (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 §3.8 of this title (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 §3.8 of this title (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 30 TAC Chapter 330 are, as defined in 30 TAC §330.3(148) (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 §8.1 of this title (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 §3.8(f) of this title (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 30 TAC Chapter 334, Subchapter K, (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 30 TAC §334.481 (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 30 TAC §334.496 (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste), except subsection (c) which is not applicable, and 30 TAC §334.497 (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 30 TAC §334.499 (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 30 TAC Chapter 334, Subchapter K. 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 30 TAC Chapter 334, Subchapter K 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 30 TAC Chapter 334, Subchapter K.

(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 30 TAC Chapter 335, Subchapter R (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 30 TAC Chapter 335, Subchapter R, §335.521, Appendix 3 (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 §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 30 TAC §330.15 (relating to General Prohibitions), and before borings or other penetration of the final cover of a closed municipal solid waste landfill under 30 TAC §330.955 (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 30 TAC Chapter 330, Subchapter I (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 30 TAC Chapter 331 (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 16, 2020.

TRD-202002417
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: July 15, 2020
Proposal publication date: February 28, 2020
For further information, please call: (512) 475-1295

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# TITLE 22. EXAMINING BOARDS

## PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

## CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners (Board) adopts amendments to Texas Administrative Code Part 1, Title 22, §1.5 and §1.65. The amendments are adopted without changes to the proposed text as published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2104). The rules will not be republished.

Reasoned Justification. The adopted rules implement Senate Bill 37 (86th Regular Session, 2019), which amends the law relating the effect of student loan default on the renewal of a professional license in Texas. Under former Texas Education Code §57.491, licensing agencies were prohibited from renewing the license of a person who was in default on loans guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC). Additionally, licensing agencies were required to adopt rules to carry out their duties under the previous law. Pursuant to these requirements, the board previously adopted former §1.65(d), which identified the process used by the Board to deny registration renewal for an architect registrant who defaulted on the repayment of a loan guaranteed by the TGSLC. The Board also previously adopted definitions in §1.5 for the terms "Texas Guaranteed Student Loan Corporation" and "TGSLC."

However, under SB 37, the legislature repealed Education Code §57.491. Furthermore, SB 37 enacted Occupations Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal. Since the Board is no longer required to deny the licensure renewal of such individuals, and is in fact prohibited from doing so, §1.65(d) is obsolete and contrary to the amended law. Therefore, the adopted rule repeals §1.65(d). Additionally, the adopted rule repeals the definitions for "Texas Guaranteed Student Loan Corporation" and "TGSLC" in §1.5. Since reference to these terms within the board's rules was limited to §1.65(d), continued definition of these terms is unnecessary under the adopted rule.

Summary of Comments and Agency Response.

The Board did not receive any comments on the proposed rules.

## SUBCHAPTER A. SCOPE; DEFINITIONS

### 22 TAC §1.5

Statutory Authority. Amended §1.05 is adopted under Texas Occupations Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of architecture and Tex. Occ. Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

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 18, 2020.

TRD-202002444

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Effective date: July 8, 2020

Proposal publication date: March 27, 2020

For further information, please call: (512) 305-8519

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## SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

### 22 TAC §1.65

STATUTORY AUTHORITY

Amended §1.65 is adopted under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of architecture and Tex. Occ. Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

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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Texas Board of Architectural Examiners

Effective date: July 8, 2020

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For further information, please call: (512) 305-8519

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## CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners (Board) adopts amendments to Texas Administrative Code Part 1, Title 22, §§1.26, 1.27, 1.149, and 1.153. The amendments are adopted without changes to the proposed text published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2107). The rules will not be republished.

Reasoned Justification.

The adopted rules implement House Bill 1342 (86th Regular Session, 2019). HB 1342 amended Chapter 53 of the Texas Occupations Code, which addresses the consequences of criminal actions with respect to occupational licenses. In summary, the HB 1342 amendments to Chapter 53 eliminated the authority of licensing authorities to take licensure action for certain criminal offenses and supplemented the procedural requirements for an agency considering licensure action as a consequence of criminal history.

Previously, the board adopted rules implementing Occupations Code Chapter 53 as it pertains to the registration and regulation of architects. The board adopts the following amendments to these rules in order to implement the changes imposed by HB 1342.

The board adopts amended §1.26, relating to Preliminary Evaluation of Criminal History for certain interested persons. The

amended rule implements amended Tex. Occ. Code §53.051(1) by requiring the executive director to identify the statutorily-required factors that served as the basis for a determination that a person requesting an evaluation is ineligible for registration as an architect.

The board adopts amended §1.27, relating to Provisional Licensure. The amended rule addresses the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based on a conviction not directly related to the profession, provided it had been committed less than five years before the filing of an application. Formerly, §1.27 distinguished between crimes that were and were not committed within five years of the filing of an application in determining whether the board was required to issue an architectural registration to a candidate. Since this distinction is no longer relevant under amended Tex. Occ. Code §53.021, it is unnecessary for this distinction to be made in §1.27. Therefore, the amended rule does not reference this factor. Additionally, the amended rule replaces an obsolete reference to "§3g, Article 42.12, Code of Criminal Procedure," in §1.27(a) with the updated reference to "Article 42A.054" of the same. Lastly, the amended rule corrects an error in the last sentence of §1.27(e) by replacing the word "provided" with "provide."

The board adopts amended §1.149, related to Criminal Convictions. Subsection (a) is amended to implement the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based a conviction not directly related to the profession if it was committed less than five years before the filing of an application. Subsection (a) is also amended to include an updated reference to Article 42A.054, Code of Criminal Procedure, as discussed above. Adopted amendments to subsections (b)(3) and (4) implement changes to Tex. Occ. Code §§53.0231, 53.051(1), and 53.104(b) that require licensing authorities to observe certain procedures when considering licensure action for criminal history. Amended subsections (c) and (d) implement amended Tex. Occ. Code §§53.022 and 53.023, which clarifies and amends the factors that licensing authorities are required to consider in determining whether a conviction is directly related to the duties and responsibilities of a licensed occupation and, if so, whether licensure action should be taken. Subsection (h) is amended to implement changes to Tex. Occ. Code §53.051, relating to information that must be provided to a person subject to suspension, revocation, or denial of licensure.

The board adopts amended §1.153, relating to Deferred Adjudication. These amendments implement previous legislative changes to §53.021(d), which addresses the limited circumstances in which a licensing authority may consider deferred action criminal proceedings in licensing decisions. The proposed amendments adopt the limitations imposed under the law.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

## SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

### 22 TAC §1.26, §1.27

STATUTORY AUTHORITY

Amended §1.26 and §1.27 are adopted under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of architecture; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §53.0211, which governs the issuance of provisional licenses by a licensing authority; Tex. Occ. Code §§53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Texas Occ. Code Chapter 53, Subchapter D, which governs preliminary evaluations of criminal history by a licensing authority for certain interested persons.

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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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8519

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## SUBCHAPTER H. PROFESSIONAL CONDUCT

### 22 TAC §1.149, §1.153

STATUTORY AUTHORITY

Amended §1.149 and §1.153 are adopted under Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of architecture; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §§53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Tex. Occ. Code §§53.0231 and 53.051, which identify the procedural requirements that must be observed by a licensing authority that seeks to revoke or suspend a license or deny a license or an opportunity to be examined for licensure.

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 3. LANDSCAPE ARCHITECTS

The Texas Board of Architectural Examiners (Board) adopts amendments to Texas Administrative Code Part 1, Title 22, §3.5 and §3.65. The amendments are adopted without changes to the proposed text as published in the March 27, 2020, issue

of the *Texas Register* (45 TexReg 2110). The rules will not be republished.

Reasoned Justification. The adopted rules implement Senate Bill 37 (86th Regular Session, 2019), which amends the law relating the effect of student loan default on the renewal of a professional license in Texas. Under former Texas Education Code §57.491, licensing agencies were prohibited from renewing the license of a person who was in default on loans guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC). Additionally, licensing agencies were required to adopt rules to carry out their duties under the previous law. Pursuant to these requirements, the board previously adopted former §3.65(d), which identified the process used by the Board to deny registration renewal for a landscape architect registrant who defaulted on the repayment of a loan guaranteed by the TGSLC. Additionally, the Board previously adopted definitions in §3.5 for the terms "Texas Guaranteed Student Loan Corporation" and "TGSLC."

However, under SB 37, the legislature repealed Education Code §57.491. Furthermore, SB 37 enacted Occupations Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal. Since the Board is no longer required to deny the licensure renewal of such individuals, and is in fact prohibited from doing so, §3.65(d) is obsolete and contrary to the amended law. Therefore, the adopted rule repeals §3.65(d). Additionally, the adopted rule repeals the definitions for "Texas Guaranteed Student Loan Corporation" and "TGSLC" in §3.5. Since reference to these terms within the board's rules was limited to §3.65(d), continued definition of these terms is unnecessary under the adopted rule.

Summary of Comments and Agency Response.

The Board did not receive any comments on the proposed rules.

## SUBCHAPTER A. SCOPE; DEFINITIONS

### 22 TAC §3.5

Statutory Authority. Amended §3.05 is adopted under Texas Occupations Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of landscape architecture and Tex. Occ. Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

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

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## SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

### 22 TAC §3.65

STATUTORY AUTHORITY

Amended §3.65 is adopted under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of landscape architecture and Tex. Occ. Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

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 3. LANDSCAPE ARCHITECTS

The Texas Board of Architectural Examiners (Board) adopts amendments to Texas Administrative Code Part 1, Title 22, §§3.26, 3.27, 3.149, and 3.153. The amendments are adopted without changes to the proposed text as published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2111). The rules will not be republished.

Reasoned Justification.

The adopted rules implement House Bill 1342 (86th Regular Session, 2019). HB 1342 amended Chapter 53 of the Texas Occupations Code, which addresses the consequences of criminal actions with respect to occupational licenses. In summary, the HB 1342 amendments to Chapter 53 eliminated the authority of licensing authorities to take licensure action for certain criminal offenses and supplemented the procedural requirements for an agency considering licensure action as a consequence of criminal history.

Previously, the board adopted rules implementing Occupations Code Chapter 53 as it pertains to the registration and regulation of landscape architects. The board adopts the following amendments to these rules in order to implement the changes imposed by HB 1342.

The board adopts amended §3.26, relating to Preliminary Evaluation of Criminal History for certain interested persons. The amended rule implements amended Tex. Occ. Code §53.051(1) by requiring the executive director to identify the statutorily-required factors that served as the basis for a determination that a person requesting an evaluation is ineligible for registration as a landscape architect.

The board adopts amended §3.27, relating to Provisional Licensure. The amended rule addresses the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure

action based on a conviction not directly related to the profession, provided it had been committed less than five years before the filing of an application. Formerly, §3.27 distinguished between crimes that were and were not committed within five years of the filing of an application in determining whether the board was required to issue a landscape architectural registration to a candidate. Since this distinction is no longer relevant under amended Tex. Occ. Code §53.021, it is unnecessary for this distinction to be made in §3.27. Therefore, the amended rule does not reference this factor. Additionally, the amended rule replaces an obsolete reference to "§3g, Article 42.12, Code of Criminal Procedure," in §3.27(a) with the updated reference to "Article 42A.054" of the same.

The board adopts amended §3.149, related to Criminal Convictions. Subsection (a) is amended to implement the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based a conviction not directly related to the profession if it was committed less than five years before the filing of an application. Subsection (a) is also amended to include an updated reference to Article 42A.054, Code of Criminal Procedure, as discussed above. Adopted amendments to subsections (b)(3)&(4) implement changes to Tex. Occ. Code §§53.0231, 53.051(1), and 53.104(b) that require licensing authorities to observe certain procedures when considering licensure action for criminal history. Amended subsections (c) and (d) implement amended Tex. Occ. Code §§53.022 and 53.023, which clarifies and amends the factors that licensing authorities are required to consider in determining whether a conviction is directly related to the duties and responsibilities of a licensed occupation and, if so, whether licensure action should be taken. Subsection (h) is amended to implement changes to Tex. Occ. Code §53.051, relating to information that must be provided to a person subject to suspension, revocation, or denial of licensure.

The board adopts amended §3.153, relating to Deferred Adjudication. These amendments implement previous legislative changes to §53.021(d), which addresses the limited circumstances in which a licensing authority may consider deferred action criminal proceedings in licensing decisions. The proposed amendments adopt the limitations imposed under the law.

Summary of Comments and Agency Response.

The Board did not receive any comments on the proposed rules.

## SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

### 22 TAC §3.26, §3.27

STATUTORY AUTHORITY

Amended §3.26 and §3.27 are adopted under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of landscape architecture; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §53.0211, which governs the issuance of provisional licenses by a licensing authority; Tex. Occ. Code §§53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Texas Occ. Code Chapter 53, Subchapter D, which governs preliminary evaluations of criminal history by a licensing authority for certain interested persons.

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

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## SUBCHAPTER H. PROFESSIONAL CONDUCT

### 22 TAC §3.149, §3.153

STATUTORY AUTHORITY

Amended §3.149 and §3.153 are adopted under Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of landscape architecture; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §§53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Tex. Occ. Code §§53.0231 and 53.051, which identify the procedural requirements that must be observed by a licensing authority that seeks to revoke or suspend a license or deny a license or an opportunity to be examined for licensure.

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 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners (Board) adopts amendments to Texas Administrative Code Part 1, Title 22, §5.5 and §5.75. The amendments are adopted without changes to the proposed text published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2115). The rules will not be republished.

Reasoned Justification. The adopted rules implement Senate Bill 37 (86th Regular Session, 2019), which amends the law relating the effect of student loan default on the renewal of a professional license in Texas. Under former Texas Education Code §57.491, licensing agencies were prohibited from renewing the license of a person who was in default on loans guaranteed

by the Texas Guaranteed Student Loan Corporation (TGSLC). Additionally, licensing agencies were required to adopt rules to carry out their duties under the previous law. Pursuant to these requirements, the board previously adopted former §5.75(d), which identified the process used by the Board to deny registration renewal for a registered interior designer who defaulted on the repayment of a loan guaranteed by the TGSLC. Additionally, the Board previously adopted definitions in §5.5 for the terms "Texas Guaranteed Student Loan Corporation" and "TGSLC."

However, under SB 37, the legislature repealed Education Code §57.491. Furthermore, SB 37 enacted Occupations Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal. Since the Board is no longer required to deny the licensure renewal of such individuals, and is in fact prohibited from doing so, §5.75(d) is obsolete and contrary to the amended law. Therefore, the adopted rule repeals §5.75(d). Additionally, the adopted rule repeals the definitions for "Texas Guaranteed Student Loan Corporation" and "TGSLC" in §5.5. Since reference to these terms within the board's rules was limited to §5.75(d), continued definition of these terms is unnecessary under the adopted rule.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

## SUBCHAPTER A. SCOPE; DEFINITIONS

### 22 TAC §5.5

Statutory Authority. Amended §5.05 is adopted under Texas Occupations Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of interior design and Tex. Occ. Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

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

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## SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

### 22 TAC §5.75

STATUTORY AUTHORITY

Amended §5.75 is adopted under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of interior design and Tex. Occ. Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

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 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners (Board) adopts amendments to Texas Administrative Code Part 1, Title 22, §§5.36, 5.37, 5.158, and 5.162. Amended §§5.36, 5.37, and 5.162 are adopted without changes to the proposed text published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2117). Amended §5.158 is adopted with minor changes to the proposed text as published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2117).

Reasoned Justification.

The adopted rules implement House Bill 1342 (86th Regular Session, 2019). HB 1342 amended Chapter 53 of the Texas Occupations Code, which addresses the consequences of criminal actions with respect to occupational licenses. In summary, the HB 1342 amendments to Chapter 53 eliminated the authority of licensing authorities to take licensure action for certain criminal offenses and supplemented the procedural requirements for an agency considering licensure action as a consequence of criminal history.

Previously, the board adopted rules implementing Occupations Code Chapter 53 as it pertains to the registration and regulation of registered interior designers. The board adopts the following amendments to these rules in order to implement the changes imposed by HB 1342.

The board adopts amended §5.36, relating to Preliminary Evaluation of Criminal History for certain interested persons. The amended rule implements amended Tex. Occ. Code §53.051(1) by requiring the executive director to identify the statutorily-required factors that served as the basis for a determination that a person requesting an evaluation is ineligible for interior design registration.

The board adopts amended §5.37, relating to Provisional Licensure. The amended rule addresses the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based on a conviction not directly related to the profession, provided it had been committed less than five years before the filing of an application. Formerly, §5.37 distinguished between crimes that were and were not committed within five years of the filing of an application in determining whether the board was required to issue an interior design registration to a candidate. Since this distinction is no longer relevant under

amended Tex. Occ. Code §53.021, it is unnecessary for this distinction to be made in §5.37. Therefore, the amended rule does not reference this factor. Additionally, the amended rule replaces an obsolete reference to "§3g, Article 42.12, Code of Criminal Procedure,"in §5.37(a) with the updated reference to "Article 42A.054"of the same.

The board adopts amended §5.158, related to Criminal Convictions. Subsection (a) is amended to implement the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based a conviction not directly related to the profession if it was committed less than five years before the filing of an application. Subsection (a) is also amended to include an updated reference to Article 42A.054, Code of Criminal Procedure, as discussed above. Adopted amendments to subsections (b)(3)&(4) implement changes to Tex. Occ. Code §§ 53.0231, 53.051(1), and 53.104(b) that require licensing authorities to observe certain procedures when considering licensure action for criminal history. Amended subsections (c) and (d) implement amended Tex. Occ. Code §§53.022 and 53.023, which clarifies and amends the factors that licensing authorities are required to consider in determining whether a conviction is directly related to the duties and responsibilities of a licensed occupation and, if so, whether licensure action should be taken. Subsection (h) is amended to implement changes to Tex. Occ. Code §53.051, relating to information that must be provided to a person subject to suspension, revocation, or denial of licensure.

The board adopts amended §5.162, relating to Deferred Adjudication. These amendments implement previous legislative changes to §53.021(d), which addresses the limited circumstances in which a licensing authority may consider deferred action criminal proceedings in licensing decisions. The proposed amendments adopt the limitations imposed under the law.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

## SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

### 22 TAC §5.36, §5.37

STATUTORY AUTHORITY

Amended §5.36 and §5.37 are adopted under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of interior design; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §53.0211, which governs the issuance of provisional licenses by a licensing authority; Tex. Occ. Code §§53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Texas Occ. Code Chapter 53, Subchapter D, which governs preliminary evaluations of criminal history by a licensing authority for certain interested persons.

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

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## SUBCHAPTER H. PROFESSIONAL CONDUCT

### 22 TAC §5.158, §5.162

STATUTORY AUTHORITY

Amended §5.158 and §5.162 are adopted under Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of interior design; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §§53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Tex. Occ. Code §§ 53.0231 and 53.051, which identify the procedural requirements that must be observed by a licensing authority that seeks to revoke or suspend a license or deny a license or an opportunity to be examined for licensure.

*§5.158. Criminal Convictions.*

(a) Pursuant to Chapter 53, Texas Occupations Code and §2005.052, Texas Government Code, the Board may suspend or revoke an existing certificate of registration, disqualify a person from receiving a certificate of registration, issue a provisional license subject to the terms and limitations of §5.37 of this chapter (relating to Provisional Licensure), or deny to a person the opportunity to be examined for a certificate of registration because of the person's conviction for committing an offense if:

(1) the offense directly relates to the duties and responsibilities of a Registered Interior Designer;

(2) the offense is listed in Article 42A.054, Texas Code of Criminal Procedure; or

(3) the offense is a sexually violent offense, as defined by Article 62.001, Texas Code of Criminal Procedure.

(b) The following procedures will apply in the consideration of an application for registration as a Registered Interior Designer or in the consideration of a Registrant's criminal history:

(1) Effective January 1, 2014, each Applicant shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Applicant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. An Applicant who does not submit fingerprints in accordance with this subsection is ineligible for registration.

