TEXAS REGISTER

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In This Issue

ADOPTED RULES

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IN ADDITION

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 September 10, 2020

Appointed to the Nursing Facility Administrators Advisory Committee, for a term to expire February 1, 2025, Melinda Mitchell Jones of Lubbock, Texas (replacing Donna Scott Tilley, Ph.D. of Colleyville, whose term expired).

Appointed to the Nursing Facility Administrators Advisory Committee, for a term to expire February 1, 2025, Hari K. Namboodiri of McAllen, Texas (replacing Michael J. Keller, Ph.D. of Plainview, whose term expired).

Appointed to the Nursing Facility Administrators Advisory Committee, for a term to expire February 1, 2025, Catherine A. "Cathy" Wilson of Austin, Texas (replacing Barbara Sunderland Manousso, Ph.D. of Houston, whose term expired).

Appointments for September 14, 2020

Appointed to the Texas Facilities Commission, for a term to expire January 31, 2023, Eddy Betancourt of Mission, Texas (replacing Rigoberto "Rigo" Villarreal of Mission, who resigned).

Greg Abbott, Governor

TRD-202003821

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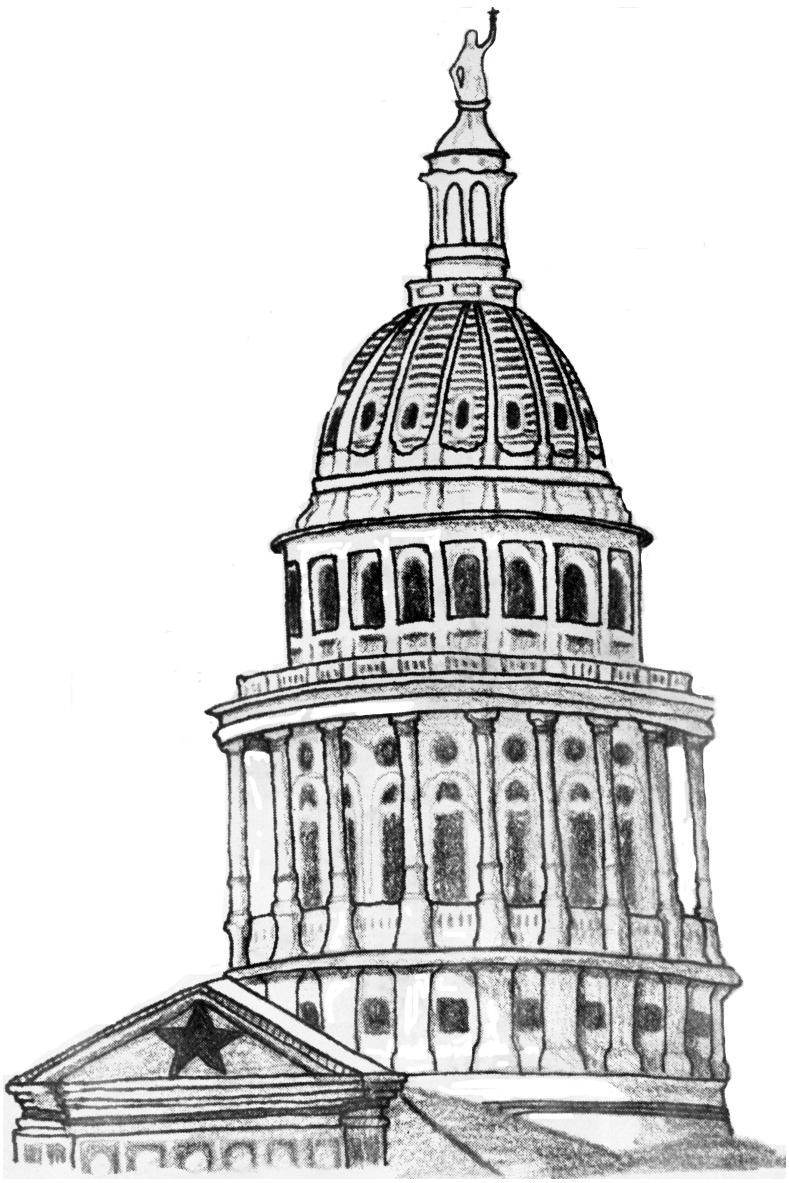