(2) Effective January 1, 2014, each Registrant on active status or returning to active status who has not submitted a set of fingerprints pursuant to paragraph (1) of this subsection shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Registrant shall pay the

cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. A Registrant who does not submit fingerprints in accordance with this subsection is ineligible for renewal of, or returning to, active registration. A Registrant is not required to submit fingerprints under this paragraph for the renewal of, or returning to, active registration if the Registrant previously submitted fingerprints under paragraph (1) of this subsection for initial registration or under this paragraph for a previous renewal of, or return to, active registration.

(3) The executive director may contact the Applicant or Registrant regarding any information about a criminal conviction, other than a minor traffic offense, disclosed in the Applicant's or Registrant's criminal history record. If the executive director intends to pursue revocation or suspension of a registration, or denial of a registration or opportunity to be examined for a registration because of a person's prior conviction of an offense, the executive director must:

(A) provide written notice to the person of the reason for the intended denial; and

(B) allow the person not less than 30 days to submit any relevant information to the Board.

(4) The notice provided by the executive director under this subsection must contain:

(A) a statement that the person is disqualified from being registered or being examined for registration because of the person's prior conviction of an offense specified in the notice; or

(B) a statement that:

*(i)* the final decision of the Board to revoke or suspend the registration or deny the person a registration or the opportunity to be examined for the registration will be based on the factors listed in subsection (d) of this section; and

*(ii)* it is the person's responsibility to obtain and provide to the Board evidence regarding the factors listed in subsection (d) of this section.

(5) If the executive director determines the conviction might be directly related to the duties and responsibilities of a Registered Interior Designer, the Board's staff will obtain sufficient details regarding the conviction to allow the Board to determine the effect of the conviction on the Applicant's eligibility for registration or on the Registrant's fitness for continued registration.

(c) In determining whether a criminal conviction is directly related to the duties and responsibilities of a Registered Interior Designer, the executive director and the Board shall consider each of the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to practice Interior Design;

(3) the extent to which Interior Design registration might offer an opportunity to engage in further criminal activity of the same type as that in which the Applicant or Registrant had been involved;

(4) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of a Registered Interior Designer; and

(5) any correlation between the elements of the crime and the duties and responsibilities of a Registered Interior Designer.

(d) If the executive director or the Board determines under subsection (c) of this section that a criminal conviction directly relates to the duties and responsibilities of a Registered Interior Designer, the executive director and the Board shall consider the following in determining whether to suspend or revoke a registration, disqualify a person from receiving a registration, or deny to a person the opportunity to take a registration examination:

(1) the extent and nature of the Applicant's or Registrant's past criminal activity;

(2) the age of the Applicant or Registrant at the time the crime was committed;

(3) the amount of time that has elapsed since the Applicant's or Registrant's last criminal activity;

(4) the conduct and work activity of the Applicant or Registrant prior to and following the criminal activity;

(5) evidence of the Applicant's or Registrant's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) other evidence of the Applicant's or Registrant's fitness to practice as a Registered Interior Designer, including letters of recommendation.

(e) Crimes directly related to the duties and responsibilities of a Registered Interior Designer include any crime that reflects a lack of fitness for professional licensure or a disregard of the standards commonly upheld for the professional practice of Interior Design, such as the following:

(1) criminal negligence;

(2) soliciting, offering, giving, or receiving any form of bribe;

(3) the unauthorized use of property, funds, or proprietary information belonging to a client or employer;

(4) acts relating to the malicious acquisition, use, or dissemination of confidential information related to Interior Design; and

(5) any intentional violation as an individual or as a consenting party of any provision of the Act.

(f) The Board shall revoke the certificate of registration of any Registrant who is convicted of any felony if the felony conviction results in incarceration. The Board also shall revoke the certificate of registration of any Registrant whose felony probation, parole, or mandatory supervision is revoked.

(g) If an Applicant is incarcerated as the result of a felony conviction, the Board may not approve the Applicant for registration during the period of incarceration. If an Applicant's felony probation, parole, or mandatory supervision is revoked, the Board may not approve the Applicant for registration until the Applicant successfully completes the sentence imposed as a result of the revocation.

(h) If the Board takes action against any Applicant or Registrant pursuant to this section, the Board shall provide the Applicant or Registrant with the following information in writing:

(1) the reason for rejecting the application or taking action against the Registrant's certificate of registration, including any factor considered under subsections (c) or (d) of this section that served as the basis for the action;

(2) notice that upon exhaustion of the administrative remedies provided by the Administrative Procedure Act, Chapter 2001, Government Code, an action may be filed in a district court

of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision is final; and

(3) the earliest date the person may appeal.

(i) All proceedings pursuant to this section shall be governed by the Administrative Procedure Act, Chapter 2001, Government Code.

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

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For further information, please call: (512) 305-8519

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# PART 9. TEXAS MEDICAL BOARD

## CHAPTER 166. PHYSICIAN REGISTRATION

### 22 TAC §166.2

The Texas Medical Board (Board) adopts amendments to Title 22, Part 9, §166.2, concerning Continuing Medical Education, with non-substantive changes to the proposed text as published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2120). The adopted rule will be republished.

The amendments are adopted in order to implement new continuing education requirements set forth by H.B. 2059, H.B. 2174, H.B. 2454, and H.B. 3285, passed by the 86th Legislature, Regular Session (2019). The new language requires that physicians complete at least two hours of continuing medical education (CME) training in topics related to pain management, and the prescription of opioids and other controlled substances. Additionally, the amendments add language requiring a course in the topic of human trafficking prevention. The new courses are to be completed as part of the formal course hours required each biennial registration period. Other changes adopted to 166.2 are made to reorganize and format the rule.

The Board received one written comment regarding the proposed amendments from the Texas Medical Association (TMA). No one appeared at the TMB meeting on June 12, 2020 to provide oral comment regarding the amendments to the rule.

A summary of TMA's comments and the Board responses follow.

Comment: TMA expressed some support for the rule, but opposed several aspects, recommending that the rules be adopted with changes.

First, TMA requested that the new course requirements related to pain management and prescribing of opioids and other controlled substances be required for only physicians engaged in pain management or those who prescribe controlled substances or opioids. TMA asserted that requiring such courses for physicians who do not engage such practice is contrary to legislative intent, does not meet the state's goals related to addressing the opioid crisis, and unnecessarily increases continuing education costs for those physicians.

Response: TMB disagrees and declines to adopt the amendments with that change. The nature and scope of the opioid crisis calls for all physicians to obtain the most up to date and important information related to pain management and the prescribing of opioids and other controlled substances. While Texas has made important strides in battling the opioid crisis, it remains a critical issue in this state. Opioid abuse accounts for more than half of all drug overdose deaths in Texas. *See Addressing Substance Abuse in Texas, Public Health Agency Action Plan,* The Texas Department of State Health Services, pg. 2, January 2020 (found at: https://www.dshs.state.tx.us/substance-use-action-plan/). The number of Texas adults reporting non-medical use of pain relievers in the last year increased at an "alarming rate", from 779,000 in 2009-2010 to 830,000 in 2016-2017, *Addressing Substance Abuse in Texas,* pg. 2.

Requiring the courses related to pain management and prescribing opioids/controlled substances for all physicians, rather than creating a difficult to follow set of rules based on variables such as license issuance date, license renewal date, type of practice and issuance of DEA registration, will also improve agency efficiency related to auditing compliance with the rule. Ultimately, the adopted rule will better protect the public and fulfill legislative intent.

Comment: Second, TMA requested that the Board permit any extra "opioid CME" credit hours to roll to the next renewal period, stating that the existing language includes appropriate limitations on how long credit can be rolled into another renewal period, eliminating concern that the information will be outdated. TMA asserted that allowing such hours to roll forward into the next renewal period will also provide physicians incentive to explore additional opioid CME besides just the two credit hours.

Response: TMB declines to make this change. Allowing carry forward hours in the topic will present a risk that physicians will not obtain the most up to date information each renewal period. TMB maintains that such is contrary to legislative intent and an unacceptable risk, especially considering the nature of the opioid crisis. The number of hours required is nominal and is unlikely to discourage physicians from obtaining additional CME beyond the two hours required.

Comment: Third, TMA states that it assumes that extensions on licensure renewals granted due to the COVID-19 disaster "will act as an extension for physicians to meet these new CME requirements as well." Alternatively, TMA requests that TMB include language making the new requirements effective September 1, 2020.

Response: TMB agrees that the extensions on licensure renewals related to the COVID-19 disaster also will apply to the new CME requirements. TMB CME audits will take the extensions granted into account and apply them to the new CME requirements. TMB declines to include language setting forth a future effective date, as TMB's internal audit processes will include a consideration of extensions granted.

Comment: Fourth, TMA requested that TMB change language to proposed subparagraph 166.2(a)(3)(E), to better clarify that hours can be dually used to meet the new pain management and prescribing CME requirements and the medical ethics and/or professional responsibility requirement and indicate that TMB "shall" designate such courses in that manner rather than "may."

Response: TMB declines to make this change. While TMB agrees that the new pain management and prescribing CME hours may be dually used to meet the medical ethics and/or professional responsibility requirement, the language adopted reflects the wording of the respective bills.

Comment: Fifth, TMA opposed not allowing for a presumption of compliance for physicians meeting Maintenance of Certification (MOC) or Osteopathic Continuous Certification (OCC) program requirements for specialty board certification by member boards of the ABMS or AOA under subsection (d), asserting that Section 156.052 of the Texas Occupations Code permits such presumption of compliance and asking that TMB clarify the distinction made under the rules.

TMB disagrees and declines to make the change. The distinction between achieving initial certification and recertification and meeting MOC/OCC program requirements has been in the continuing education rules since approximately 2015.

The rules recognize that Section 156.052's presumption of compliance applies to physicians obtaining initial or recertification by a specialty board of the AOA or ABMS within 36 months from the required date of renewal, and only for one registration renewal period. The presumption of compliance applies to all continuing education requirements, including the new courses.

The second type of compliance presumption (created in 2015) recognizing a physician's meeting MOC/OCC ongoing program requirements, is contingent upon the physician also showing that the MOC/OCC continuing education requirements meet the formal requirements under (a)(1). The MOC/OCC compliance presumption is unlimited in the number of registration periods that a physician may obtain the presumption. As MOC/OCC program continuing education requirements between the dozens of specialty member boards vary widely in content and minimum quantity required, this presumption has never been extended to the ethics/professionalism requirements and for the same reason will not be extended to the new course requirements.

TMB declines TMA's request to adopt changes to the proposed amendments so that physicians meeting ongoing MOC/OCC requirements are presumed to have taken the new courses. The effect of adopting such language would be to risk creating the possibility in which a physician meeting MOC/OCC program requirements may obtain a presumption of compliance for an unlimited number of registration periods, without having to complete any hours in the new topics set forth by the 86th Legislature.

Comment: Finally, TMA suggested drafting revisions to address two typographical errors and some rewording of language related to sexual assault forensic exam continuing education.

Response: TMB appreciates those comments and adopts the rules with non-substantive drafting revisions to correct the typographical errors and a slight rewording to the sexual assault forensic exam continuing education requirements.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act. The amendments are further adopted under the authority of House Bills 2059, 2174, 2454, and 3285, 86th Legislature, Regular Session (2019).

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

*§166.2. Continuing Medical Education.*

(a) As a prerequisite to the registration of a physician's permit a physician must complete 48 credits of continuing medical education (CME) every 24 months. CME credits must be completed in the following categories and topics:

(1) At least 24 credits every 24 months are to be from formal courses that are:

(A) designated for AMA/PRA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education;

(B) approved for prescribed credit by the American Academy of Family Physicians;

(C) designated for AOA Category 1-A credit required for osteopathic physicians by an accredited CME sponsor approved by the American Osteopathic Association;

(D) approved by the Texas Medical Association based on standards established by the AMA for its Physician's Recognition Award; or

(E) approved by the board for medical ethics and/or professional responsibility courses only.

(2) At least two of the 24 formal credits of CME which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular credit of CME involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

(3) At least two of the 24 formal credits of CME which are required by paragraph (1) of this subsection must involve the study of the following topics:

(A) best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments;

(B) safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding:

*(i)* standards of care;

*(ii)* identification of drug-seeking behavior in patients; and

*(iii)* effectively communicating with patients regarding the prescription of an opioid or other controlled substances; and

(C) prescribing and monitoring of controlled substances.

(D) For physicians practicing in pain clinics, the hours required under this subparagraph shall be credited towards the 10 hours of required continuing medical education related to pain management required under 22 TAC Chapter 195.4(e), relating to Operation of Pain Management Clinics.

(E) The hours required under this subparagraph may be designated for medical ethics or professional responsibility credit for purposes of compliance with paragraph (2) of this subsection.

(4) As part of the 24 formal credits of CME required under paragraph (1) of this subsection, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and

Human Services Commission must be completed. The course shall be designated by the board for medical ethics or professional responsibility credit for the purposes of compliance with paragraph (2) of this subsection.

(5) The remaining 24 credits for the 24-month period may be composed of informal self-study, attendance at hospital lectures, grand rounds, or case conferences not approved for formal CME, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(6) A physician who performs sexual assault forensic examinations must have basic forensic evidence collection training or the equivalent education. A physician who completes a CME course in forensic evidence collection that:

(A) meet the requirements described in paragraph (1)(A) - (C) of this subsection; or

(B) is approved or recognized by the Texas Board of Nursing, is considered to have the basic forensic evidence training required by the Health and Safety Code, §323.0045.

(7) A physician may complete one credit of formal continuing medical education, as required by paragraph (1) of this subsection, for each hour of time spent up to 12 hours, based on participation in a program sponsored by the board and approved for CME credit for the evaluation of a physician competency or practice monitoring.

(8) A physician whose practice includes the treatment of tick-borne diseases should complete CME in the treatment of tick-borne diseases that meet the requirements described in paragraph (1)(A) - (E) of this subsection.

(b) A physician must report on the registration permit application if she or he has completed the required CME during the previous 2 years.

(1) A physician may carry forward CME credits earned prior to a registration report which are in excess of the 48-credit biennial requirement and such excess credits may be applied to the following years' requirements, except that excess credits may not be applied to requirements set forth under paragraphs (2) and (3) of subsection (a).

(2) A maximum of 48 total excess credits may be carried forward and shall be reported according to the categories set out in subsection (a) of this section, subject to the limitations established under paragraph (1) of this subsection.

(3) Excess CME credits of any type may not be carried forward or applied to a report of CME more than two years beyond the date of the registration following the period during which the credits were earned.

(c) A physician shall be presumed to have complied with this section if in the preceding 36 months the physician becomes board certified or recertified by a specialty board approved by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association Bureau of Osteopathic Specialists (AOA). This provision exempts the physician from all CME requirements, including the requirement for two credits involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section. This exemption is valid for one registration period only.

(d) Maintenance of Certification, Presumption of Compliance.

(1) Except as otherwise provided in this subsection, a physician shall be presumed to have complied with subsection (a)(1) and (5) of this section if the physician is meeting the Maintenance of Certification (MOC) program requirements set forth by a specialty or subspecialty member board of the ABMS or the Osteopathic Continuous Certification (OCC) program requirements set forth by the AOA, and the member board's MOC or OCC program mandates completion of CME credits that meet the minimum criteria set forth under subsection (a)(1) of this section.

(2) Notwithstanding paragraph (1) of this subsection, a physician's compliance with an MOC program will not be credited toward the requirements set forth under paragraphs (2), (3), and (4) of subsection (a).

(e) A physician may request in writing an exemption for the following reasons:

(1) the physician's catastrophic illness;

(2) the physician's military service of longer than one year's duration outside the state;

(3) the physician's medical practice and residence of longer than one year's duration outside the United States; or

(4) good cause shown submitted in writing by the physician, which provides satisfactory evidence to the board that the physician is unable to comply with the requirement for CME.

(f) Exemptions are subject to the approval of the executive director or medical director and must be requested in writing at least 30 days prior to the expiration date of the permit.

(g) A temporary exemption under subsection (d) of this section may not exceed one year but may be renewed, subject to the approval of the board.

(h) Subsection (a) of this section does not apply to a physician who is retired and has been exempted from paying the registration fee under §166.3 of this title (relating to Retired Physician Exception).

(i) This section does not prevent the board from taking board action with respect to a physician or an applicant for a license by requiring additional credits of CME or of specific course subjects.

(j) The board may require written verification of both formal and informal credits from any physician within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(k) Residency or Fellowship Training Completion, Presumption of Compliance.

(1) Except as otherwise provided in this subsection, physicians in residency/fellowship training or who have completed such training within six months prior to the registration expiration date will satisfy the requirements of subsection (a)(1) and (2) of this section by their residency or fellowship program.

(2) Notwithstanding paragraph (1) of this subsection, completion of training in a residency or fellowship within six months prior to the registration expiration date will not be credited toward requirements set forth under paragraphs (3) and (4) of subsection (a).

(l) CME credits which are obtained during the 30-day grace period after the expiration of the physician's permit to comply with the CME requirements for the preceding two years, shall first be credited to meet the CME requirements for the previous registration period and then any additional credits obtained shall be credited to meet the CME requirements for the current registration period.

(m) A false report or false statement to the board by a physician regarding CME credits reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Medical Practice Act (the "Act"), Tex. Occ. Code Ann. §§164.051 - 164.053. A physician who is disciplined by the board for such a violation may be subject to

the full range of actions authorized by the Act including suspension or revocation of the physician's medical license, but in no event shall such action be less than an administrative penalty of $500.

(n) Administrative penalties for failure to timely obtain and report required CME credits may be assessed in accordance with §§187.75 - 187.82 of this title (relating to Imposition of Administrative Penalty) and §190.14 of this title (relating to Disciplinary Sanction Guidelines).

(o) Unless exempted under the terms of this section, failure to obtain and timely report the CME credits on a registration permit application shall subject the physician to a monetary penalty for late registration in the amount set forth in §175.3 of this title (relating to Penalties). Any administrative penalty imposed for failure to obtain and timely report the 48 credits of CME required for a registration permit application shall be in addition to the applicable penalties for late registration as set forth in §175.3 of this title.

(p) A physician, who is a military service member, may request an extension of time, not to exceed two years, to complete any continuing medical education requirements.

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

Filed with the Office of the Secretary of State on June 22, 2020.

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Scott Freshour
General Counsel
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For further information, please call: (512) 305-7016

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# CHAPTER 172. TEMPORARY AND LIMITED LICENSES

## SUBCHAPTER C. LIMITED LICENSES

### 22 TAC §172.13

The Texas Medical Board (Board) adopts amendments to Title 22, Part 9, §172.13, concerning Conceded Eminence with nonsubstantive changes, as described below, to the proposed text as published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2123). The adopted rule will be republished.

Section 172.13, relating to Conceded Eminence, was amended to add language to clarify the requirements for and process to obtain conceded eminence. Superfluous language is deleted. The rule was also reorganized and renumbered for clarity.

Subsection (c) lists qualifications the Board shall consider in determining whether an applicant has recognized conceded eminence and authority in the applicant's specialty. Examination requirements have been deleted from subsection (c) and expanded upon in subsection (e).

Subsection (d) lists requirements to be shown in an application for conceded eminence. Consideration for foreign applicants who may not be able to maintain a foreign license or certificate has been made in paragraph (1)(B).

Subsection (e) lists examination requirements. Previously, subsection (c)(3) required that an applicant not have failed a licensing examination within a three-attempt limit. Subsection (e)(2) is now expanded, based on stakeholder input, to accept examinations not only accepted by the board for licensure, but also accepted for licensure in another state, territory, Canadian province, or country, or accepted for specialty board certification.

Subsection (f) lists additional requirements and documentation necessary for a conceded eminence application. Based on stakeholder input, paragraph (3) adds a substantial equivalence analysis for subspecialty training programs that have received ACGME accreditation after the applicant's participation.

Subsections (g) through (l) contains information and requirements listed in the Texas Occupations Code Annotated, §155.006, previously contained in the rule.

The Board sought stakeholder input through the Licensure Stakeholder Group which made comments on the proposed changes to the rules that were incorporated in the proposed text.

The Board received one written comment, which contained multiple parts, regarding the proposed amendments from the Texas Medical Association (TMA). A summary of the TMA comment, and the Board responses, follows.

In their first comment, TMA recommended that, in subparagraph (c)(1)(d), a semicolon be used at the end of the sentence instead of a period. The Board agrees and has incorporated this nonsubstantive change into the adopted amendments.

In their second comment, TMA recommended the use of the word "continually" in subparagraph (d)(1)(B)(ii) instead of the word "continuously." The Board disagrees and made no change in response to this comment. The Board used the word "continuously" intentionally.

In their third comment, TMA noted that the words "domestic," "international," and "national" are used in the rule. TMA recommended using the same phrase throughout the rule - either "international/national" or "international/domestic." The Board disagrees and made no change in response to this comment. Each word was used intentionally in the context of its usage.

In the first part of their fourth comment, TMA notes that language in subsection (a) may be inconsistent with the language in subparagraph (d)(1)(B)(i). Subsection (a) contemplates conceded eminence for someone "licensed or educated in another state, territory, Canadian province or country" while subparagraph (d)(1)(B)(i) contemplates conceded eminence for a foreign medical graduate who is licensed by another state, territory, Canadian province or country. The Board disagrees and made no change in response to this comment, as the Board does not believe the language is inconsistent.

In the second part of their fourth comment, TMA notes that language in subparagraph (d)(1)(B)(i) is confusing about a foreign license or certificate being issued by the United States. The Board agrees and has made clarifying changes to the language adopted in that subparagraph in response to the comment.

In the third part of their fourth comment, TMA asks whether some portion of the required 10 years of practice referenced in subparagraph (d)(1)(B)(i) should occur in the United States. The Board made no change in response to this comment, as the requirement as proposed was drafted intentionally.

In the first part of their fifth comment, TMA points out that language in paragraph (f)(1) as proposed implied Texas physicians are licensed by specialty area. The Board agrees and has made

clarifying changes to the language adopted in that paragraph in response to the comment.

In the second part of their fifth comment, TMA suggests adding language in paragraph (f)(5) to ensure "subject to disciplinary action" means disciplinary action relating to the applicant's licensure. TMA also suggests adding language that the applicant has not been the subject of disciplinary action by any territory, foreign state, Canadian province, or another country in which they held or hold a medical license. The Board agrees and has made clarifying changes to the language adopted in that paragraph in response to the comment.

In their sixth comment, TMA suggests adding language in paragraph (g)(1) clarifying that the licensed physician supervising the medical services of the applicant must be a Texas-licensed physician. The Board agrees and has made clarifying changes to the language used in that paragraph in response to the comment.

In their last comment, TMA recommended a number of small changes. First, they recommended adding a semicolon at the end of subparagraph (d)(1)(B). The Board disagrees and made no change in response to this comment, as a semicolon would be grammatically incorrect.

Second, TMA recommended the addition of the word "Science" to "The University of Texas Health Science Center at Tyler" in subparagraph (d)(2)(B). The Board agrees and added the word "Science," which was inadvertently left out of the proposed text.

Third, TMA recommended adding the word "the" to the phrase "evident that applicant" in subsection (e). The Board agrees and added the word "the," which was inadvertently left out of the proposed text.

Lastly, TMA recommended using lowercase letters to begin paragraphs (g)(1) and (g)(2). The Board agrees and changed the case of the beginning letters of paragraphs (g)(1) and (g)(2) in the adopted amendments.

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. Additionally, the amendments are adopted under the authority of the Texas Occupations Code Annotated, §155.006, which provides authority for the Board to recommend and adopt rules related to the issuance of a limited license issued to an applicant by virtue of the applicant's conceded eminence and authority in the applicant's specialty.

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

*§172.13. Conceded Eminence.*

(a) Pursuant to the authority of §155.006, Texas Occupations Code, the board may issue a limited license to an applicant licensed or educated in another state, territory, Canadian province or country conceded eminence and authority in the applicant's specialty.

(b) "Conceded eminence and authority in the applicant's specialty," as used in this section, shall mean that the physician has achieved a high level of academic or professional recognition, domestically or internationally, for excellence in research, teaching, or the practice of medicine within the applicant's specialty.

(c) In determining whether an applicant has recognized conceded eminence and authority in the applicant's specialty, the Board shall consider whether:

(1) the applicant has been the recipient of professional honors and awards, and professional recognition in the international or domestic medical community, for achievements, contributions, or advancements in the field of medicine, or medical research as evidenced by objective factors, including, but not limited to:

(A) publications in recognized scientific, medical, or medical research journals, including American peer review journals;

(B) being the recipient or nominee for international or national awards for distinguished contributions to the advancement of medicine or medical research;

(C) acknowledgement of expertise from recognized American authorities in the applicant's field of medical specialty; and

(D) other professional accomplishments as determined meritorious in the discretion of the Board;

(2) the recommending institution is unable to recruit, after good faith effort, a physician with the same sub-specialty who is: either already licensed in Texas or is eligible for an unrestricted license in Texas; and

(3) other full licensure options are available to the applicant.

(d) An applicant must complete an application and present satisfactory proof to the board that the applicant:

(1) is a graduate of:

(A) a medical school which is recognized or accredited by the Liaison Committee on Medical Education (LCME) of the Association of American Medical Colleges, Royal College of Physicians in Canada or the American Osteopathic Association (AOA); or

(B) a foreign medical school and

*(i)* holds a valid medical license or registration certificate issued by a state or territory in the United States or a valid foreign medical license or registration certificate issued by another country or Canadian province on the basis of a foreign examination, and has practiced medicine for at least 10 years, 5 years of which occurred immediately preceding the date applications is made to the Board; or

*(ii)* held a valid foreign medical license or certificate at the time of coming to the United States and has since continuously worked under a Faculty Temporary License; and

(2) is recommended to the board by the dean, president, or chief academic officer of:

(A) a school of medicine in this state accredited by the LCME or AOA;

(B) The University of Texas Health Science Center at Tyler;

(C) The University of Texas M.D. Anderson Cancer Center; or

(D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education, that exceeds the requirements for eligibility for first board certification in the discipline; and

(3) is expected to receive an appointment at the institution or program making the recommendation under paragraph (2) of this subsection; and

(4) has demonstrated conceded eminence and authority in a medical specialty identified in the application.

(e) Examination Requirements. An applicant must submit evidence that the applicant:

(1) has passed the Texas Medical Jurisprudence Examination; and

(2) has passed an examination that is:

(A) accepted by the board for licensure as defined in §163.6(a) of this title, (relating to Examinations Accepted for Licensure) and has not exceeded the number of failed attempts allowed for a licensing exam as provided by §163.6(b) of this title; or

(B) accepted for physician licensure in another state, territory, Canadian province, or country; or

(C) accepted for specialty board certification by:

*(i)* the American Board of Medical Specialties; or

*(ii)* the American Osteopathic Association.

(f) Additional requirements and documentation for Conceded Eminence License. An applicant:

(1) must submit 3 letters of recommendation from Texas-licensed physicians who practice in the same specialty area as the applicant and who shall attest to the candidate's conceded eminence qualifications, character, and ethical behavior;

(2) must submit 5 letters from renowned specialists in the applicant's discipline who attest to the applicant's eminence and qualifications;

(3) has successfully completed at least one year of approved subspecialty training accredited by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (or has completed a substantially equivalent program that has since received ACGME accreditation);

(4) has not been convicted of, or placed on deferred adjudication, community supervision, or deferred disposition for a felony, a misdemeanor connected with the practice of medicine, or a misdemeanor involving moral turpitude;

(5) has not been the subject of disciplinary action related to the practice of medicine by any other state; the uniformed services of the United States; the applicant's peers in a local, regional, state, or national professional medical association or staff of a hospital; or a territory, Canadian province, or other country in which the applicant holds or has held a medical license or registration certificate;

(6) is of good professional character, as defined by §163.1(a)(8) of this title (relating to Definitions); and

(7) has read and will abide by board rules and the Medical Practice Act.

(g) Supervision. The Board may require an applicant to submit:

(1) the name of a Texas-licensed physician, in good standing, who will supervise the medical services provided by the applicant for the first 6 months of practice; and

(2) a detailed description of the medical services, duties, and responsibilities that the applicant will perform.

(h) Applicants with complete applications may qualify for a Temporary License prior to being considered by the board for licensure, as required by §172.11 of this title (relating to Temporary Licensure--Regular).

(i) The holder of a conceded eminence license shall be limited to the practice of only a specialty of medicine for which the license holder has conceded eminence and authority, as identified in the application. The license holder may only practice medicine within the setting of the institution or program that recommended the license holder under subsection (d)(3) of this section, including a setting that is part of the institution or program by contractual arrangement.

(j) If the holder of a conceded eminence license terminates the relationship with the institution or program that recommended the license holder under subsection (d)(3) of this section, the conceded eminence license shall be considered automatically canceled. To practice medicine in Texas, the license holder must:

(1) file a new application with the recommendation of a new institution or program, as required by subsection (d)(3) of this section; or

(2) file an application for another Texas medical license or permit.

(k) The holder of a conceded eminence license shall be required to pay the same fees and meet all other procedural requirements for issuance and renewal of the license as a person holding a full Texas medical license.

(l) The holder of a conceded eminence license shall be subject to disciplinary action under the Medical Practice Act and board 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 22, 2020.

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General Counsel
Texas Medical Board
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# TITLE 26. HEALTH AND HUMAN SERVICES

## PART 1. HEALTH AND HUMAN SERVICES COMMISSION

## CHAPTER 711. INVESTIGATIONS OF INDIVIDUALS RECEIVING SERVICES FROM CERTAIN PROVIDERS

## SUBCHAPTER L. EMPLOYEE MISCONDUCT REGISTRY

### 26 TAC §§711.1401 - 711.1404, 711.1406 - 711.1408, 711.1413 - 711.1415, 711.1417, 711.1419, 711.1421, 711.1423, 711.1425 - 711.1427, 711.1429, 711.1431, 711.1432, 711.1434

The Texas Health and Human Services Commission (HHSC) adopts new §§711.1401 - 711.1404, 711.1406 - 711.1408, 711.1413 - 711.1415, 711.1417, 711.1419, 711.1421, 711.1423, 711.1425 - 711.1427, 711.1429, 711.1431, 711.1432, and 711.1434 in Chapter 711, Subchapter L, concerning Employee Misconduct Registry.

These new rules are adopted without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1833). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

Senate Bill (S.B.) 200, 84th Legislature Regular Session, 2016, transferred certain functions previously performed by the Department of Family and Protective Services (DFPS) to HHSC and reorganized health and human services delivery in Texas. Certain functions previously performed by DFPS transferred to HHSC in accordance with Texas Government Code, §531.0201, §531.02011, and §531.02013. As a result, both agencies need the rules currently located in Title 40, Chapter 711, Subchapter O, Employee Misconduct Registry; therefore, HHSC is adopting new rules in Title 26 for use by HHSC. These rules create a new subchapter in Title 26, Chapter 711, Subchapter L, Employee Misconduct Registry, which copy necessary rules from Title 40, Chapter 711, Subchapter O, Employee Misconduct Registry, update references to other rules and reflect agency language changes where appropriate.

COMMENTS

The 31-day comment period ended April 13, 2020.

During this period, HHSC received one comment regarding the proposed rules from Disability Rights Texas. A summary of this comment relating to Subchapter L, Employee Misconduct Registry, and HHSC's response follows.

Comment: The commenter recommended that a flag be provided to alert individuals checking the Employee Misconduct Registry (EMR) that the individual is currently under investigation or their finding is under appeal. This would better fulfill the goal of the EMR to protect individuals.

Response: HHSC declines to make the suggested change at this time. This suggested change falls outside of the purview of this rule packet.

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. These new rules are also adopted in accordance with Texas Human Resources Code Chapter 48, Subchapter I, Employee Misconduct Registry, and Texas Health and Safety Code Chapter 253, Employee Misconduct Registry; both of which authorize the Executive Commissioner of HHSC to adopt rules to implement provisions therein relating to the Employee Misconduct Registry.

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-202002398
Karen Ray
General Counsel
Health and Human Services Commission
Effective date: July 5, 2020
Proposal publication date: March 13, 2020
For further information, please call: (210) 861-7465

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# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## PART 1. GENERAL LAND OFFICE

## CHAPTER 9. EXPLORATION AND LEASING OF STATE OIL AND GAS

## SUBCHAPTER C. MAINTAINING A STATE OIL AND GAS LEASE

### 31 TAC §9.35

The General Land Office ("GLO") adopts an amendment to 31 TAC §9.35 (relating to Producing the State Lease), amending paragraph 9.35(a)(2) and adding paragraph 9.35(a)(4), with changes to the proposed text as published for comment in the January 24, 2020, issue of the *Texas Register* (45 TexReg 501). The rule will be republished.

The amendment clarifies the procedures and standards for obtaining permission to commingle oil and gas production from wells in which the State holds a royalty interest.

BACKGROUND AND JUSTIFICATION

The amended and new paragraphs are adopted to clarify GLO procedures and standards for obtaining permission to commingle oil and gas production from a well in which the State holds a royalty interest. This clarification will reduce staff time dedicated to review and correction of commingling applications and allow for more efficient use of staff time in management of mineral production and income for the Permanent School Fund.

PUBLIC COMMENT

The comment period for the proposed rulemaking began on January 24, 2020, and ended on February 24, 2020. The GLO received comments from Chevron U.S.A. Inc., Occidental Petroleum, and the Texas Oil and Gas Association (TXOGA).

*Comments*

Comments from Chevron U.S.A. Inc., Occidental Petroleum, and TXOGA all expressed general support for the proposed rulemaking as published.

*Response*

The GLO acknowledges these comments.

STATUTORY AUTHORITY

This amendment to 31 TAC §9.35 is adopted under the authority of Texas Natural Resources Code §31.051(3), which states that the Commissioner of the GLO shall make and enforce suitable rules consistent with the law.

*§9.35. Producing the State Lease.*

(a) General provisions applicable to producing oil and/or gas on state leases.

(1) The GLO will treat a well as non-producing if no RRC production reports are filed for that well or if reports showing zero production are filed with the RRC for that well.

(2) All wells producing natural gas and water or natural gas and surface hydrocarbon liquids or natural gas, water and surface hydrocarbon liquids must be produced through oil and gas separators of ample capacity and in good working order. All separators shall be of conventional type (or other equipment at least as efficient) to provide

for separation and measurement of all lease or pooled unit gas and liquid hydrocarbon production before sale or surface commingling with production from any other lease and/or pooled unit. All measurement shall be in accordance with the American Gas Association (AGA) standards and all applicable chapters of the American Petroleum Institute (API) Manual of Petroleum Measurement Standards (MPMS) subject to the following:

(A) gross lease or pooled unit gas and liquid hydrocarbon production must be measured by, at the option of the lessee, either:

*(i)* continuous measurement; or

*(ii)* utilization of periodic production well tests as described in MPMS Chapter 20.5 with each lease or pooled unit being tested at least once per month; and

(B) all lessees shall perform both gas and oil sampling with compositional analyses at the outlet of the initial stage of separation for each lease and/or pooled unit with:

*(i)* the gas sampling occurring within fifteen (15) days of the expiration of each six (6) month interval; and

*(ii)* the oil sampling occurring initially within thirty (30) days after completion of the well, and again between 24 to 36 months after such initial sampling.

(3) Industry standard laboratory analysis shall be performed on such samples in compliance with ASTM, API, and GPA standards for gas and oil. Lessees shall retain the foregoing required oil and gas analysis data and make such data available to the GLO as directed per the authority retained under §9.32(c)(3)(D) of this title, upon request. Requests submitted by the lessee shall be sent to the Texas General Land Office, Attention: Mineral Leasing, 1700 N. Congress Ave., Austin, TX 78701-1495.

(4) Lessee shall obtain written permission from GLO before surface commingling state lease or state pooled-unit production with private lease production or before surface commingling oil and/or gas from two separate state leases and/or pooled state units. Lessee shall obtain written permission from GLO staff before down-hole commingling production from two or more intervals where the state's royalty interests differ between the proposed commingled intervals. Send commingling requests to the Texas General Land Office, Attention: Mineral Leasing, 1700 North Congress Avenue, Austin, TX 78701-1495. The requirement to obtain GLO staff approval applies to all commingle exception applications including new permits and amendments to existing permits.

(5) If, within a group of properties comprised of surface commingled leases, tracts, and/or pooled units (Commingled Properties):

(A) all state leases pertaining to the Commingled Properties were executed prior to January 7, 1999; or

(B) the State's largest revenue interest among the Commingled Properties is less than 5.000%; or

(C) the State has a net revenue interest in each and all of the Commingled Properties and those net revenue interests are identical to a tolerance of 0.001, then upon written certification by lessee to the GLO that one or more of these conditions has been met, such Commingled Properties are deemed to have obtained permission from the GLO as required under §9.35(a)(3) of this title until and unless additional, non-qualifying surface commingling occurs in conjunction with the Commingled Properties, at which time written permission from the GLO shall be required.

(b) Effect of production during or after the primary term. If production in paying quantities is established during the primary term, lessee shall be exempt from paying further delay rentals so long as such production continues through the primary term. Thereafter, subject to other lease requirements, terms and conditions, a lease shall remain in effect so long as oil and/or gas is being produced in paying quantities from the lease.

(c) Cessation of production.

(1) If production ceases within 60 days of a lease anniversary date during the primary term, the lease is maintained until the next anniversary date without payment of delay rentals. If production ceases more than 60 days before a lease anniversary date during the primary term, a delay rental must be timely paid on or before such anniversary date to maintain the lease by delay rentals.

(2) If production ceases during the last year of the primary term or within the 60 days immediately preceding that last year, the lease will be maintained to the end of the primary term. To maintain a lease after such cessation of production, lessee may conduct drilling or reworking operations in compliance with §9.34(d) of this title, (relating to Drilling and Reworking Operations), treating the last day of the primary term as the date of cessation of production under such paragraph.

(3) If production ceases after the primary term has expired, lessee may maintain its lease by conducting drilling or reworking operations under §9.34(d) or as otherwise authorized by the lease.

(d) No ratification or revivor. If a lease ceases to produce and is not otherwise maintained in force and effect, no action by the state or an owner of the soil on Relinquishment Act property, may ratify, re-grant or revive the terminated lease or may estop the state from asserting lease termination.

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 22, 2020.

TRD-202002482
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: July 12, 2020
Proposal publication date: January 24, 2020
For further information, please call: (512) 475-1859

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# TITLE 34. PUBLIC FINANCE

## PART 11. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### CHAPTER 302. GENERAL PROVISIONS RELATING TO THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

**34 TAC §302.2**

The Texas Emergency Services Retirement System (TESRS) adopts amendments to §302.2 concerning general provisions relating to TESRS, without changes to the proposed text as published in the April 24, 2020, edition of the *Texas Register* (45 TexReg 2692). The rules will not be republished.

The adopted amendments clarify the Board rule regarding benefit distributions to satisfy the plan qualification requirements under the Internal Revenue Code of 1986, as amended.

No public comments were received regarding the proposed amendments to Chapter 302

The amendments are adopted pursuant to Texas Government Code, §865.006(b), which authorizes the state board to adopt rules as necessary for the administration of the fund.

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-202002393
Kevin Deiters
Executive Director
Texas Emergency Services Retirement System
Effective date: July 5, 2020
Proposal publication date: April 24, 2020
For further information, please call: (800) 919-3372

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## CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### 34 TAC §§310.5, 310.13, 310.14

The Texas Emergency Services Retirement System (TESRS) adopts amendments to 34 TAC §310.5 and new rules §§310.13, and 310.14, concerning the administration of TESRS, without changes to the proposed text as published in the April 24, 2020 edition of the *Texas Register* (44 TexReg 2696). These rules will not be republished.

These sections address clarifications and changes related to administrative processes and to allow the administration of TESRS to comply with House Bill (H.B.) 3247, 86th Legislature, Regular Session, 2019, which amended §§861 - 865, Texas Government Code.

The amendments to §310.5 establish the staggered two-year terms served by trustees of the local board to begin March 1st and end the last day of February of the second year and would further describe the composition of the six-member local board.

New rule §310.13 describes the delegation of local board duties to the executive director as provided under §865.0121, Texas Government Code, when the trustees of a local board have not been appointed or when the local board fails to perform its duties.