THE ATTORNEY GENERAL

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-0378-KP

Requestor:

The Honorable Gary D. Trammel

Stephens County Attorney

100 East Walker

Breckenridge, Texas 76424

Re: Application of Government Code chapter 573, regarding nepotism, to the candidacy for sheriff of a person who is a brother of the current county judge, and associated questions regarding the county judge's role as a member of the county commissioners court with respect to budget and election matters involving the sheriff (RQ-0378-KP)

Briefs requested by October 9, 2020

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

TRD-202003787
Lesley French
General Counsel
Office of the Attorney General
Filed: September 15, 2020

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Opinions

Opinion No. KP-0331

The Honorable Tracy O. King

Chair, House Committee on Licensing and Administrative Procedures

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of the Texas Department of Motor Vehicles to title and register three-wheeled, electric, low-speed vehicles (RQ-0337-KP)

S U M M A R Y

Chapters 501 and 502 of the Transportation Code govern the titling and registration of motor vehicles, including motorcycles. Depending on its design and characteristics, a vehicle may be a motorcycle under Transportation Code subsection 521.001(a)(6-1), section 541.201, or section 501.008, each with its own specified seating requirements.

A vehicle that is a motorcycle under sections 521.001 and 501.008 of the Transportation Code may have a seat other than a saddle as specified in those statutes. To qualify as a motorcycle under section 541.201, a vehicle must be equipped with a rider's saddle, which is a seat designed similarly to a horse saddle to be straddled by the rider. Whether a particular vehicle qualifies as a motorcycle under sections 501.008, 521.001, or 541.201, or some other vehicle regulated in the Transportation Code, would depend on the particular facts, which cannot be resolved in the opinion process.

Opinion No. KP-0332

The Honorable Geanie W. Morrison

Chair, House Local & Consent Calendars Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a county investigator to carry a firearm in a courtroom (RQ-0338-KP)

S U M M A R Y

Penal Code section 46.03 prohibits a person from carrying a firearm on certain premises, including the premises of any government court without written regulations or authorization from the court. Penal Code subsection 46.15(a)(1) exempts peace officers from section 46.03. Under Code of Criminal Procedure subarticle 2.12(5), an investigator of a district attorney, criminal district attorney, or county attorney is not required to be licensed under Occupations Code chapter 1701 to be a peace officer. Accordingly, a court would likely conclude that a prosecuting attorney's investigator is not prohibited by Penal Code section 46.03 from carrying a firearm into a government court.

Opinion No. KP-0333

The Honorable Eduardo Arredondo

Burnet County Attorney

220 South Pierce Street

Burnet, Texas 78611

Re: Whether a city ordinance requiring compliance with certain restrictive covenants before granting a building permit violates chapter 3000 of the Government Code (RQ-0340-KP)

S U M M A R Y

Subsection 3000.002(a)(1) of the Government Code prohibits a governmental entity from adopting or enforcing a rule that prohibits or limits, directly or indirectly, the use or installation of a building product or material in the construction of a residential or commercial building if the building product or material is approved for use by a national model code published within the last three code cycles.

An ordinance that conditions receipt of a building permit on architectural control committee approval could conflict with subsection 3000.002(a)(1) to the extent that the architectural control committee prohibits or limits the use of certain building products or materials approved for use by a national model code.

Chapter 212, subchapter F of the Local Government Code does not apply to the City of Horseshoe Bay, and the City may not file suit to enforce restrictive covenants under the specific grant of authority in that subchapter. However, as a home-rule municipality, the City may possess authority to enforce restrictive covenants through other means, as long as the law does not prohibit enforcement of the types of covenants at issue.

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

TRD-202003788
Lesley French
General Counsel
Office of the Attorney General
Filed: September 15, 2020

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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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 29. ECONOMIC DEVELOPMENT SUBCHAPTER B. RURAL ECONOMIC DEVELOPMENT CAPITAL FOR TEXAS PROGRAM

4 TAC §§29.20 - 29.32

The Texas Department of Agriculture (Department) proposes the addition of new Title 4, Part 1, Chapter 29, Subchapter B, §§29.20 - 29.32, to the Texas Administrative Code, providing rules for the continued administration and eventual conclusion of the Department's Jobs for Texas and Capital for Texas Programs, and establishing the Department's successor program, the Rural Economic Development Capital for Texas (RED C4T) Program.

Proposed new §29.20 sets out the purpose and background for the new rules, while proposed new §29.21 lays out the Department's authority to implement and administer the program.

Proposed new §29.22 includes general definitions applicable to Subchapter B.

Proposed new §29.23 provides for the continued administration and eventual conclusion of the Department's existing Jobs for Texas (J4T) Program and proposed new §29.24 provides for the continued administration and eventual conclusion of the existing Capital for Texas Program, which utilized the initial State Small Business Credit Initiative (SSBCI) Funds allocated to the Department from the U.S. Department of the Treasury to support financing of rural small and agricultural businesses in the state.

Proposed new §29.25 establishes the Rural Economic Development Capital for Texas (RED C4T) Program which replaces the former Jobs for Texas and Capital for Texas programs. The proposed rules are related to the RED C4T Program application process, eligibility requirements, and other program policies and procedures.

Proposed new §29.26 defines the eligibility requirements for a RED C4T Recipient; proposed new §29.27 outlines the filing requirements and considerations of an Application; proposed new §29.28 includes the selection criteria for a RED C4T investment; and proposed new §29.29 outlines the general terms and conditions of the Department's investment.

Proposed new §29.30 defines the criteria for administering RED C4T Funds.

Proposed new §29.31 and §29.32 describe investments that are prohibited under the RED C4T Program and those persons that are ineligible for funding under the program.

Ms. Karen Reichek, Administrator for Trade and Business Development, has determined that for the first five-year period the proposed new rules are in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the rules.

Ms. Reichek has also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated as a result of the proposed RED C4T Program will be to promote and support economic development in rural areas of this State and agricultural businesses.

The costs to a RED C4T Recipient include an investment return to be determined by the Department commencing on the Funding Date. Repayment of the initial Investment and Investment Return does not commence until after the agreement term ends.

Ms. Reichek has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. During the first five years the proposed rules are in effect:

(1) new government programs will be created;

(2) no employee positions will be created or eliminated, as the Department already has staff dedicated to administering the programs;

(3) there will be no increase or decrease in future legislative appropriations to the Department;

(4) there will be no increase or decrease in fees paid to the Department;

(5) new regulations will be created by the proposal;

(6) there will be no expansion, limitation, or repeal of existing regulation;

(7) there may be an increase in the number of individuals subject to the rules, depending on the number of applicants who seek to participate in the program; and

(8) the proposed rules are expected to have a positive economic impact on rural areas of the state, and are not anticipated to have an adverse effect on the state's economy.

The Department has determined the proposed rules will not affect a local economy within the meaning of Government Code §2001.022 and will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

Written comments on the proposal may be submitted to Ms. Karen Reichek, Administrator for Trade and Business Development, Texas Department of Agriculture, P.O. Box 12847,

Austin, Texas 78711, or by email to: Karen.Reichek@Texas-Agriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new rules are proposed pursuant to Section 12.016 of the Texas Agriculture Code, which authorizes the Department to adopt rules as necessary for the administration of its powers and duties under the Agriculture Code, and Section 12.0272 of the Texas Agriculture Code, which establishes the Texas Economic Development Fund which is appropriated to the Department for the purpose of administering, establishing, implementing, or maintaining economic development programs.

The code affected by the proposal is Texas Agriculture Code, Chapter 12.

§29.20. Purpose.

(a) The Capital for Texas Program was established effective January 20, 2016, using part of the funds allocated to the Department through the U.S. Department of the Treasury's (Treasury) State Small Business Credit Initiative (SSBCI) program, to provide funding to Community Development Financial Institutions (CDFIs) in support of small business lending in rural communities of this State.