New rule §310.14 describes the delegation of duties to the executive director upon the discontinuance of department participation in the pension system as provided under §864.010 when a department ceases to exist or withdraws from the pension system.

No public comments were received regarding the proposed amendment or new rules for Chapter 310.

The amendments and new rules are adopted pursuant to Texas Government Code, §865.006(b), which authorizes the state board to adopt rules as necessary for the administration of the fund.

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-202002395
Kevin Deiters
Executive Director
Texas Emergency Services Retirement System
Effective date: July 5, 2020
Proposal publication date: April 24, 2020
For further information, please call: (800) 919-3372

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 20. TEXAS WORKFORCE COMMISSION

## CHAPTER 809. CHILD CARE SERVICES

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 809, relating to Child Care Services, without changes, as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1194):

Subchapter B. General Management, §809.15 and §809.20

Subchapter D. Parent Rights and Responsibilities, §809.71

Subchapter E. Requirements to Provide Child Care, §§809.91, 809.93, and 809.94

Subchapter G. Texas Rising Star Program, §809.132

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Senate Bill (SB) 781, 86th Texas Legislature, Regular Session (2019), amended §42.071 of the Human Resources Code to discontinue evaluation as a corrective action for the Texas Health and Human Services Commission's (HHSC) Child Care Licensing (CCL) staff to impose on a licensed child care facility or family home. Effective September 1, 2019, CCL will either recommend a voluntary plan of action or place a facility on probation as corrective action when needed.

The amendments to TWC Chapter 809 Child Care Services rules remove references to evaluation as a corrective action to align with Chapter 42 of the Human Resources Code as amended by SB 781.

Additionally, House Bill (HB) 5, 85th Texas Legislature, Regular Session (2017), reorganized several functions within the HHSC umbrella. Included in this reorganization was the transfer of CCL from the Texas Department of Family and Protective Services (DFPS) to HHSC. These rule amendments change references throughout Chapter 809 to reflect the transfer of CCL from DFPS to HHSC.

Finally, §658E(c)(4) of the Child Care and Development Block Grant Act (2014) and 45 Code of Federal Regulations (CFR) §98.45 require state Child Care and Development Fund (CCDF) lead agencies to conduct a market rate survey (MRS) of child care rates and to use market rate data to set direct care reimbursement rates. States must ensure equal access to child care services for children participating in child care subsidies by set-

ting direct care reimbursement rates that are sufficient to provide comparable services to those received by families that do not receive assistance.

As the CCDF lead agency for Texas, TWC conducts an annual MRS to analyze and summarize child care market rate data for the state and for the 28 Local Workforce Development Boards (Boards). Section 809.20, Maximum Provider Reimbursement Rates, authorizes Boards to set reimbursement rates for their local workforce development areas (workforce areas) based on local factors, including the MRS, and to ensure that the rates provide equal access to child care.

The US Department of Health and Human Services Office of Inspector General (OIG) recently released a report--States' Payment Rates Under the Child Care and Development Fund Program Could Limit Access to Child Care Providers--in which OIG found that many states were not setting their child care reimbursement rates at a level sufficient to ensure that eligible children have equal access to child care services that are comparable to services available to children whose parents are not eligible to receive child care assistance. OIG recommended that Office of Child Care (OCC) evaluate whether states are ensuring equal access for families in the CCDF program, as required by statute.

OCC concurred with OIG's recommendation and prioritized review of equal access requirements in its review of CCDF State Plans. Based on the review, OCC placed 33 states on Corrective Action Plans (CAPs) for not achieving equal access requirements, with 21 of those based specifically on inadequate rates.

OCC notified states at the 2019 State and Territories Administrators Meeting that CAPs were implemented for states whose rates were at or below the 25th percentile of the market rate, as determined by a statistically valid MRS. OCC also notified states that it would be reevaluating the 25th percentile "floor" on an ongoing basis, and states can expect OCC to raise the floor over time to improve equal access to child care services.

Based on OCC's actions to place states on CAPs for equal access if they fail to meet a minimum floor for their rates, on September 24, 2019, TWC's three-member Commission (Commission) took action to ensure that Boards' maximum reimbursement rates are set at a level adequate to ensure equal access as set forth in the CCDF regulations at 45 CFR §98.45 Equal Access.

Specifically, the Commission directed staff to develop guidance--subsequently issued through Workforce Development Letter 23-19, issued on October 15, 2019, and titled "Child Care Provider Maximum Reimbursement Rate Increases"--requiring Boards to set their maximum reimbursement rate at or above the 30th percentile of the 2019 MRS, in compliance with §809.20(a), which requires that rates provide equal access to child care.

Section 809.20 authorizes Boards to establish maximum provider reimbursement rates and to ensure that the rates provide equal access to child care. To further support the federal requirement of equal access, §809.20 is amended to require Boards to establish maximum reimbursement rates at or above a level established by the Commission.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER B. GENERAL MANAGEMENT

TWC adopts the following amendments to Subchapter B:

§809.15. Promoting Consumer Education

Section 809.15 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from DFPS to HHSC.

§809.20. Maximum Provider Reimbursement Rates

Section 809.20(a) is amended to require Boards to establish maximum reimbursement rates for child care subsidies at or above a level established by the Commission. The purpose of the rule amendment is to ensure that Boards' maximum reimbursement rates are set at a level adequate to enable equal access to subsidized child care services as set forth in the CCDF regulations at 45 CFR §98.45 Equal Access.

Section 809.20 is also amended to change "DFPS" to "CCL" to reflect the transfer of CCL from DFPS to HHSC.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

TWC adopts the following amendments to Subchapter D:

§809.71. Parent Rights

Section 809.71 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from DFPS to HHSC.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

TWC adopts the following amendments to Subchapter E:

§809.91. Minimum Requirements for Providers

Section 809.91 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from DFPS to HHSC.

§809.93. Provider Reimbursement

Section 809.93 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from DFPS to HHSC.

§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department of Family and Protective Services

Section 809.94 is amended to remove references to evaluation as a corrective action to align with Chapter 42 of the Human Resources Code as amended by SB 781. Specifically, §809.94(a), regarding providers placed on evaluation by CCL, is removed and subsequent subsections are relettered accordingly.

Section 809.94 is also amended to change "DFPS" to "CCL" to reflect the transfer of CCL from DFPS to HHSC.

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

TWC adopts the following amendments to Subchapter G:

§809.132. Impact of Certain Deficiencies on TRS Certification

Section 809.132 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from DFPS to HHSC.

No comments were received.

## SUBCHAPTER B. GENERAL MANAGEMENT

**40 TAC §809.15, §809.20**

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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 16, 2020.

TRD-202002406
Patricia Martinez
Interim Deputy Director, Workforce Program
Texas Workforce Commission
Effective date: July 6, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 689-9855

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## SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

### 40 TAC §809.71

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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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Patricia Martinez
Interim Deputy Director, Workforce Program
Texas Workforce Commission
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Proposal publication date: February 21, 2020
For further information, please call: (512) 689-9855

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## SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

### 40 TAC §§809.91, 809.93, 809.94

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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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Patricia Martinez
Interim Deputy Director, Workforce Program
Texas Workforce Commission
Effective date: July 6, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 689-9855

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## SUBCHAPTER G. TEXAS RISING STAR PROGRAM

### 40 TAC §809.132

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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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Patricia Martinez
Interim Deputy Director, Workforce Program
Texas Workforce Commission
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For further information, please call: (512) 689-9855

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# CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

## SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

### 40 TAC §819.12

The Texas Workforce Commission (TWC) adopts amendments to the following section of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, without changes, as published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2307):

Subchapter B. Equal Employment Opportunity Provisions, §819.12

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 819 rule change is to align TWC's Chapter 819 Texas Workforce Commission Civil Rights Division rules with amendments to Texas Labor Code §21.054, pursuant to House Bill (HB) 1074, enacted by the 86th Texas Legislature, Regular Session (2019), signed into law effective September 1, 2019.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of the Individual Provisions)

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

TWC adopts the following amendments to Subchapter B:

§819.12. Unlawful Employment Practices

Texas Labor Code §21.101 prohibits age discrimination against individuals ages 40 and older. Section 21.054 prohibits age discrimination as it relates to on-the-job training programs, retraining, apprenticeships, and other training. HB 1074 repealed Texas Labor Code §21.054(b), which limited this provision to individuals between the ages of 40 and 56.

Section 819.12(d) is amended to align with Texas Labor Code, Chapter 21, which prohibits age discrimination against individuals ages 40 and older.

No comments were received.

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

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 16, 2020.

TRD-202002410
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Effective date: July 6, 2020
Proposal publication date: April 3, 2020
For further information, please call: (512) 689-9855

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# CHAPTER 821. TEXAS PAYDAY RULES
## SUBCHAPTER C. WAGE CLAIMS

**40 TAC §821.43**

The Texas Workforce Commission (TWC) adopts, without changes, as published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2283) amendments to the following section of Chapter 821, relating to Texas Payday Rules:

Subchapter C. Wage Claims, §821.43

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 821 rule change is to clarify that a claimant can withdraw a wage claim at any time up to the point at which TWC's written order becomes final. An order becomes final for all purposes under the following circumstances:

--If either party does not file an appeal within 21 days from the date the Preliminary Wage Determination Order is mailed.

--If either party does not file an appeal within 14 days from the date the Wage Claim Appeal Tribunal or Commission order is mailed.

--A denial of a Motion for Rehearing becomes final 14 days after the date it is mailed.

--A denial of a Motion for Rehearing, or order of the Commission when no Motion for Rehearing has been filed, becomes final 14 days from the date it is mailed regardless as to whether a party files for judicial review of the decision.

Per §821.43 as currently written, a claimant may withdraw a wage claim whether or not it has become final. When a withdrawal request is submitted and approved, TWC no longer enforces any orders issued (including administrative penalties) and releases all liens and freezes. It is as if the claimant never filed the wage claim.

The Agency has determined that §821.43(a)(2) creates legal challenges by implying that the wage claimant may alter or set aside a claim that has become final.

Because a claimant may not alter or set aside a claim after the TWC decision is final, TWC no longer accepts a wage claim withdrawal submitted pursuant to §821.43(a)(2). Instead, in cases in which a wage claim decision has become final and the claimant wants TWC to halt collection action, the claimant may file a Satisfaction of Payment Declaration.

A Satisfaction of Payment Declaration differs from a withdrawal in that TWC will still recognize that an order has been issued, but the Collections and Civil Actions department will cease collections action on wages owed by the employer to the claimant under a wage claim. The employer will still be liable for any administrative penalties assessed on the claim. TWC will release any liens or freezes on the claim once the employer pays any administrative penalties owed.

TWC does not process contractual settlements between parties regarding wage claims. If the parties reach an outside settlement, and the TWC order is not yet final, the claimant may withdraw a wage claim. If an order has become final, the claimant may declare satisfaction of payment with respect to the settlement. The Satisfaction of Payment Declaration has the effect of ceasing the wage order collection process.

A claimant may not rescind a withdrawal of wage claim or Satisfaction of Payment Declaration once it has been submitted. If the employer does not fulfill the terms of the settlement, the claimant may not "undo" either action.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER C. WAGE CLAIMS

TWC adopts the following amendments to Subchapter C:

§821.43. Wage Claim Withdrawal

Section 821.43(a) is amended to delete paragraphs (1) and (2) to clearly stipulate that a claimant may withdraw a wage claim at any point up to when TWC's written order becomes final.

No comments were received.

The rules are adopted under Texas Labor Code §61.002(a)(2), which directs TWC to adopt rules as necessary to implement Chapter 61, the Texas Payday Law.

The adopted rules affect Texas Labor Code Chapter 61.

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 16, 2020.

TRD-202002411
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Effective date: July 6, 2020
Proposal publication date: April 3, 2020
For further information, please call: (512) 689-9855

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## CHAPTER 857. PURCHASE OF GOODS AND SERVICES FOR VOCATIONAL REHABILITATION SERVICES BY TEXAS WORKFORCE COMMISSION

### 40 TAC §857.1

The Texas Workforce Commission (TWC) adopts the repeal of Chapter 857 in its entirety, relating to the Purchase of Goods and Services for Vocational Rehabilitation Services by Texas Workforce Commission, without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1201):

Section 857.1. Noncompetitive Procurement

PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted chapter repeal is to streamline TWC rules by incorporating the relevant portions of this chapter into Chapter 858, Vocational Rehabilitation Services Contract Management, which is being amended and renamed in a separate proposed rulemaking.

Effective September 1, 2016, pursuant to Texas Labor Code §351.002, the administration of vocational rehabilitation (VR) services was transferred from the Texas Department of Assistive and Rehabilitative Services (DARS) to TWC. To ensure continuity and avoid any impact on customers, the administrative rules shared by all DARS programs were duplicated into Chapters 850, 857, and 858 of TWC's rules upon transfer of the programs. Because the rules established DARS' administrative framework and served all DARS programs, they overlap certain existing TWC administrative rules and contain numerous references to programs that were not transferred to TWC.

Chapter 857 consists of one section, §857.1, which authorizes the use of open-enrollment solicitation and interagency contracting, in addition to other noncompetitive procurement methods. To streamline TWC rules and preserve the relevant subsections of §857.1, the chapter should be repealed and its relevant content should be amended and moved to Chapter 858, which will be renamed "Vocational Rehabilitation Purchases and Contracts" to reflect the additional content.

No comments were received.

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 351 and 352.

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 16, 2020.

TRD-202002412
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Effective date: July 6, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 689-9855

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## CHAPTER 858. PROCUREMENT AND CONTRACT MANAGEMENT REQUIREMENTS FOR PURCHASE OF GOODS AND SERVICES FOR VOCATIONAL REHABILITATION SERVICES

## SUBCHAPTER D. VOCATIONAL REHABILITATION SERVICES CONTRACT MANAGEMENT REQUIREMENT

The Texas Workforce Commission (TWC) adopts the following new sections to Chapter 858, relating to Vocational Rehabilitation Services Contract Management Requirement, without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1202):

§858.1 and §858.2

TWC adopts amendments to the following sections of Chapter 858, relating to Vocational Rehabilitation Services Contract Management Requirement, without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1202):

§§858.3, 858.4, and 858.7 - 858.16

The rules will not be republished.

TWC adopts the repeal of the following sections of Chapter 858, relating to Vocational Rehabilitation Services Contract Management Requirement, without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1202):

§§858.1, 858.2, 858.5, and 858.6

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 858 rule change is to align the chapter with TWC's operation of the Vocational Rehabilitation (VR) services program. Texas Labor Code §351.002 transferred the administration of VR services from the Texas Department of Assistive and Rehabilitative Services (DARS) to TWC, effective September 1, 2016.

To ensure continuity and avoid any impact on customers, the administrative rules shared by all DARS programs were duplicated into Chapters 850, 857, and 858 of TWC's rules upon transfer of the programs. Because the rules established DARS' adminis-

trative framework and served all DARS programs, they overlap certain existing TWC administrative rules and contain references to programs that were not transferred to TWC.

To streamline TWC rules and accurately reflect TWC's program administration, several amendments are needed to integrate and align overlapping sections and update outdated terms and procedures to align with TWC's current program operation. This will help to ensure the health and safety of VR customers, as well as help to ensure that Texans receive the best value for the expenditure of available public funds for VR services.

In keeping with the goal of protecting the health and safety of VR customers and ensuring that Texas receives the best value for the expenditure of available public funds for VR services, TWC understands that the VR services program is a recognized health and human services entity and the express authority for procuring goods and services through a noncompetitive process, referred to as an enrollment contract, transferred to TWC with the VR services function. The definition of an enrollment contract is found in Texas Administrative Code (TAC) 1 TAC §391.103(8).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

TWC adopts the following amendments to Chapter 858:

§858.1. Purpose and Applicability

Section 858.1 is repealed because the language on purpose and applicability is unnecessary and inconsistent with TWC's current rulemaking framework.

§858.1. Definitions

New §858.1 updates and retains the applicable definitions from §858.2, which is currently proposed for repeal, to reflect TWC's current operation of the VR program.

§858.2. Definitions

Section 858.2 is repealed to accommodate reorganization of the subchapter.

§858.2. Noncompetitive Open Enrollment Solicitation

New §858.2 adds new language from the proposed repeal of Chapter 857, that authorizes the use of open enrollment solicitations.

§858.3. General Requirements for Contracting

Section 858.3 is amended to remove, update, combine, or add language and provisions accounted for in the standard terms and conditions of VR services contracts, the VR Standards for Providers on TWC's website, and TWC's contracting policies and procedures.

§858.4. Complaints

Section 858.4 is amended to add language specifying that TWC is the administrative agency for directing complaints and requiring contractors to verify that the information they provide to customers for directing complaints is current and accurate.

§858.5. Record Requirements

Section 858.5 is repealed; retention and production of contractor records is required and covered by TWC's Financial Manual for Grants & Contracts Appendix K: Record Retention & Access Requirements.

§858.6. Access to Contractor Facilities and Records

Section 858.6 is repealed. Access to contractor records is required and covered by the Financial Manual for Grants & Contracts Appendix K: Record Retention & Access Requirements.

§858.7. Contract Monitoring

Section 858.7 is amended to update terminology and to highlight contractor responsibility regarding the monitoring and review of contracts under this chapter.

§858.8. Corrective Action Plan

Section 858.8 is amended to update terminology and to highlight contractor responsibility regarding a corrective action plan. Language has been added to require that the corrective action plan be acceptable to TWC and that contractors remedy all deficiencies or violations in a timely manner.

§858.9. Adverse Actions

Section 858.9 is amended to update terminology and to add language that includes substantiated claims of fraud against a contractor and failure to submit a corrective action plan as reasons for which TWC may impose adverse actions against a contractor. Language has been modified for clarity and consistency and to reflect TWC's current operation of the VR services program.

§858.10. Debarment and Suspension of Contractors

Section 858.10 is amended to update terminology and clarify the general length of debarment. Subsection (d) has been modified to clarify when TWC may suspend contracts.

§858.11. Causes and Conditions of Debarment

Section 858.11 is amended to remove language stating that paragraph (3)(B) applies only to actions occurring after the effective date of these rules. Additionally, language has been updated for clarity and consistency with existing contract language and to reflect TWC's current operation of the VR services program.

§858.12. Causes and Results of Suspension

Section 858.12(b) is amended to update terminology and to clarify the possible results of suspension. Additionally, language has been updated to reflect TWC's current operation of the VR services program.

§858.13. Evidence for Debarment

Section 858.13 is amended to update terminology to reflect TWC's current operation of the VR services program.

§858.14. Notice for Debarment or Suspension

Section 858.14 is amended to update terminology to reflect TWC's current operation of the VR services program.

§858.15. Appeals

Section 858.15(b) is amended to update terminology and to clarify that a notice of adverse action rendered by TWC is final for all purposes unless the contractor files an appeal not later than 28 calendar days after the date the initial adverse action is sent to the contractor. Additionally, language has been added giving TWC the discretion to grant a contractor's request for an extension of the period in which to file a notice of appeal of an adverse action upon showing of good cause. The term "appellant" has been replaced with the term "contractor."

§858.16. Request for Reconsideration

Section 858.16 is amended to update terminology and be consistent with changes in §858.15. The term "appellant" has been replaced with the term "contractor."

No comments were received.

**40 TAC §858.1, §858.2**

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted repeals affect Title 4, Texas Labor Code, particularly Chapters 301, 302, 351, and 352.

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 16, 2020.

TRD-202002413
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Effective date: July 6, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 689-9855

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**40 TAC §§858.1 - 858.4**

The new and amended rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301, 302, 351, and 352.

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 16, 2020.

TRD-202002414
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Effective date: July 6, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 689-9855

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**40 TAC §858.5, §858.6**

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted repeals affect Title 4, Texas Labor Code, particularly Chapters 301, 302, 351, and 352.

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 16, 2020.

TRD-202002415
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Effective date: July 6, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 689-9855

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**40 TAC §§858.7 - 858.16**

The amended rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301, 302, 351, and 352.

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 16, 2020.

TRD-202002416
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Effective date: July 6, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 689-9855

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# 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.