(b) The Department's Allocation Agreement with the Treasury expired on March 31, 2017, while the authority and duty of the Treasury to administer the SSBCI program terminated on September 27, 2017. However, the SSBCI Act, Policy Guidelines, Compliance Standards and Allocation Agreement continue to apply to the first use of funds from the allocation made to the Department.

(c) The SSBCI Act, Policy Guidelines, Compliance Standards and Allocation Agreement do not apply to the recycling of SSBCI funds by the Department, or by a participating venture capital firm on behalf of the Department, after March 31, 2017.

(d) The purpose of these rules is to establish regulations for the Rural Economic Development Capital for Texas (RED C4T) Program to continue the Department's small business lending and investment programs using recycled SSBCI funds generated from SSBCI loan repayments and returns on SSBCI investments received or realized by the Department as a result of loans and investments made under the Capital for Texas and Jobs for Texas (J4T) programs, as well as other state funding from the Texas Economic Development Fund.

§29.21. Authority.

The Department's authority to establish, implement, and administer the RED C4T Program derives from Section 12.0272 of the Texas Agriculture Code, which establishes the Texas Economic Development Fund which is appropriated to the Department for the purpose of administering, establishing, implementing, or maintaining one or more of the Department's economic development programs. Per Section 12.0273 of the Texas Agriculture Code, the Department may use money in the Texas Economic Development Fund only to make loans and grants.

§29.22. Definitions.

The following definitions shall apply to this subchapter:

(1) Act--The State Small Business Credit Initiative Act of 2010, Public Law 111-240, as amended.

(2) Agreement--A Performance Agreement entered into between the Department and an eligible recipient selected to participate in the C4T Programs, including all amendments to the Agreement.

(3) Agricultural Business--A business that is or proposes to be engaged in producing, processing, marketing, or exporting of an agricultural product, or that is or proposes to be engaged in an agricultural-related business in rural areas of Texas, including a business that provides recreational activities associated with the enjoyment of nature or the outdoors on agricultural land.

(4) Allocation Agreement--The Department's August 15, 2011 Allocation Agreement with the Treasury, as amended effective April 18, 2012 and January 20, 2016.

(5) Capital for Texas Program--The program established through the Allocation Agreement to provide funding to Community Development Financial Institutions (CDFIs) in support of small business lending in rural communities of this State.

(6) Department--The Texas Department of Agriculture.

(7) Family Relationship--Defined by Title 5, Chapter 573, Subchapter A, §573.002 of the Texas Government Code as a relationship within the third degree of consanguinity or second degree of affinity.

(8) Fund Manager--A venture capital firm selected by the Department to administer all or a portion of the J4T Program.

(9) Jobs for Texas Program--The venture capital program established by the Department pursuant to the Allocation Agreement, also referred to as the "J4T Program".

(10) Investment--An allocation of funds, either in the form of a grant or a loan, by the Department to an eligible Recipient of the RED C4T Program. The Recipient administers and manages the funds on behalf of the Department ensuring all funds administered meet the objectives and requirements of the RED C4T Program as defined in this subchapter and the Agreement between the Department and Recipient.

(11) Other Funds--Gifts, loans, donations, aid, appropriations, guaranties, allocations, subsidies, grants, or contributions received by the Department under Section 12.027(g) of the Texas Agriculture Code, and which have been deposited in the Texas Economic Development Fund; interest and income earned on the investment of money in the Texas economic development fund not resulting from an SSBCI investment or loan; and other money required by law to be deposited in the Texas Economic Development Fund.

(12) Recipient--An organization selected by the Department to administer all or a portion of the RED C4T Program.

(13) Recycled Funds--Money in the Texas Economic Development Fund resulting from an exit from an investment or repayment of a loan, including all money, deposits, distributions, dividends, earnings, gain, income, interest, proceeds, profits, program income, rents, returns of capital, returns on investments, royalties, revenue, or yields received or realized by the Department as a result of an investment or loan made under the J4T, Capital for Texas or RED C4T Programs.