## Proposed Rule Reviews

Texas State Board of Pharmacy

**Title 22, Part 15**

The Texas State Board of Pharmacy files this notice of intent to review Chapter 291, (§§291.71 - 291.77), concerning Pharmacies (Institutional Pharmacy (Class C)), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., August 1, 2020.

TRD-202002479
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Filed: June 22, 2020

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The Texas State Board of Pharmacy files this notice of intent to review Chapter 303, (§§303.1 - 303.3), concerning Destruction of Drugs, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., August 1, 2020.

TRD-202002480
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Filed: June 22, 2020

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## Adopted Rule Reviews

Office of Consumer Credit Commissioner

**Title 7, Part 5**

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 83, Subchapter B was published in the *Texas Register* on March 27, 2020 (45 TexReg 2211). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist.

Before publishing notice of the review in the *Texas Register,* the Office of Consumer Credit Commissioner (OCCC) issued an informal advance notice of the rule review to stakeholders. The OCCC received one informal precomment in response to the advance notice. The OCCC appreciates the thoughtful input provided by stakeholders.

As a result of internal review by the OCCC, the commission has determined that certain revisions are appropriate and necessary. Those proposed changes are published elsewhere in this issue of the *Texas Register.*

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 83, Subchapter B continue to exist, and readopts this subchapter in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202002469
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Filed: June 22, 2020

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The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 85, Subchapter B, concerning Rules for Crafted Precious Metal Dealers in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 85, Subchapter B was published in the *Texas Register* on March 27, 2020 (45 TexReg 2211). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist.

Before publishing notice of the review in the *Texas Register,* the Office of Consumer Credit Commissioner (OCCC) issued an informal advance notice of the rule review to stakeholders. The OCCC received no informal precomments in response to the advance notice.

As a result of internal review by the OCCC, the commission has determined that certain revisions are appropriate and necessary. Those proposed changes are published elsewhere in this issue of the *Texas Register.*

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 85, Subchapter B continue to exist, and readopts this subchapter in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202002470

Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Filed: June 22, 2020

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# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §83.6007(a)

# CAB NAME HERE

## Payday Loan
## $_____, One Payment
## Cost Disclosure

### Cost of this loan:

| | |
|---|---|
| **Borrowed amount** (cash advance) | $ _____ |
| **Interest** paid to lender (interest rate: __ %) | $ _____ |
| **Fees** paid to CAB name here | $ _____ |
| **Total of payments** (if I pay on time) | $ _____ |

| | |
|---|---|
| **APR** | _____% |
| **Term of loan** | _____ |

| If I pay off the loan in: | I will have to pay interest and fees of approximately: | I will have to pay a total of approximately: |
|---|---|---|
| 2 Weeks | $_____ | $_____ |
| 1 Month | $_____ | $_____ |
| 2 Months | $_____ | $_____ |
| 3 Months | $_____ | $_____ |

### Cost of other types of loans:


### Repayment:

| Of 10 people who get a new single-payment payday loan: | |
|---|---|
|  | 4 ¾ will pay the loan on time as scheduled (typically before 30 days) |
|  | 1 ¼ will renew 1 time before paying off the loan |
|  | 1 ½ will renew 2 to 4 times before paying off the loan |
|  | 2 ½ will renew 5 or more times or will never pay off the loan |

This data is from 2019 reports to the OCCC.

### Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan ***in full*** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

### OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

Figure: 7 TAC §83.6007(b)

# CAB NAME HERE

## Payday Loan
## $_____, ____ Payments
## Cost Disclosure

### Cost of this loan:

| | |
|---|---|
| **Borrowed amount** (cash advance) | $ _____ |
| | |
| **Fees** paid to CAB name here | $ _____ |
| | |
| **Total of payments** (if I pay on time) | $ _____ |

| | |
|---|---|
| **APR** | _____% |
| **Term of loan** | |

| If I pay off the loan in: | I will have to pay interest and fees of approximately: | I will have to pay a total of approximately: |
|---|---|---|
| | $_____ | $_____ |
| 1 Month | $_____ | $_____ |
| | $_____ | $_____ |
| 3 Months | $_____ | $_____ |
| | $_____ | $_____ |

### Cost of other types of loans:


### Repayment:

| Of 10 people who get a new multi-payment payday loan: | |
|---|---|
|  | 5 will pay the loan on time as scheduled (typically 5 months) |
|  | 1 will renew 1 to 4 times before paying off the loan |
|  | 4 will renew 5 or more times or will never pay off the loan. |

This data is from 2019 reports to the OCCC.

### Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan ***in full*** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

### OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

Figure: 7 TAC §83.6007(c)

# CAB NAME HERE

## Auto Title Loan
## $_____, One Payment
## Cost Disclosure

**You can lose your car.**
If you miss a payment or make a late payment, your car can be repossessed.

### Cost of this loan:

| | |
|---|---|
| **Borrowed amount** (cash advance) | $ _____ |
| **Interest** paid to lender (interest rate: __ %) | $ _____ |
| **Fees** paid to CAB name here (includes a one-time $__ title fee) | $ _____ |
| **Total of payments** (if I pay on time) | $ _____ |

| | |
|---|---|
| **APR** | _____% |
| **Term of loan** | _____ |

| If I pay off the loan in: | I will have to pay interest and fees of approximately: | I will have to pay a total of approximately: |
|---|---|---|
| 2 Weeks | $_____ | $_____ |
| 1 Month | $_____ | $_____ |
| 2 Months | $_____ | $_____ |
| 3 Months | $_____ | $_____ |

### Cost of other types of loans:


### Repayment:

| Of 10 people who get a new single-payment auto title loan: | |
|---|---|
|  | 2 will pay the loan on time as scheduled (typically 30 days) |
|  | ½ will renew 1 time before paying off the loan |
|  | 1½ will renew 2 to 4 times before paying off the loan |
|  | 6 will renew 5 or more times or will never pay off the loan |

This data is from 2019 reports to the OCCC.

### Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan ***in full*** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

### OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

Figure: 7 TAC §83.6007(d)

# CAB NAME HERE

## Auto Title Loan
## $_____, ___ Payments
## Cost Disclosure

**You can lose your car.**
If you miss a payment or make a late payment, your car can be repossessed.

### Cost of this loan:

| | |
|---|---|
| **Borrowed amount** (cash advance) | $ _____ |
| **Interest** paid to lender (interest rate: __ %) | $ _____ |
| **Fees** paid to CAB name here (includes a one-time $__ title fee) | $ _____ |
| **Payment amounts** (payments due every _____) | Payments #1-#_____ $ _____ (Final) Payment #___ $ _____ |
| **Total of payments** (if I pay on time) | $ _____ |

| | |
|---|---|
| **APR** | _____% |
| **Term of loan** | _____ |

| If I pay off the loan in: | I will have to pay interest and fees of approximately: | I will have to pay a total of approximately: |
|---|---|---|
| 2 Weeks | $_____ | $_____ |
| 1 Month | $_____ | $_____ |
| 2 Months | $_____ | $_____ |
| 3 Months | $_____ | $_____ |
| _____ | $_____ | $_____ |

### Cost of other types of loans:


### Repayment:

| Of 10 people who get a new multi-payment auto title loan: | |
|---|---|
|  | 4 ¾ will pay the loan on time as scheduled (typically 5 - 6 months) |
|  | ½ will renew 1 time before paying off the loan |
|  | 1 ¼ will renew 2 to 4 times before paying off the loan |
|  | 3 ½ will renew 5 or more times or will never pay off the loan |

This data is from 2019 reports to the OCCC.

### Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan ***in full*** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

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- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

**Figure: 7 TAC §89.701(c)**

| | | |
|---|---|---|
| STATE OF TEXAS | § | Return [~~After recording, return~~] to: |
| COUNTY OF | § | *(Insert TRANSFEREE'S NAME)* |
| | § | *(Insert TRANSFEREE'S* |
| _____ | § | *STREET ADDRESS)* |

## SWORN DOCUMENT AUTHORIZING TRANSFER OF TAX LIEN

Before me, the undersigned notary, on this day personally appeared *(Insert NAME(S) OF OWNER(S) OR AUTHORIZED REPRESENTATIVE(S))*, known to me to be the person(s) whose name(s) is/are subscribed below, and being duly sworn, upon oath deposed and stated as follows:

"My name is *(Insert NAME(S) OF OWNER(S) OR AUTHORIZED REPRESENTATIVE(S))*. I am over 18 years of age and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. I or the entity I represent owns the real property described as follows:

Account No. or Property ID No.: _____

Legal Description: _____

Street Address, if applicable: _____

Amount Paid for Transfer (including taxes, penalties,

interest, and collection costs): $_____

Tax Years: _____

Transferee's Name: _____

OCCC Property Tax License Lender No.: _____

*OR* Exemption Information: _____

Transferee's Street Address: _____

_____

"Pursuant to Texas Tax Code §32.06, I hereby authorize the above-named transferee or transferee's agent (the "Transferee"), to pay all taxes, penalties, interest, and collection costs imposed by any and all local taxing units or their agents on the real property, described above, for the tax years listed above. I further authorize and direct the tax assessor-collector(s) for said taxing units to issue a tax receipt with the collector's seal of office or notarized signature to the Transferee and to certify that the taxes and any penalties and interest on the subject property and collection costs have been paid by the transferee on behalf of the owner, and the tax lien on the owner's property has been transferred to the Transferee.

"I have been given notice that if this property is my homestead and I am disabled, I may be eligible for a tax deferral under Texas Tax Code §33.06."

Property Owner
*OR* Authorized Representative: _____
Signature Date Signed

_____
Printed Name Representative Capacity (if applicable)

*(Insert NOTARY'S SEAL)*

SUBSCRIBED AND SWORN TO BEFORE ME on this, the _____day of_____, 20_____.

_____
Notary Public, State of Texas

Figure: 7 TAC § 155.2(c)(6)

# PAYOFF STATEMENT FORM

Name of Mortgage Servicer _____ REQUEST DATE: ___/___/_____
Name of Representative _____
Street or E-mail Address _____ SENT BY: ☐ Mail ☐ E-mail
City, State, Zip Code _____ ☐ Facsimile

## LOAN INFORMATION

MORTGAGOR: _____ NEXT PAYMENT DUE DATE: ___/___/____

COLLATERAL: _____ LOAN TYPE: _____

LOAN NUMBER: _____ ORIGINAL LOAN AMOUNT: _____

## AMOUNT DUE

THIS STATEMENT REFLECTS THE TOTAL AMOUNT DUE UNDER THE TERMS OF THE NOTE/SECURITY INSTRUMENT THROUGH THE CLOSING DATE WHICH IS ___/___/_____. If this obligation is not paid in full by this date, then you should obtain from us an updated payoff amount before closing.

Total Principal, Interest, and other amounts due under the Note/Security Instrument:

| | |
|---|---|
| Unpaid Principal Balance: | $ _____ |
| Interest through ___/___/_____ | $ _____ |
| Less Reductions in amount due | $ _____ |
| _____ | $ _____ |
| _____ | $ _____ |
| _____ | $ _____ |
| _____ | $ _____ |
| **TOTAL AMOUNT DUE:** | $ _____ |

## WHERE TO SUBMIT PAYOFF FUNDS

**WIRE TRANSFER**

Beneficiary Name: _____ _____
Beneficiary/Receiving Bank: _____
Beneficiary Bank ABA: _____
Beneficiary Bank Account: _____
Special Information to Beneficiary: _____
_____ _____
_____ _____

**OVERNIGHT MAIL**

Attention: _____
Company: _____
Address: _____
_____
_____
_____

## LEGAL NOTICES

**TEXAS FINANCE CODE § 343.106 REQUIRES PAYOFF STATEMENT CONTAIN CLOSING DATE AND DATE THROUGH WHICH PAYOFF AMOUNT IS VALID. THESE REQUIREMENTS CANNOT BE DELETED FROM PAYOFF STATEMENT.**

**TEXAS FINANCE CODE § 343.106 REQUIRES THE IMPLEMENTING RULE TO ALLOW MORTGAGE SERVICERS AT LEAST SEVEN (7) BUSINESS DAYS FROM THE DATE OF RECEIPT OF PAYOFF REQUEST TO RESPOND TO A REQUEST MADE UNDER THE STATUTE.**

**ANY AMOUNT HELD IN ESCROW AT CLOSING WILL BE SETTLED IN ACCORDANCE WITH APPLICABLE FEDERAL LAW.**

| OPTIONAL SECTIONS |
| --- |
| ORIGINAL LOAN AMOUNT: |
| This is an Adjustable Rate Mortgage. Under the terms of this loan the next Change Date for the interest rate charged is ___/___/_____. We will only issue a payoff good through the next Change Date. If the closing date is past the next Change Date an updated Payoff Statement from us will be required. |
| If loan has quotable per diem interest, then "Funds received after ___/___/_____ will be subject to an additional $_____ of interest per day." FUNDS MUST BE RECEIVED BY _____ FOR SAME-DAY PROCESSING. PAYOFFS ARE NOT POSTED ON WEEKENDS OR HOLIDAYS. INTEREST WILL BE ADDED TO THE ACCOUNT FOR THESE DAYS. |
| NOTE: This Note/Security Instrument is due for payment on ___/___/_____. If payment is not received within _____ days of the current payment due date, a late charge of $_____ will be assessed. Please add that amount to the payoff total. |
| Escrow Disbursement Amounts & Dates:<br>Description(s): Amount(s) Held: Next Disbursement Date(s):<br>_____ $_____ _____<br>_____ $_____ _____<br>_____ $_____ _____ |
| Release of Lien Processing: |

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Comptroller of Public Accounts

### Certification of the Average Closing Price of Gas and Oil - May 2020

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period May 2020 is $24.27 per barrel for the three-month period beginning on February 1, 2020, and ending April 30, 2020. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of May 2020, from a qualified low-producing oil lease, is eligible for a 50% credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period May 2020 is $0.91 per mcf for the three-month period beginning on February 1, 2020, and ending April 30, 2020. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of May 2020, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of May 2020 is $28.53 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from oil produced during the month of May 2020, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of May 2020 is $1.82 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of May 2020, from a qualified low-producing gas well.

This agency hereby certifies that legal counsel has reviewed this notice and found it to be within the agency's authority to publish.

Issued in Austin, Texas, on June 24, 2020.

TRD-202002524
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: June 24, 2020

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## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/29/20 - 07/05/20 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 06/29/20 - 07/05/20 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/20 - 07/31/20 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/20 - 07/31/20 is 5.00% for commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202002499
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 23, 2020

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## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 3, 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 commission's jurisdiction or the commissions orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the 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 **August 3, 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, pro-

vides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Arkema Incorporated; DOCKET NUMBER: 2020-0007-AIR-E; IDENTIFIER: RN100216373; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: organic chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 111.111(a)(1)(B), 116.115(c), and 122.143(4), New Source Review Permit Numbers 865A, PSDTX1016M2, and GHGPSDTX168, Special Conditions Number 1, Federal Operating Permit Number O1636, General Terms and Conditions and Special Terms and Conditions Number 14, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $4,350; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Aus-Tex Parts & Services, Ltd.; DOCKET NUMBER: 2020-0284-MWD-E; IDENTIFIER: RN102314218; LOCATION: Kyle, Hays County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §217.330(b) and (c), by failing to test the reduced-pressure backflow assembly annually; 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014060001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and TPDES Permit Number WQ0014060001, Interim Effluent Limitations and Monitoring Requirements Number 4 and Permit Conditions Number 2.d, by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment; 30 TAC §305.125(1) and (5), and §317.4(g)(4)(A), and TPDES Permit Number WQ0014060001, Operational Requirements Number 1, by failing to maintain a minimum dissolved oxygen concentration of 2.0 milligrams per liter throughout the aeration basin; 30 TAC §305.125(1) and (5) and §319.5(b), and TPDES Permit Number WQ0014060001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to collect and analyze effluent samples at the intervals specified in the permit; and 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0014060001, Monitoring and Reporting Requirements Number 7.c, by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of noncompliance; PENALTY: $16,764; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: Bastrop Independent School District; DOCKET NUMBER: 2020-0357-PST-E; IDENTIFIER: RN103001574; LOCATION: Bastrop, Bastrop County; TYPE OF FACILITY: unmanned fleet tank facility; RULES VIOLATED: 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with an underground storage tank (UST) system at least once every 60 days to ensure that their sides, bottoms, and any penetration points are maintained liquid-tight; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to ensure that all installed spill and overfill prevention devices are maintained in good operating condition; 30 TAC §334.602(a)(4), by failing to post weather-resistant signage with basic safety procedures and emergency contact information on the dispensers for an unmanned UST facility; and 30 TAC §334.603(b)(1), by failing to maintain operator training certification records on-site; PENALTY: $6,002; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(4) COMPANY: Canyon Regional Water Authority; DOCKET NUMBER: 2020-0377-PWS-E; IDENTIFIER: RN101439339; LOCATION: New Braunfels, Guadalupe County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.114(b)(5)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for bromate based on a running annual average; PENALTY: $1,725; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: City of Daingerfield; DOCKET NUMBER: 2020-0361-MWD-E; IDENTIFIER: RN102177953; LOCATION: Daingerfield, Morris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010499001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: City of Ferris; DOCKET NUMBER: 2019-1272-WQ-E; IDENTIFIER: RN101404358; LOCATION: Ferris, Ellis County; TYPE OF FACILITY: lift station; RULES VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; and 30 TAC §327.32(b), by failing to report an unauthorized discharge to the TCEQ within 24 hours of the noncompliance, and failing to provide a written submission to the TCEQ within five days of the noncompliance; PENALTY: $9,937; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Meadow; DOCKET NUMBER: 2020-0373-PWS-E; IDENTIFIER: RN101453884; LOCATION: Meadow, Terry County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(N), by failing to provide a flow-measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.42(e)(3)(G), by failing to obtain an exception, in accordance with 30 TAC §290.39(l), prior to using blended water containing free chlorine and water containing chloramines; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(s)(2)(D), by failing to properly verify the accuracy of the analyzers used to determine the effectiveness of chloramination in accordance with manufacturer's recommendations every 90 days; 30 TAC §290.46(u), by failing to plug abandoned public water supply wells in accordance with 16 TAC Chapter 76 or submit the test results proving that the wells are in a non-deteriorated condition; and 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national code; PENALTY: $2,298; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(8) COMPANY: City of Penelope; DOCKET NUMBER: 2019-1025-MWD-E; IDENTIFIER: RN101523066; LOCATION: Penelope, Hill 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