(14) Recycling--The use of Recycled Funds in the Texas Economic Development Fund by the Department, or by a Recipient selected by the Department.

(15) Rural area--An area which is predominately rural in character and which is not adjacent to a Metropolitan Statistical Area (MSA); an unincorporated area or a city with a population under 50,000; or an area in a county with an unincorporated population of less than 200,000.

(16) Rural Economic Development Capital for Texas Program--The Department's rural economic development program established by this subchapter, also referred to as "RED C4T Program".

(17) Small Business--A business with 99 or fewer employees.

(18) Solicitation Document--A document used to request potential vendors to offer a quote, bid, or proposal to acquire goods, supplies, grants, and services. Solicitation document may also be referred to a notice of funding availability, request for application, request for proposal, request for quotation, or invitation to bid.

(19) SSBCI Funds--Money received by the Department pursuant to the Allocation Agreement.

(20) State--The State of Texas.

§29.23. Jobs for Texas Program for Initial Investments Using SSBCI Funds.

(a) The J4T program is continued by the Department for all initial investments of SSBCI Funds.

(b) The Act, Compliance Standards and Policy Guidelines apply to all initial investments of SSBCI Funds.

(c) All terms and conditions of Agreements entered into between the Department and Fund Managers in the administration of the J4T Program continue to apply to the Department and Fund Managers until those Agreements expire or are terminated according to their terms.

(d) The purpose of these rules is to ensure the continued administration and orderly conclusion of the J4T Program, and to establish regulations for the recycling of SSBCI funds generated from returns on investments made under this program.

§29.24. Capital for Texas Program for Initial Loans Using SSBCI Funds.

(a) The Capital for Texas program is continued by the Department for all initial loans made with SSBCI Funds.

(b) The Act, Compliance Standards and Policy Guidelines for all initial loans made with SSBCI Funds.

(c) All terms and conditions of Agreements entered into between the Department and CDFIs in the administration of the Capital for Texas Program continue to apply to the Department and CDFIs until those Agreements expire or are terminated according to their terms.

(d) The purpose of these rules is to ensure the continued administration and orderly conclusion of the Capital for Texas Program, and to establish regulations for the recycling of SSBCI funds generated from loan repayments under this program.

§29.25. Rural Economic Development Capital for Texas (RED C4T) Program.

(a) The RED C4T Program shall promote rural economic development and agricultural development in this State.

(b) The Department may utilize Other Funds or Recycled Funds to make allocations to Recipients selected by the Department to administer the RED C4T Program.

(c) The Department may authorize grants or loans under the RED C4T Program to eligible entities that will in turn administer the funds on behalf of the Department.

(d) RED C4T funds must be administered according to the original application filed and approved by the Department and must meet the requirements and the objectives of the RED C4T Program.

(e) The initial investment, whether a grant or loan, must be made to an entity directly supporting rural economic development, or a rural small business or small agricultural business of this State.

(f) An eligible Recipient of a RED C4T investment may be political subdivisions, economic development organizations, non-profits, utility companies, public-private partnerships or for-profit entities that are directly supporting a small rural business or small agricultural business of this State.

(g) Specific legal terms and obligations applicable to the Department and any Recipient shall be defined in an Agreement.

§29.26. RED C4T Recipient Eligibility Requirements.

(a) An applicant is eligible for an investment from the Department if, at minimum, it:

(1) Demonstrates its ability to administer and mobilize RED C4T funds to meet program objectives;

(2) Demonstrates it has sufficient funds to adequately leverage a RED C4T investment according to the Agreement and the program's Policy and Procedures;

(3) Is a legal entity formed, existing and in good standing under the laws of the United States of America and the State;

(4) Meets eligibility requirements defined in this subchapter and the solicitation document issued by the Department; and

(5) Is legally authorized to do business in this State and has a principal place of business in the state.

(b) Eligible expenditures. The proceeds of the RED C4T investment provided by the Department may be used only to finance loans and/or grants that meet the requirements set forth in this subchapter, the program's Policy and Procedures, and the Agreement signed by the Department and Recipient. All RED C4T loans and grants shall be approved by the Department in the Agreement.