WQ0013621001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $6,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $6,750; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: City of Pflugerville; DOCKET NUMBER: 2019-1616-PWS-E; IDENTIFIER: RN101430064; LOCATION: Pflugerville, Travis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.111(c)(3)(B)(i) and Texas Health and Safety Code (THSC), §341.031(a), by failing to achieve the removal/inactivation requirements for Cryptosporidium at the surface water treatment plant (TP20798) for the months of October 2018 and November 2018, January 2019 - March 2019, and May 2019 - August 2019; 30 TAC §290.111(c)(3)(B)(i) and THSC, §341.031(a), by failing to achieve the removal/inactivation requirements for Cryptosporidium at the surface water treatment plant (TP20798) for the month of September 2019; 30 TAC §290.111(d)(2)(A), by failing to measure the disinfection residual, pH, temperature, and flow rate of the water in each disinfection zone at least once each day during a time when peak hourly flow rates are occurring for the months of July 2018 - August 2019; 30 TAC §290.111(d)(2)(A), by failing to measure the disinfection residual, pH, temperature, and flow rate of the water in each disinfection zone at least once each day during a time when peak hourly flow rates are occurring for the month of September 2019; 30 TAC §290.111(f)(2)(B), by failing to measure and record the turbidity level of the combined filter effluent at least every four hours for the months of July 2018 - August 2019; 30 TAC §290.111(f)(2)(B), by failing to measure and record the turbidity level of the combined filter effluent at least every four hours for the month of September 2019; 30 TAC §290.111(f)(2)(D)(iii), by failing to conduct direct integrity testing on each membrane unit at least once every seven days using a procedure approved by the executive director for the months of July 2018 and September 2018 - August 2019; and 30 TAC §290.111(f)(2)(D)(iii), by failing to conduct direct integrity testing on each membrane unit at least once every seven days using a procedure approved by the executive director for the month of September 2019; PENALTY: $27,300; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $21,840; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(10) COMPANY: Division Food Mart, LLC; DOCKET NUMBER: 2019-1737-PST-E; IDENTIFIER: RN101432458; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c) and §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to conduct inventory control procedures for the underground storage tanks (USTs), at a retail service station, and failing to monitor the USTs for releases at a frequency of at least once every 30 days; and 30 TAC §334.54(b)(1), by failing to keep all vent lines open and functioning; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Tyler Smith, (512) 239-3421; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Duncanville Independent School District; DOCKET NUMBER: 2020-0041-PST-E; IDENTIFIER: RN101554848; LOCATION: Duncanville, Dallas County; TYPE OF FACILITY: fleet refueling facility; 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 regulated USTs; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report suspected releases to the TCEQ within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate suspected releases of a regulated substance within 30 days of discovery; PENALTY: $28,750; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Kalika Malika Inc dba One Stop Market; DOCKET NUMBER: 2020-0164-PST-E; IDENTIFIER: RN101550762; LOCATION: Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure the corrosion protection system was operated and maintained in a manner that will ensure corrosion protection is continuously provided to all underground metal components of the underground storage tank (UST) system; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $5,958; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Live Oak County; DOCKET NUMBER: 2020-0081-MSW-E; IDENTIFIER: RN101479186; LOCATION: Three Rivers, Live Oak County; TYPE OF FACILITY: municipal solid waste transfer station; RULES VIOLATED: 30 TAC §30.213(a), by failing to employ at least one individual possessing a Class A or Class B municipal solid waste (MSW) operator's license to supervise or manage the operations of a MSW facility; 30 TAC §330.219(a) and (b)(2) and MSW Registration Number 40002, Site Operating Plan, Item 2D8.1(a)(2) - Personnel, by failing to record and retain inspection records in the facility's operating record, and failing to maintain a copy of the operating record at the facility or at an alternative location approved by the executive director; and 30 TAC §330.221(c) and MSW Registration Number 40002, Site Operating Plan, Item 2D8.7 - Fire Control, Paragraph (b) - Training, by failing to train all employees in an established fire protection plan; PENALTY: $4,813; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(14) COMPANY: Loy Morris Sonmor Jr.; DOCKET NUMBER: 2020-0269-WOC-E; IDENTIFIER: RN103285649; LOCATION: Center, Shelby County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §30.5(a) and §30.381(b), TWC, §37.003, and Texas Health and Safety Code, §341.034(b), by failing to have a current, valid water system operator's license prior to performing process control duties in production or distribution of public drinking water; PENALTY: $1,510; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: M & H Crates, Incorporated; DOCKET NUMBER: 2020-0369-MLM-E; IDENTIFIER: RN101947919; LOCATION: Jacksonville, Cherokee County; TYPE OF FACILITY: pallet mill and sawmill; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the State of Texas; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; and 30 TAC §330.15(c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: $26,188; ENFORCEMENT COORDINATOR: Danielle

Porras, (713) 767-3682; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: M & M Water Supply Corporation; DOCKET NUMBER: 2020-0256-PWS-E; IDENTIFIER: RN101185700; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(3) and (f), by failing to submit a Chlorine Dioxide Monthly Operating Report with the required data to the executive director (ED) by the tenth day of the month following the end of the reporting period of September and October of 2019; 30 TAC §290.114(a)(2)(B) and (4), by failing to collect and report the results of chlorite sampling to the ED for the September and October 2019, monitoring periods; 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the ED within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for total trihalomethanes (TTHM) for Disinfection Byproducts (DBP2) at Site 2 during the third quarter of 2019; and 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for TTHM based on the locational running annual average, and failing to provide public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the MCL for TTHM for Stage 2 DBP2 at Site 1 for the fourth quarter of 2019; PENALTY: $5,981; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(17) COMPANY: Midcoast G & P (East Texas) L.P.; DOCKET NUMBER: 2020-0366-AIR-E; IDENTIFIER: RN107224339; LOCATION: Goodrich, Polk County; TYPE OF FACILITY: natural gas plant; RULES VIOLATED: 30 TAC §106.6(b), Permit by Rule Registration Number 155748, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $1,125; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: Mr. Carlos Antonio Flores and Ms. Tomasa C. Flores; DOCKET NUMBER: 2020-0039-MLM-E; IDENTIFIER: RN110571643; LOCATION: Porter, Montgomery County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the State of Texas; and 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized collection, storage, processing, or disposal of municipal solid waste; PENALTY: $2,688; ENFORCEMENT COORDINATOR: Ken Moller, (512) 534-7550; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Rohm and Haas Chemicals LLC; DOCKET NUMBER: 2019-1760-AIR-E; IDENTIFIER: RN102776002; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §115.162(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the control requirements for each batch process operation; and 30 TAC §116.115(c), New Source Review Permit Number 18966, Special Conditions Number 3, and THSC, §382.085(b), by failing to comply with the minimum removal efficiency in disposing of the waste gas; PENALTY: $31,942; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $12,777; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Shandha Inc dba 3 Star Mart; DOCKET NUMBER: 2020-0238-PST-E; IDENTIFIER: RN101991644; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure that the corrosion protection system is operated and maintained in a manner that will provide continuous corrosion protection to all underground metal components of the underground storage tanks (USTs) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; and 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to ensure that all installed spill containment devices are maintained in good operating condition; PENALTY: $7,875; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2019-1309-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(b)(1)(H) and §122.143(4), Federal Operating Permit (FOP) Number O1668, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 3179, Special Conditions Number 6, FOP Number O1668, GTC and STC Number 22, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $50,438; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $25,219; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Solvay Specialty Polymers USA, L.L.C. (Facility 2); DOCKET NUMBER: 2019-1746-WDW-E; IDENTIFIERS: RN107829640 and RN110737921; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: chemical manufacturing plants; RULES VIOLATED: 30 TAC §305.125(1) and §331.63(e), 40 Code of Federal Regulations (CFR) §146.67(c), and underground injection control (UIC) Permit Number Waste Disposal Well (WDW)067 Permit Provision (PP) VII.E. Operating Parameters, by failing to maintain an annulus pressure of at least 100 pounds per square inch gauge (psig) greater than the injection tubing pressure to prevent leaks from the well into unauthorized zones; 30 TAC §305.125(1) and §331.63(e), 40 CFR §146.67(c), and UIC Permit Number WDW219 PP VII.E. Operating Parameters, by failing to maintain an annulus pressure of at least 100 psig greater than the injection tubing pressure to prevent leaks from the well into unauthorized zones; 30 TAC §305.125(1) and §331.64(d), 40 CFR §146.67(f), and UIC Permit Number WDW067 PP VII.E. Operating Parameters and PP VIII.A. Monitoring and Testing Requirements, by failing to properly maintain and use continuous recording devices to record the annulus differential pressure at WDW067; 30 TAC §305.125(1) and §331.64(d), 40 CFR §146.67(f), and UIC Permit Number WDW219 PP VII.E. Operating Parameters and PP VIII.A. Monitoring and Testing Requirements, by failing to properly maintain and use continuous recording devices to record the annulus differential pressure at WDW219; 30 TAC §331.65(c)(1), 40 CFR §146.69(a)(2), and UIC Permit Number WDW067 PP IX. Record Keeping Requirements, by failing to submit to the executive director (ED), within 20 days of the last day of the months of March, June, September, and December, quarterly reports of injection operations on forms supplied by the ED and comply with the reporting requirements of 40 CFR §146.69(a); and 30 TAC §331.65(c)(1), 40 CFR §146.69(a)(2), and UIC Permit Number WDW219 PP IX.

Record Keeping Requirements, by failing to submit to the ED, within 20 days of the last day of the months of March, June, September, and December, quarterly reports of injection operations on forms supplied by the ED and comply with the reporting requirements of 40 CFR §146.69(a); PENALTY: $31,430; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(23) COMPANY: SR Aus, LLC; DOCKET NUMBER: 2020-0368-MWD-E; IDENTIFIER: RN107988586; LOCATION: Del Valle, Travis 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 WQ0015418001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $11,000; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

TRD-202002491
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 23, 2020

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## AmeriTex Pipe & Products, LLC, Air Quality Standard Permit for Concrete Batch Plants: Proposed Registration No. 159336

Thank you for your recent interest regarding the above-referenced application. This letter is your notice that the public meeting previously scheduled for June 16, 2020, has been cancelled. **The public meeting will be rescheduled for a later date.** Notice of the rescheduled public meeting will be mailed to those persons on the mailing list for this application.

If you have any questions, please contact Mr. Brad Patterson, Section Manager, Office of the Chief Clerk, at (512) 239-1201.

The Texas Commission on Environmental Quality appreciates your interest in matters pending before the agency.

TRD-202002520
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 23, 2020

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## Notice of a Proposed Amendment of General Permit TXG670000 Authorizing the Discharge of Wastewater

The Texas Commission on Environmental Quality (TCEQ or commission) is proposing to amend (without renewal) Texas Pollutant Discharge Elimination System General Permit TXG670000. This general permit authorizes the discharge of hydrostatic test water from new vessels; existing vessels which contained raw water, potable water, or elemental gases; or existing vessels which contained petroleum substances or waste related to petroleum substances. The draft general permit applies to the entire state of Texas. General permits are authorized by Texas Water Code, §26.040.

**DRAFT GENERAL PERMIT.** The executive director has prepared a draft general permit amendment of the existing general permit. The permit amendments will allow discharges of hydrostatic test water from new and existing vessels into water in the state from crude oil and natural gas exploration, development, and production operations to be eligible for authorization under the general permit upon the TCEQ receiving approval from the U.S. Environmental Protection Agency (EPA) to regulate these activities under the Texas Pollutant Discharge Elimination System. Until such time, these entities would continue to be required to obtain authorization to discharge from both the EPA and RRC. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The executive director proposes to require certain dischargers, including discharges of hydrostatic test water from crude oil and natural gas exploration, development, and production operations, to submit a Notice of Intent to obtain authorization to discharge.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to General Land Office regulations and has determined that the action is consistent with applicable CMP goals and policies.

On the date that this notice is published, a copy of the draft general permit and fact sheet will be available for a minimum of 30 days for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ Austin office, at 12100 Park 35 Circle, Building F. These documents will also be available at the TCEQ's 16 regional offices and on the TCEQ website at *https://www.tceq.texas.gov/permitting/wastewater/general/index.html.* Alternately, you may request a copy of the draft general permit and fact sheet 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.

**PUBLIC COMMENT/PUBLIC MEETING.** You may submit public comments or request a public meeting about this draft general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the draft general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the draft general permit or if requested by a state legislator. A public meeting is not a contested case hearing.

**Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at *https://www14.tceq.texas.gov/epic/eComment/* within 30 days from the date this notice is published.**

**APPROVAL PROCESS.** After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled commission meeting when the commission will consider approval of the general permit. The commission will consider all public comment in making its decision and will either adopt the executive director's response or prepare its own response. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin office. A notice of the commissioners' action on the draft general permit and a copy of its response to comments will be mailed to each person who submitted a comment. Also, a notice of the commission's action on the draft general permit and the text of its response to comments will be published in the *Texas Register.*

**MAILING LISTS.** In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the TCEQ Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific county; or 3) both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously men-

tioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

**INFORMATION.** If you need more information about this general permit or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at: *https://www.tceq.texas.gov*

Further information may also be obtained by calling Chris Linendoll, TCEQ Water Quality Division, at (254) 761-3025.

*Si desea información en español, puede llamar (800) 687-4040.*

TRD-202002502
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 23, 2020

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## Notice of District Resolution

Notice issued June 19, 2020

TCEQ Internal Control No. D-05132020-027; Sunbelt Fresh Water Supply District of Harris County (the District), filed a resolution for conversion of the District to a Municipal Utility District (MUD) with the Texas Commission on Environmental Quality (TCEQ). The resolution was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; and the procedural rules of the TCEQ. The District contains approximately 2,224.161 acres of land within Harris County. A copy of the District's site map is available for public review upon request at either the District's office or at the TCEQ's office. According to the District's second resolution contained in the application, Sunbelt Fresh Water Supply District was created by the Harris County Commissioners Court by order dated November 14, 1995. The District operates under Chapters 49 and 53 of the Texas Water Code. The District's resolution further states that the District entered in the minutes of meeting of board of supervisors, on January 16, 2020, to adopt a first resolution pursuant to Texas Water Code §54.030(b) and the board determined that conversion into a MUD would serve the best interest of the District and would be a benefit to the land and property included in the District. The notice of the District's intent to conduct a hearing on conversion was published in the *Houston Chronicle* pursuant to the Texas Water Code §§54.030 and 54.032. The hearing for conversion was conducted on March 26, 2020 and entered in the minutes pursuant to the Texas Water Code §§54.030(b) and (d). After the hearing, having determined that conversion into a MUD would serve the best interest of the District and would be a benefit to the land and property included in the District, the second resolution for conversion was adopted.

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-202002514
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 23, 2020

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## Notice of Hearing Greenhouse Road Landfill, LP: SOAH Docket No. 582-20-3603; TCEQ Docket No. 2019-1534-MSW; Proposed Permit No. 1599B

APPLICATION.

Greenhouse Road Landfill, LP, P.O. Box 218363, Houston, Texas 77218-8363, a waste management company, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize the expansion of the Greenhouse Road Landfill. The facility is located at 3510 Greenhouse Road, Houston, Texas in Harris County, Texas. The TCEQ received this application on November 10, 2016. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: https://www.mapquest.com/us/texas/greenhouse-road-landfill-365543480. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit plan which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Harris County Public Library, Katherine Tyra Branch at Bear Creek, 16719 Clay Road, Houston, Texas 77084. The permit application may be viewed online at http://www.biggsandmathews.com/permits.php.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference on the date and time below. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

9:00 a.m. - August 10, 2020

To join the Zoom meeting via computer:

**www.zoom.us/join**

**Meeting ID:** 946 5322 1266

**Password:** 4s^4hS

or

To join the Zoom meeting via telephone:

(346) 248-7799

**Meeting ID:** 946 5322 1266

**Password:** 574810

or

To join the Zoom meeting via Smart Device:

Download the free app

**Meeting ID:** 946 5322 1266

**Password:** 4s^4hS

Additional details and methods for joining the Zoom meeting are available online at: https://www.tceq.texas.gov/assets/public/comm_exec/agendas/comm/backup/SOAH/Greenhouse Road Landfill LP/GreenhouseZoomInfo.pdf

**Visit the SOAH website for registration at:** http://www.soah.texas.gov/ or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on March 5, 2020. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 361, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 330; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. The mailing address for the TCEQ is P.O. Box 13087, Austin Texas 78711-3087.

Further information may also be obtained from Greenhouse Road Landfill, LP at the address stated above or by calling Greg Weiss at (281) 492-2558, ext. 21.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: June 23, 2020

TRD-202002515
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 23, 2020

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## Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 3, 2020.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 3, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: JLS CONSULTING LLC; DOCKET NUMBER: 2018-1079-PST-E; TCEQ ID NUMBER: RN101434025; LOCATION: 419 North Farm-to-Market Road 707 near Merkel, Taylor County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(e)(1), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $1,312; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225;

REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-202002493
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 23, 2020

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## Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 3, 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 commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 3, 2020.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: AHRS ENTERPRISES, INC.; DOCKET NUMBER: 2018-0844-PST-E; TCEQ ID NUMBER: RN102714995; LOCATION: 2706 West Gentry Parkway, Tyler, Smith County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; TWC, §26.3475(d) and 30 TAC §334.49(a)(7) and §334.50(c)(1) (30 TAC §334.50(c)(1) is now found at 30 TAC §334.54(b)(3)), by failing to provide corrosion protection for the temporarily out-of-service UST system; and TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(a)(7) and §334.54(c)(2) (30 TAC §334.54(c)(2) is now found at 30 TAC §334.54(c)), by failing to provide release detection for the temporarily out-of-service USTs; PENALTY: $7,442; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202002492
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 23, 2020

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## Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Ralston Acres Water Supply Corporation: SOAH Docket No. 582-20-3994; TCEQ Docket No. 2019-1028-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - July 23, 2020**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed March 27, 2020, concerning assessing administrative penalties against and requiring certain actions of RALSTON ACRES WATER SUPPLY CORPORATION, for violations in Harris County, Texas, of: Tex. Water Code §5.702 and 30 Texas Administrative Code §§290.42(m); 290.44(h)(1)(A) and (h)(1)(B); 290.45(h)(1); 290.46(f)(2), (f)(3)(A)(iv), (m), (n)(2), and (q)(1); and 291.76.

The hearing will allow RALSTON ACRES WATER SUPPLY CORPORATION, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford RALSTON ACRES WATER SUPPLY CORPORATION, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of RALSTON ACRES WATER SUPPLY CORPORATION to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.**

RALSTON ACRES WATER SUPPLY CORPORATION, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code ch. 5, Tex. Health & Safety Code ch. 341, and 30 Texas Administrative Code chs. 70, 290, and 291; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ian Groetsch, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concern-

ing your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 22, 2020

TRD-202002516
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 23, 2020

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## Notice of Public Meeting for Air Quality Permits: Air Quality Permit Numbers 4682B, PSDTX761M4, AND GHGPSDTX32M1

**APPLICATION.** Equistar Chemicals, LP, P.O. Box 10940, Corpus Christi, Texas 78460-0940, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to State Air Quality Permit 4682B, modification to Prevention of Significant Deterioration (PSD) Air Quality Permit PSDTX761M4, and issuance of Greenhouse Gas (GHG) PSD Air Quality Permit GHGPSDTX32M1 for emissions of GHGs, which would authorize modification to the Olefins Plant at the Equistar Chemicals Corpus Christi Complex located at 1501 McKinzie Road, Corpus Christi, Nueces County, Texas 78410. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. The existing facility will emit the following air contaminants in a significant amount: carbon monoxide. In addition, the facility will emit the following air contaminants: nitrogen oxides, organic compounds and sulfur dioxide.

A PSD increment has not been established for carbon monoxide; therefore, an increment analysis was not conducted.

The executive director has determined that the emissions of air contaminants from the existing facility which are subject to PSD review will not violate any state or federal air quality regulations and will not have any significant adverse impact on soils, vegetation, or visibility. All air contaminants have been evaluated, and "best available control technology" will be used for the control of these contaminants.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate.

**PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below.** The TCEQ will consider all public comments in developing a final decision on the application. 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 permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit 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 permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Thursday, July 16, 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 778-079-619. 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 who wish to only listen to the meeting may call, toll free, (562) 247-8321 and enter access code 230-817-026.

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 public 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 permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, draft permit, and the executive director's preliminary determination summary and executive director's air quality analysis, will be available for viewing and copying at the TCEQ central office, the TCEQ Corpus Christi regional office, at Owen R. Hopkins Public Library - Corpus Christi Public Library, 3202 McKinzie Road, Corpus Christi, Nueces County, Texas, and www.lyondellbasell.com/corpuschristicomplex. The facility's compliance file, if any exists, is available for public review at the TCEQ Corpus Christi Regional Office, NRC Building Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas. These documents are accessible through the Commission's Web site at www.tceq.texas.gov/goto/cid: the executive director's preliminary decision which includes the draft permit, the executive director's preliminary determination summary, air quality analysis, and, once available, the executive director's response to comments and the final

decision on this application. Access the Commissioners' Integrated Database (CID) using the above link and enter the permit number for this application. The public location mentioned above provides public access to the internet. 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=27.81&lng=-97.593611&zoom=13&type=r.

Further information may also be obtained from Equistar Chemicals LP at the address stated above or by calling Mr. H Scott Peters, Environmental Engineer at (361) 242-5028.

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.

Notice Issuance Date: June 17, 2020

TRD-202002517
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 23, 2020

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## Notice of Public Meeting for an Air Quality Permit: Permit Number 74785

The existing facility will emit the following contaminants: exempt solvents, hazardous air pollutants, inorganic compounds, organic compounds and particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations.

**PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below.** The TCEQ will consider all public comments in developing a final decision on the application. 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 permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit 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 permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Thursday, July 9, 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 982-324-547. 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 who wish to only listen to the meeting may call, toll free, (914) 614-3221 and enter access code 477-901-972.

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 public 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 permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en Español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Dallas/Fort Worth regional office, and at the Nicholson Memorial Library, Central Branch, 625 Austin Street, Garland, Dallas County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Dallas/Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas. Further information may also be obtained from IFS Industries, Inc. at the address stated above or by calling Mr. Jeff Coleman, EHS Manager at (972) 864-2222.

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.

Notice Issuance Date: June 19, 2020

TRD-202002519
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 23, 2020

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## Notice of Public Meeting for TPDES Permit for Municipal Wastewater: New Permit No. WQ0015766001

**APPLICATION.** Legacy Housing Corporation, 1600 Airport Freeway, Suite 101, Bedford, Texas 76022, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015766001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 288,000 gallons per day.

The property where the facility will be located is approximately 1,000 feet east of the intersection of Farm-to-Market Road 812 and Mesa Road, in Bastrop County, Texas 78617. **The treated effluent will be discharged to an unnamed tributary, thence to Cedar Creek, thence to Colorado River Above La Grange in Segment No. 1434 of the Colorado River Basin.** The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary and high aquatic life use for Cedar Creek. The designated uses for Segment No. 1434 are primary contact recreation, public water supply, and exceptional aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ implementation procedures (June 2010) for the

Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Cedar Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This 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. For the exact location, refer to the application.

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.582%2C30.0914&level=12

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.582%2C30.0914&level=12

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

**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 permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit 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 permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Monday, July 27, 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 649-243-587. 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 who wish to only listen to the meeting may call, toll free, (415) 930-5321 and enter access code 924-894-316.

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 permit application or the permitting 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 permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Bastrop County Tax Office, 211 Jackson Street, Bastrop, Texas.

Further information may also be obtained from Legacy Housing Corporation at the address stated above or by calling Mr. Rey Cedillos, P.E., Cedillos & Company, at (512) 306-1322.

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.

Issuance Date: June 17, 2020

TRD-202002521
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 23, 2020

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## Notice of Water Rights Application

Notice issued June 17, 2020

**APPLICATION NO. 13541;** OGC CNO JV, LLC (Applicant), 2800 South Texas Avenue, Suite 401, Bryan, Texas 77802-5361, seeks authorization to maintain an existing dam and reservoir on an unnamed tributary of Alum Creek, tributary of Lick Creek, tributary of the Navasota River for recreational purposes in Brazos County. Applicant also requests authorization to use the bed and banks of the unnamed tributary of Alum Creek to convey groundwater for storage in the reservoir and subsequent diversion for agricultural purposes. More information on the application and how to participate in the permitting process is given below. The application and fees were received on January 22, 2019. Additional information and fees were received on May 9, 2019, and September 5, 2019. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on October 7, 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, maintaining an accounting plan. 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-202002518
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 23, 2020

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## Texas Department of Insurance

### Company Licensing

Application for incorporation in the state of Texas for SMW Health Network, LLC, Plan Sponsor, a domestic Multiple Employer Welfare Arrangement (MEWA). The home office is in Austin, Texas.

Application for AmTrust Insurance Company of Kansas, Inc., a domestic fire and/or casualty company, to change its name to AmTrust Insurance Company. The home office is in Dallas, Texas.

Application for 21st Century Assurance Company, a foreign fire and/or casualty company, to change its name to Toggle Insurance Company. The home office is in Wilmington, Delaware.

Application for Financial American Life Insurance Company, a foreign life, accident and/or health company, to change its name to Arch Life Insurance Company of America. The home office is in Jacksonville, Florida.

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-202002523
James Person
General Counsel
Texas Department of Insurance
Filed: June 24, 2020

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## Texas Lottery Commission

### Scratch Ticket Game Number 2232 "TRIPLE 777"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2232 is "TRIPLE 777". The play style is "match 3 of x".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2232 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2232.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: $1.00, $2.00, $3.00, $10.00, $20.00, $30.00, $50.00, $100, $1,000 and 777 SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2232 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| $1.00 | ONE$ |
| $2.00 | TWO$ |
| $3.00 | THR$ |
| $10.00 | TEN$ |
| $20.00 | TWY$ |
| $30.00 | TRTY$ |
| $50.00 | FFTY$ |
| $100 | ONHN |
| $1,000 | ONTH |
| 777 SYMBOL | TRP |

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2232), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2232-0000001-001.

H. Pack - A Pack of the "TRIPLE 777" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be on the top page; Tickets 006 to 010 on the next page etc.; and Tickets 146 to 150 will be on the last page. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "TRIPLE 777" Scratch Ticket Game No. 2232.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "TRIPLE 777" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose six (6) Play Symbols. A player scratches the play area to reveal 6 prize amounts. If the player reveals 3 matching prize amounts, the player wins that amount. If the player reveals 2 matching prize amounts and a "777" Play Symbol, the player wins TRIPLE that amount. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly six (6) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly six (6) Play Symbols under the Latex Overprint on the front

portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the six (6) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the six (6) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to one (1) time.

D. A Prize Symbol will not appear more than three (3) times on any Ticket.

E. A Ticket will not contain two (2) sets of three (3) matching Prize Symbols.

F. Winning Tickets will contain three (3) matching Prize Symbols or two (2) matching Prize Symbols and a "777" (TRP) Play Symbol.

G. On winning Tickets, all non-winning Prize Symbols will be different from the winning Prize Symbols.

H. Non-Winning Tickets will never have more than two (2) matching Prize Symbols.

I. The "777" (TRP) Play Symbol will never appear on a Non-Winning Ticket.

J. The "777" (TRP) Play Symbol will never appear more than once on a Ticket.

K. The "777" (TRP) Play Symbol will never appear on a Ticket that wins with three (3) matching Prize Symbols.

L. The "777" (TRP) Play Symbol will never appear on a Ticket that has more than one (1) pair of matching Prize Symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE 777" Scratch Ticket Game prize of $1.00, $2.00, $3.00, $6.00, $10.00, $20.00, $30.00, $50.00, $60.00, $90.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $60.00, $90.00 or $100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TRIPLE 777" Scratch Ticket Game prize of $1,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TRIPLE 777" Scratch Ticket Game prize, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "TRIPLE 777" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "TRIPLE 777" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2232. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2232 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|---|---|---|
| $1.00 | 950,000 | 9.47 |
| $2.00 | 340,000 | 26.47 |
| $3.00 | 410,000 | 21.95 |
| $6.00 | 60,000 | 150.00 |
| $10.00 | 50,000 | 180.00 |
| $20.00 | 30,000 | 300.00 |
| $30.00 | 8,075 | 1,114.55 |
| $50.00 | 3,500 | 2,571.43 |
| $60.00 | 3,225 | 2,790.70 |
| $90.00 | 2,550 | 3,529.41 |
| $100 | 2,250 | 4,000.00 |
| $1,000 | 15 | 600,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.84. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2232 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2232, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202002495
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 23, 2020

♦ ♦ ♦

Scratch Ticket Game Number 2250 "BINGO TIMES 20"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2250 is "BINGO TIMES 20". The play style is "bingo".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2250 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2250.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: CHERRY SYMBOL, DIAMOND SYMBOL, HORSESHOE SYMBOL, BOAT SYMBOL, ANCHOR SYMBOL, WATERMELON SYMBOL, BAG OF MONEY SYMBOL, GOLD BAR SYMBOL, HEART SYMBOL, STAR SYMBOL, B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, FREE SYMBOL and X20 SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2250 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| CHERRY SYMBOL | CHERRY |
| DIAMOND SYMBOL | DIAMND |
| HORSESHOE SYMBOL | HRSHOE |
| BOAT SYMBOL | BOAT |
| ANCHOR SYMBOL | ANCHOR |
| WATERMELON SYMBOL | WTRMLN |
| BAG OF MONEY SYMBOL | BAG |
| GOLD BAR SYMBOL | BAR |
| HEART SYMBOL | HEART |
| STAR SYMBOL | STAR |
| B01 | |
| B02 | |
| B03 | |
| B04 | |
| B05 | |
| B06 | |
| B07 | |
| B08 | |
| B09 | |
| B10 | |
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| 75 | |
| FREE SYMBOL | |
| X20 SYMBOL | |

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2250), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2250-0000001-001.

H. Pack - A Pack of the "BINGO TIMES 20" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "BINGO TIMES 20" Scratch Ticket Game No. 2250.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "BINGO TIMES 20" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose the Play Symbols as indicated per the game instructions from the total one hundred eighty-one (181) Play Symbols. BINGO TIMES 20 PLAY INSTRUCTIONS: The player scratches the "CALLER'S CARD" area and the "5 BONUS NUMBERS" area to reveal a total of twenty-nine (29) Bingo Numbers. The player scratches only those Bingo Numbers on the six (6) "BINGO CARDS" that match the "CALLER'S CARD" Bingo Numbers and the "5 BONUS NUMBERS" Bingo Numbers. The player also scratches the "X20" spaces and the "FREE" spaces on the six (6) "BINGO CARDS". If a player matches all Bingo Numbers in a complete vertical, horizontal or diagonal line (five (5) Bingo Numbers, four (4) Bingo Numbers + "FREE" space, four (4) Bingo Numbers + "X20" space, or three (3) Bingo Numbers + "X20" space + "FREE" space), the player wins the prize in the corresponding prize legend for that "BINGO CARD". If the player matches all Bingo Numbers in all four (4) corners, the player wins the prize in the corresponding prize legend for that "BINGO CARD". If the player matches all Bingo Numbers to complete an "X" (eight (8) Bingo Numbers + "FREE" space), the player wins the prize in the corresponding prize legend for that "BINGO CARD". X20 PLAY INSTRUCTIONS: If a completed LINE pattern in any of the six (6) "BINGO CARDS" contains a "X20" symbol, the player wins 20 TIMES the LINE prize in the corresponding prize legend for that "BINGO CARD". Note: Only the highest prize per "BINGO CARD" will be paid. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly one hundred eighty-one (181) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption. Crossword and Bingo style games do not typically have Play Symbol captions;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly one hundred eighty-one (181) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the one hundred eighty-one (181) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the one hundred eighty-one (181) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to six (6) times.

D. BONUS GAME: Winning Tickets will contain two (2) matching Play Symbols in the "BONUS GAME" play area and will win as per the prize structure.

E. BINGO: The number range used for each letter (B, I, N, G, O) will be as follows: B (1-15), I (16-30), N (31-45), G (46-60) and O (61-75).

F. BINGO: On winning and Non-Winning Tickets, there will be no matching "CALLER'S CARD" or "BONUS NUMBERS" Play Symbols.

G. BINGO: Each of the "CALLER'S CARD" and "BONUS NUMBERS" Play Symbols will appear on at least one of the six (6) "BINGO CARDS".

H. BINGO: Each "BINGO CARD" will contain twenty-three (23) numbers, one (1) "FREE" Play Symbol fixed in the center of the CARD and one (1) "X20" Play Symbol.

I. BINGO: The "I20" CALLER'S CARD and 5 BONUS NUMBERS Play Symbols will never appear in the "CALLER'S CARD" or the "5 BONUS NUMBERS" play areas.

J. BINGO: The "20" BINGO CARDS Play Symbol will never appear on a "BINGO CARD".

K. BINGO: There will be no matching Play Symbols on each "BINGO CARD" play area.

L. BINGO: The "X20" Play Symbol will appear once per "BINGO CARD" but will never appear in a corner or inside the "X" pattern of a "BINGO CARD".

M. BINGO: The "X20" Play Symbol will win 20 TIMES the prize and will win as per the prize structure.

N. BINGO: Prize for "BINGO CARDS" 1-6 are as follows:

CARD 1: LINE=$5. 4 CORNERS=$20. X=$100.

CARD 2: LINE=$10. 4 CORNERS=$25. X=$200.

CARD 3: LINE=$15. 4 CORNERS=$50. X=$400.

CARD 4: LINE=$20. 4 CORNERS=$100. X=$500.

CARD 5: LINE=$25. 4 CORNERS=$300. X=$1,000.

CARD 6: LINE=$50. 4 CORNERS=$500. X=$100,000.

O. BINGO: Each "BINGO CARD" on a Ticket will be different. Two (2) cards match if they have the same number Play Symbols in the same spots.

P. BINGO: Non-winning "BINGO CARDS" will match a minimum of three (3) number Play Symbols.

Q. BINGO: There can only be one (1) winning pattern on each "BINGO CARD".

2.3 Procedure for Claiming Prizes.

A. To claim a "BINGO TIMES 20" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $30.00, $50.00, $100, $200, $300, $400 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $30.00, $50.00, $100, $200, $300, $400 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BINGO TIMES 20" Scratch Ticket Game prize of $1,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BINGO TIMES 20" Scratch Ticket Game prize, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S.

Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "BINGO TIMES 20" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "BINGO TIMES 20" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 22,320,000 Scratch Tickets in Scratch Ticket Game No. 2250. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2250 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|---|---|---|
| $5 | 2,232,000 | 10.00 |
| $10 | 1,041,600 | 21.43 |
| $15 | 520,800 | 42.86 |
| $20 | 446,400 | 50.00 |
| $25 | 446,400 | 50.00 |
| $30 | 148,800 | 150.00 |
| $50 | 193,440 | 115.38 |
| $100 | 74,462 | 299.75 |
| $200 | 4,650 | 4,800.00 |
| $300 | 2,604 | 8,571.43 |
| $400 | 2,232 | 10,000.00 |
| $500 | 1,860 | 12,000.00 |
| $1,000 | 496 | 45,000.00 |
| $100,000 | 8 | 2,790,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.36. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2250 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2250, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202002494
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 23, 2020

♦ ♦ ♦

Scratch Ticket Game Number 2283 "NEON 7s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2283 is "NEON 7s". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2283 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2283.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 7 SYMBOL, $2.00, $5.00, $6.00, $10.00, $15.00, $30.00, $90.00, $900 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2283 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| 01 | ONE |
| 02 | TWO |
| 03 | THR |
| 04 | FOR |
| 05 | FIV |
| 06 | SIX |
| 08 | EGT |
| 09 | NIN |
| 10 | TEN |
| 11 | ELV |
| 12 | TLV |
| 13 | TRN |
| 14 | FTN |
| 15 | FFN |
| 16 | SXN |
| 18 | ETN |
| 19 | NTN |
| 20 | TWY |
| 21 | TWON |
| 22 | TWTO |
| 23 | TWTH |
| 24 | TWFR |
| 25 | TWFV |
| 7 SYMBOL | TRP |
| $2.00 | TWO$ |
| $5.00 | FIV$ |
| $6.00 | SIX$ |
| $10.00 | TEN$ |
| $15.00 | FFN$ |
| $30.00 | TRTY$ |
| $90.00 | NITY$ |
| $900 | NIHN |
| $30,000 | 30TH |

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2283), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2283-0000001-001.

H. Pack - A Pack of the "NEON 7s" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "NEON 7s" Scratch Ticket Game No. 2283.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "NEON 7s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-two (22) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "7" Play Symbol, the player wins TRIPLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-two (22) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-two (22) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-two (22) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 02 and $2).

D. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to two (2) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "7" (TRP) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "NEON 7s" Scratch Ticket Game prize of $2.00, $5.00, $6.00, $10.00, $15.00, $30.00 or $90.00, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00 or $90.00 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "NEON 7s" Scratch Ticket Game prize of $900 or $30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "NEON 7s" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "NEON 7s" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "NEON 7s" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2283. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2283 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|---|---|---|
| $2.00 | 679,680 | 10.42 |
| $5.00 | 283,200 | 25.00 |
| $6.00 | 283,200 | 25.00 |
| $10.00 | 99,120 | 71.43 |
| $15.00 | 99,120 | 71.43 |
| $30.00 | 42,598 | 166.20 |
| $90.00 | 7,080 | 1,000.00 |
| $900 | 40 | 177,000.00 |
| $30,000 | 10 | 708,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.74. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2283 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2283, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202002496
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 23, 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

Tarpey Ranch LTD 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 1,000 cubic yards of sedimentary material within an unnamed tributary of the Nueces River in Edwards County. The purpose is to relocate flood gravel deposits. The location is approximately 1,000 feet upstream of the FM 335 crossing near the Vance Crossing of the East Fork Nueces River. 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 24, 2020, at TPWD headquarters, 4200 Smith School Road, Austin, Texas 78744. Due to COVID-19 transmission concerns with traveling 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-202002490
Shannon Love
Staff Attorney
Texas Parks and Wildlife Department
Filed: June 22, 2020

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## Public Utility Commission of Texas

### Notice of Application for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on June 23, 2020, for recovery of universal service funding under Public Utility Regulatory Act (PURA) §56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Community Telephone Company, Inc. to Recover Funds from the Texas Universal Service Fund Under PURA §56.025 and 16 TAC §26.406, Docket Number 50970.

The Application: Community Telephone Company, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Community Telephone Company, Inc. for calendar year 2018. Community Telephone Company, Inc. requests that the Commission allow recovery of funds from the TUSF in the amount of $271,166 for calendar year 2018 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50970.

TRD-202002525
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: June 24, 2020

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### Notice of Intent to File LRIC Study Under 16 TAC §26.214

Notice is given to the public of the filing on June 9, 2020, with the Public Utility Commission of Texas (the commission), a notice of intent to file a long run incremental cost (LRIC) study under 16 Texas Administrative Code (TAC) §26.214. The applicant will file the LRIC study on or before July 1, 2020.

Docket Title and Number: Application of Consolidated Communications of Texas for Approval of LRIC Study Under 16 TAC §26.214, Docket No. 50916.

Any person who demonstrates a justiciable interest may file written comments or recommendations concerning the LRIC study referencing Docket No. 50916. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the commission, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50916.

TRD-202002430
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2020

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## Supreme Court of Texas

### Order Approving Amendments to the Rules and Fees of the Judicial Branch Certification Commission

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," this order is not included in the print version of the Texas Register. The order is available in the on-line version of the July, 3, 2020, issue of the Texas Register.)*

TRD-202002460
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: June 19, 2020

♦ ♦ ♦

## Texas Workforce Commission

### Workforce Diploma Pilot (Senate Bill 1055) Policy Concept

On June 23, 2020, the Texas Workforce Commission's (TWC) three-member Commission approved the following pertaining to TWC rules under Texas Administrative Code Chapter 800 General Administration related to the Workforce Diploma Pilot Program under Chapter 317 of the Texas Labor Code.

TWC will accept public comment on this policy concept for a period of 30 days following the date of publication in the *Texas Register*.

Submit comments to TWCPolicyComments@twc.state.tx.us.

**Background**
Senate Bill (SB) 1055, 86th Texas Legislature, Regular Session (2019), added new Chapter 317 to the Texas Labor Code, requiring the Texas Workforce Commission (TWC), in consultation with the Texas Education Agency (TEA), to create and administer a Workforce Diploma Pilot Program (Program). As outlined in Chapter 317, the Program will allow eligible high school diploma–granting entities to be reimbursed for helping adult students obtain high school diplomas and industry-recognized credentials and develop technical career-readiness and employability skills.

SB 1055 stipulates that Chapter 317 expires on September 1, 2025, and requires TWC to develop rules that:

- outline the application process to become a qualified provider;
- define the minimum performance standards for qualified providers, which include a graduation rate of at least 50 percent and a program cost per graduate of $7,000 or less for the previous calendar year; and
- develop formulas to make the appropriate calculations to determine the graduation rate and program cost per graduate.

SB 1055 includes the stipulation that TWC "is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the Texas Workforce Commission may, but is not required to, implement a provision of this Act using other appropriations available for that purpose." TWC will develop rules to implement the Program upon allocating funding for its implementation.

Accordingly, staff proposes creating a new subchapter, Workforce Diploma Pilot Program, in TWC's Chapter 800 General Administration rules to develop rules as required in statute.

**Purpose and Definitions**
The new subchapter will outline the purpose of the Program and define terms to be used in the subchapter and in the Program's implementation. Staff proposes the following guidelines for TWC's three-member Commission (Commission) to use to identify the purpose of the Program. Underlined throughout the policy concept is proposed rule language for the Commission to consider when completing the rulemaking process.

The purpose of the Workforce Diploma Pilot Program is to reimburse qualified providers that provide assistance to adult students to obtain high school diplomas and industry-recognized credentials and to develop technical career readiness and employability skills to the extent that funding is available for this purpose.

Proposed direction for the Commission to consider to define terms for this subchapter is as follows:

- "Academic resiliency" is a student's ability to persist and to academically succeed despite adversity.

- An "academic skill intake assessment" is a formal and/or informal assessment used at intake to gather information on a student's current knowledge and skills in specific academic areas (for example, literacy and numeracy). That information then is used to determine an appropriate instructional level as well as accommodations and/or remediation that the student needs.

- A "Career Pathway" is "a combination of rigorous and high-quality education, training, and other services that—(A) aligns with the skill needs of industries in the economy of the State or regional economy involved; (B) prepares an individual to be successful in any of a full range of secondary or postsecondary education options . . .; (C) includes counseling to support an individual in achieving the individual's education and career goals; (D) includes, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster; (E) organizes education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable; (F) enables an individual to attain a secondary school diploma or its recognized equivalent, and at least 1 recognized postsecondary credential; and (G) helps an individual enter or advance within a specific occupation or occupational cluster" (29 USC §3102, Definitions).

- An "eligible participant" who may receive services under this Program must be an individual who is over the age of compulsory school attendance prescribed by Texas Education Code §25.085 and, in addition, as required by TWC:
  - is a Texas resident;
  - lacks a high school diploma;
  - is authorized to work in the United States; and
  - is able to work immediately upon graduation from the program.

- An "employability skills certification program" refers to a certification in general skills that are necessary for success in the labor market at all employment levels and in all industry sectors. Employability skills include problem-solving, collaboration, organization, and adaptability.

- The term "half credit" is based on the Carnegie Unit, which refers to the standard award of credit given for a course that lasts one semester. When determining credits, qualified providers should consider instructional time plus the amount of time the student would take to complete the coursework in a high school semester or academic year. In traditional education models, a student typically attends a class for 55–60 minutes a day for four or five days a week in addition to studying independently.

- A "high school diploma" is a credential awarded by an entity based on completion of all state graduation requirements as outlined in Texas Education Code (TEC) §28.025 and §39.023 and Texas Administrative Code (TAC) §§74 and 101.

- An "industry-recognized credential" is a state-approved credential verifying an individual's qualifications and competence and is issued by a third party with the relevant authority to issue such credentials (US Department of Labor, 2010). Industry-recognized credentials

offered by qualified providers must align with TWC's mission to target high-growth, high-demand, and emerging occupations that are crucial to the state and local workforce economies and must reflect the target occupations for the workforce areas in which services will be provided. Qualified providers may also reference the list of industry-based certifications for public school accountability published by the Texas Education Agency.

- "Learning Plan Development" is the process by which an individualized learning plan is developed after student intake; it is maintained through coaching and mentoring.

- The term "one credit" is based on the Carnegie Unit, which refers to the standard award credit given for a course that lasts a full academic year. When determining credits, qualified providers should consider instructional time plus the amount of time the student would take to complete the coursework in a high school semester or academic year. In traditional education models, a student typically attends a class for 55–60 minutes a day for four or five days a week in addition to studying independently.

- "Program" refers to the Workforce Diploma Pilot Program authorized under SB 1055.

- A "qualified provider" that may participate in the Program and receive reimbursement is a provider that:
  - is a public, nonprofit, or private entity that is:
    - authorized under the Texas Education Code (TEC) or other state law to grant a high school diploma, or
    - accredited by a regional accrediting body, as established by the Secretary of Education pursuant to 20 USCS §1099b, Recognition of Accrediting Agency or Association;
  - has at least two years of experience providing dropout reengagement services to adult students, including recruitment, learning plan development, and proactive coaching and mentoring, leading to the obtainment of a high school diploma;
  - is equipped to:
    - provide:
      - academic skill intake assessment and transcript evaluations;
      - remediation coursework in literacy and numeracy;
      - a research-validated academic resiliency assessment and intervention;
      - employability skills development aligned to employer needs;
      - career pathways coursework;
      - preparation for the attainment of industry-recognized credentials; and
      - career placement services; and
    - develop a learning plan that integrates academic requirements and career goals; and
  - offers a course catalog that includes all courses necessary to meet high school graduation requirements in Texas, as authorized under Texas Education Code Chapter 74. Curriculum Requirements, Subchapter B. Graduation Requirements.

- A "regional accrediting body" must meet the criteria established by the Secretary of Education pursuant to 20 USCS §1099b, Recognition of Accrediting Agency or Association, and appear on the Secretary of Education's list of federally recognized accrediting agencies

in the *Federal Register* as stated in 34 CFR §602.2. A copy of the list may be obtained from the US Department of Education.

**Issue 1: TWC Request for Qualifications and List of Qualified Providers**
New Chapter 800 subchapter, Workforce Diploma Reimbursement Program, will describe the Program's implementation provisions, as outlined in Chapter 317, to the extent that TWC funding is available. The Commission would approve funding for the Program each calendar year.

Chapter 317 requires TWC to publish a Request for Qualifications (RFQ) no later than October 15 of each year to identify Program providers. The new subchapter will outline the application process for qualified providers. Proposed direction for the Commission to consider to outline the application process is as follows:

- TWC will identify qualified providers to participate in the Program through a statewide RFQ process conducted in accordance with state requirements.
- Potential providers will apply directly to TWC using the RFQ process, and, once identified as a qualified provider, must meet all deadlines, requirements, and guidelines set forth in the RFQ.
- TWC will publish a list of qualified providers by November 15 of each year to participate in the Program the next calendar year.
- Each provider on the qualified provider list will be eligible to receive monthly reimbursements for this Program based on monthly invoices submitted to TWC as prescribed in the RFQ's terms.
- The list of qualified providers will be reviewed by TWC and updated each year. Qualified providers that do not meet the minimum performance standards outlined in rule will be placed on probation for the remainder of the calendar year. Failure to meet both minimum performance standards for two consecutive years will result in disqualification from the Program.
- TWC's determinations in the RFQ process will be based on the affirmation of the qualified provider to effectively perform all services and activities outlined in Chapter 317.

**Issue 2: Minimum Performance Standards and Formulas to Calculate Graduation Rate and Program Cost Per Graduate**
As required in statute, the new subchapter's rules will describe the minimum performance standards needed for qualified providers to remain on the list and provide formulas for calculating the graduation rate and Program cost per graduate.

**Minimum Performance Standards**
Proposed direction for the Commission to consider to define minimum performance standards is as follows:
The minimum performance standards for the calendar year must include:

- a graduation rate of at least 50 percent; and
- a program cost per graduate of $7,000 or less.

Proposed direction for the Commission to consider to outline Commission actions if a qualified provider fails to maintain minimum performance standards is as follows:

- The Commission shall review data from each participating provider annually to ensure that the services offered by the provider are meeting the minimum performance standards. If the Commission determines that a provider did not meet the minimum performance standards in the previous calendar year, the Commission shall place the provider on probationary status for the remainder of the current calendar year.
- The Commission shall remove any provider that does not meet the minimum performance standards for two consecutive calendar years from the provider list published under §317.005.

**Graduation Rate**
Proposed direction for the Commission to consider to develop a formula for determining graduation rate is as follows:

"Graduation rate" shall be defined as and determined by dividing the number of students who received a high school diploma from the qualified provider by the number of students for which the qualified provider sought and received reimbursements.

For example, as stated in the annual report and verified through the monthly invoices, a qualified provider reports providing services and receiving reimbursements for 100 students, with 54 of the reported students obtaining a high school diploma within the calendar year. The graduation rate is therefore 54 percent: 54 students/100 students = 54 percent.

**Program Cost Per Graduate**
Proposed direction for the Commission to consider to develop a formula for determining the program cost per graduate is as follows:
- The program cost per graduate may not exceed $7,000.
- The product of the number of students who received a high school diploma the previous calendar year multiplied by $7,000 may not exceed the total annual cost (reimbursements paid) to the qualified provider for the total number of services provided.

For example, in the annual report, the provider reports providing services to 100 students, 54 of which obtained a high school diploma. The total annual cost for providing services to the 100 students listed on the report may not exceed $378,000, or 54 multiplied by $7,000. Reimbursements will be tracked and verified through reconciliation of the monthly invoices submitted by the provider.

While SB 1055 outlines the various milestones for which qualified providers may receive a reimbursement, TWC will clarify in the new rule that a provider may not receive more than one reimbursement for the training provided in the student's pursuit of an industry-recognized credential. For example, SB 1055 allows for a reimbursement of $250 for training that does not exceed 50 hours and $500 for a training that is at least 50 hours. Staff proposes clarifying that a provider may not be reimbursed twice for one achievement of an industry-recognized credential.

In addition to addressing cost per graduate, the new subchapter will list the reimbursement amounts that a qualified provider may receive (to the extent that funding is available). Per SB 1055, those reimbursement rates will be as follows:
- $250 for completion of a half credit

- $250 for completion of an employability skills certification program equal to at least one credit or the equivalent
- $250 for the attainment of an industry-recognized credential requiring not more than 50 hours of training
- $500 for the attainment of an industry-recognized credential requiring at least 50 but not more than 100 hours of training
- $750 for the attainment of an industry-recognized credential requiring more than 100 hours of training
- $1,000 for the obtainment of a high school diploma

As described in the RFQ, the qualified provider must submit an invoice and supporting documentation for the milestones achieved by the provider's students during the previous month.

Invoices and supporting documentation must be submitted by 5:00 p.m. on the 10th day of the following month. If the 10th day falls on a weekend, the due date is the first Monday following the 10th day, or the first Tuesday if the first Monday falls on a federal holiday. TWC will provide an email address to which providers will send invoices, supporting documentation, and point-of-contact information.

Invoices will be processed in the order in which they are received, and they will be validated before reimbursement.

Before the start of the Program, eligible providers will be required to establish the number of students to be served to ensure payment of all invoices.

**Decision Point**

Staff seeks direction on creating a new subchapter in Chapter 800, Workforce Diploma Reimbursement Program, to:

- outline the application process to become a qualified provider;
- describe the minimum performance standards for qualified providers, which include a graduation rate of at least 50 percent and a program cost per graduate of $7,000 or less for the previous calendar year; and
- develop formulas to make the appropriate calculations to determine graduation rate and program cost per graduate.

TRD-202002500
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Filed: June 23, 2020

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## Workforce Solutions Brazos Valley Board

Public Notice Brenham Lease

**Request for Quotes for Available Commercial Space to Lease in Brenham, Texas**

The Workforce Solutions Brazos Valley Board (WSBVB) is soliciting quotes for lease of available commercial space in Brenham, Texas for their workforce center. The lease for space RFQ can be downloaded at *www.bvjobs.org* or by request to Barbara Clemmons via email at *Barbara.Clemmons@bvcog.org*.

The purpose of the RFQ is to solicit quotes for available commercial lease space to be used for the day to day operations for the workforce center in Brenham, Texas.

The primary consideration in selecting a vendor will be their ability to provide a space to lease as specified in the RFQ.

The deadline for proposals will be 4:00 p.m. CST on Tuesday, July 28, 2020.

Bidders will have the opportunity to ask questions during the bidder's conference call, which is scheduled for July 9, 2020, 11:00 a.m. CST. Attendance on the bidder's conference call is not mandatory. All an-

swers to questions from the bidder's conference call will be posted at *www.bvjobs.org* by close of business on July 15, 2020.

Deadline for Questions: The Bidder's Conference will be held on **Thursday, July 9, 2020 at 11:00 a.m. CST. The call-in number is (979) 595-2802. If Bidders cannot attend the bidder's conference call on July 9, 2020, they can submit their questions in writing concerning this RFQ to Barbara Clemmons at** *Barbara.Clemmons@bvcog.org* **no later than July 13, 2020, 5:00 p.m. CST. Answers to all questions received will be posted to** *www.bvjobs.org* **no later than Wednesday, July 15, 2020, 5:00 p.m. CST.**

A proud partner of the American Job Center network.

Equal opportunity employer/program.

Auxiliary aids and services are available upon request to individuals with disabilities.

Deaf, hard of hearing or speech-impaired customers may contact:

Relay Texas (800) 735-2989 (TTY) and 711 Voice.

TRD-202002458
Vonda Morrison
Program Manager
Workforce Solutions Brazos Valley Board
Filed: June 19, 2020

♦ ♦ ♦

Public Notice Hearne Lease

**PUBLIC NOTICE**

**Request for Quotes for Available Commercial Space to Lease in Hearne, Texas**

The Workforce Solutions Brazos Valley Board (WSBVB) is soliciting quotes for lease of available commercial space in Hearne, Texas for their workforce center. The lease for space RFQ can be downloaded at *www.bvjobs.org* or by request to Barbara Clemmons via email at *Barbara.Clemmons@bvcog.org.*

The purpose of the RFQ is to solicit quotes for available commercial lease space to be used for the day to day operations for the workforce center in Hearne, Texas.

The primary consideration in selecting a vendor will be their ability to provide a space to lease as specified in the RFQ.

The deadline for proposals will be 4:00 p.m. CST on Tuesday, July 28, 2020.

Bidders will have the opportunity to ask questions during the bidder's conference call, which is scheduled for July 9, 2020, 10:00 a.m. CST. Attendance on the bidder's conference call is not mandatory. All answers to questions from the bidder's conference call will be posted at *www.bvjobs.org* by close of business on July 15, 2020.

Deadline for Questions: The Bidder's Conference Call will be held on **Thursday, July 9, 2020 at 10:00 a.m. CST. The call in number is (979) 595-2802. If Bidders cannot attend the bidder's conference call on July 9, 2020, they can submit their questions in writing concerning this RFQ to Barbara Clemmons at *Barbara.Clemmons@bvcog.org* no later than July 13, 2020, 5:00 p.m. CST. Answers to all questions received will be posted to *www.bvjobs.org* no later than Wednesday, July 15, 2020, 5:00 p.m. CST.**

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Relay Texas (800) 735-2989 (TTY) and 711 Voice.

TRD-202002459
Vonda Morrison
Program Manager
Workforce Solutions Brazos Valley Board
Filed: June 19, 2020

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January - December 2021 Publication Schedule

Filing deadlines for publication in the *Texas Register* are 12 noon Monday for rules and 12 noon Wednesday for miscellaneous documents, rule review notices, and other documents. These deadlines are for publication. ***They are not related to posting requirements for open meeting notices.*** Because of printing and mailing schedules, documents received after the deadline for an issue cannot be published until the next issue. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

| Issue Date | Deadline for rules by 12 noon | Deadline for other documents by 12 noon |
|---|---|---|
| January 1, 2021 | *Friday, December 18, 2020** | *Friday, December 18, 2020** |
| January 8, 2021 | Monday, December 28, 2020 | Wednesday, December 30, 2020 |
| January 8, 2021 | *2020 Annual Index* | |
| January 15, 2021 | Monday, January 4, 2021 | Wednesday, January 6, 2021 |
| January 22, 2021 | Monday, January 11, 2021 | Wednesday, January 13, 2021 |
| January 29, 2021 | *Friday, January 15, 2021** | Wednesday, January 20, 2021 |
| February 5, 2021 | Monday, January 25, 2021 | Wednesday, January 27, 2021 |
| February 12, 2021 | Monday, February 1, 2021 | Wednesday, February 3, 2021 |
| February 19, 2021 | Monday, February 8, 2021 | Wednesday, February 10, 2021 |
| February 26, 2021 | *Friday, February 12, 2021** | Wednesday, February 17, 2021 |
| March 5, 2021 | Monday, February 22, 2021 | Wednesday, February 24, 2021 |
| March 12, 2021 | Monday, March 1, 2021 | Wednesday, March 3, 2021 |
| March 19, 2021 | Monday, March 8, 2021 | Wednesday, March 10, 2021 |
| March 26, 2021 | Monday, March 15, 2021 | Wednesday, March 17, 2021 |
| April 2, 2021 | Monday, March 22, 2021 | Wednesday, March 24, 2021 |
| April 2, 2021 | *2021 First Quarterly Index* | |
| April 9, 2021 | Monday, March 29, 2021 | Wednesday, March 31, 2021 |
| April 16, 2021 | Monday, April 5, 2021 | Wednesday, April 7, 2021 |
| April 23, 2021 | Monday, April 12, 2021 | Wednesday, April 14, 2021 |
| April 30, 2021 | Monday, April 19, 2021 | Wednesday, April 21, 2021 |
| May 7, 2021 | Monday, April 26, 2021 | Wednesday, April 28, 2021 |
| May 14, 2021 | Monday, May 3, 2021 | Wednesday, May 5, 2021 |
| May 21, 2021 | Monday, May 10, 2021 | Wednesday, May 12, 2021 |
| May 28, 2021 | Monday, May 17, 2021 | Wednesday, May 19, 2021 |
| June 4, 2021 | Monday, May 24, 2021 | Wednesday, May 26, 2021 |
| June 11, 2021 | *Friday, May 28, 2021** | Wednesday, June 2, 2021 |
| June 18, 2021 | Monday, June 7, 2021 | Wednesday, June 9, 2021 |
| June 25, 2021 | Monday, June 14, 2021 | Wednesday, June 16, 2021 |
| July 2, 2021 | Monday, June 21, 2021 | Wednesday, June 23, 2021 |

| | | |
|---|---|---|
| July 2, 2021 | *2021 Second Quarterly Index* | |
| July 9, 2021 | Monday, June 28, 2021 | Wednesday, June 30, 2021 |
| July 16, 2021 | Monday, July 5, 2021 | Wednesday, July 7, 2021 |
| July 23, 2021 | Monday, July 12, 2021 | Wednesday, July 14, 2021 |
| July 30, 2021 | Monday, July 19, 2021 | Wednesday, July 21, 2021 |
| August 6, 2021 | Monday, July 26, 2021 | Wednesday, July 28, 2021 |
| August 13, 2021 | Monday, August 2, 2021 | Wednesday, August 4, 2021 |
| August 20, 2021 | Monday, August 9, 2021 | Wednesday, August 11, 2021 |
| August 27, 2021 | Monday, August 16, 2021 | Wednesday, August 18, 2021 |
| September 3, 2021 | Monday, August 23, 2021 | Wednesday, August 25, 2020 |
| September 10, 2021 | Monday, August 30, 2021 | Wednesday, September 1, 2021 |
| September 17, 2021 | *Friday, September 3, 2021** | Wednesday, September 8, 2021 |
| September 24, 2021 | Monday, September 13, 2021 | Wednesday, September 15, 2021 |
| October 1, 2021 | Monday, September 20, 2021 | Wednesday, September 22, 2021 |
| October 1, 2021 | *2020 Third Quarterly Index* | |
| October 8, 2021 | Monday, September 27, 2021 | Wednesday, September 29, 2021 |
| October 15, 2021 | Monday, October 4, 2021 | Wednesday, October 6, 2021 |
| October 22, 2021 | Monday, October 11, 2021 | Wednesday, October 13, 2021 |
| October 29, 2021 | Monday, October 18, 2021 | Wednesday, October 20, 2021 |
| November 5, 2021 | Monday, October 25, 2021 | Wednesday, October 27, 2021 |
| November 12, 2021 | Monday, November 1, 2021 | Wednesday, November 3, 2021 |
| November 19, 2021 | Monday, November 8, 2021 | Wednesday, November 10, 2021 |
| November 26, 2021 | Monday, November 15, 2021 | Wednesday, November 17, 2021 |
| December 3, 2021 | *Friday November 19, 2021** | *Friday, November 19, 2021** |
| December 10, 2021 | Monday, November 29, 2021 | Wednesday, December 1, 2021 |
| December 17, 2021 | Monday, December 6, 2021 | Wednesday, December 8, 2021 |
| December 24, 2021 | Monday, December 13, 2021 | Wednesday, December 15, 2021 |
| December 31, 2021 | Monday, December 20, 2021 | Wednesday, December 22, 2021 |

## 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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