(c) Ineligible expenditures. Any expenditure that is not identified in the approved budget filed with the application, or is otherwise prevented by regulation or statute, is not eligible for financing. RED C4T funds may not finance any loan and/or grant that is listed as a prohibited investment in §29.31 of this subchapter.

§29.27. Filing Requirements and Consideration for RED C4T Investment Applications.

(a) Application forms. An applicant seeking a commitment from the Department shall use the application forms provided by the Department.

(b) Submission of an application. Applicants are required to submit the complete application and all required material to the Department in accordance with the request for applications or other solicitation. Staff will be available prior to submission of the qualified application to discuss project eligibility.

(c) Staff Review. Staff will review the application for completeness and will notify the applicant of any additional information required. When all required information has been received within the time set by the Department, staff will evaluate the technical and feasibility of the project and examine the benefits of the project for economic growth in the state.

(d) Notification of approval. Upon approval of the qualified application by the Department, staff will notify the applicant and execute an Agreement between the applicant and the Department.

(e) Denial of an application. If an application is denied by the Department, the Department will notify the applicant in writing identifying the reasons for denial. Applicants who have been denied may re-apply for participation in the program.

(f) Providing false information. An applicant who knowingly provides false information in an application is liable to the Department for any expense incurred by the Department that results from the provision of false information to the Department. Any financial assistance,

commitment or loan by the Department made as a result of a misrepresentation or providing false information in an application will be subject to termination with a requirement for full repayment of any and all proceeds disbursed to the applicant or Recipient by the Department. In addition, the Department may pursue any other remedies provided by law.

§29.28. Criteria for a RED C4T Investment.

In evaluating and selecting applications for an investment under this program, the Department shall consider:

(1) The anticipated benefits arising from the investment to the applicant, including both the potential impact on agricultural development and rural economic development;

(2) The qualifications of the applicant;

(3) The ability of the applicant to leverage its own funds with RED C4T funds to ensure RED C4T funds are mobilized;

(4) The applicant's ability to administer RED C4T funds;

(5) The extent and level of other funding sources for the applicant;

(6) The applicant's ability to meet the program's objectives including current and previous success in supporting agricultural development and/or rural economic development; and

(7) The applicant's present involvement with related local organizations.

§29.29. General Terms and Conditions of a RED C4T Investment.

(a) Permissible use of investment. The Department's investment is to be used to finance individual loans and/or grants that meet the RED C4T Program's objectives and terms defined by the Agreement.

(b) Minimum amount of investment. The Department shall not provide an investment to an applicant where the amount of the investment is less than $100,000.

(c) Maximum amount of investment. The cumulative amount of investment(s) to an applicant may not exceed $1,000,000.

(d) Investment Return. The investment return shall be the rate approved by the Department and/or lender, if applicable.

(e) Investment term. The term of the initial investment shall be defined in the Agreement between the Recipient and the Department. Any extension to the initial term must be approved in writing by the Department.

(f) Reporting requirements for an investment provided by the Department, at minimum, include:

(1) Annual reporting. The Recipient shall provide to the Department a copy of its annual audit report.

(2) Quarterly reports. The Recipient shall provide to the Department quarterly reports, in a format approved by the Department, summarizing its activities or accomplishments for the previous three-month period. Quarterly reports are due thirty days after the end of each quarter or as specified in the Agreement.

(3) If necessary, the Department may request other reports or documentation reasonably necessary for an assessment of the applicant's compliance with the program.

(g) Repayment of the initial investment. The Recipient shall repay the initial investment plus the investment return as defined in the Agreement.

§29.30. Criteria for Administering RED C4T Funds.

In administering the funds provided by the initial RED C4T investment, the Recipient:

(1) Shall administer the funds in accordance with the Agreement approved by the Department and the Recipient, applicable statutes, and program rules;

(2) Must mobilize the RED C4T funds in a timely manner to ensure the initial investment is meeting the objectives of the RED C4T Program;

(3) Shall submit all loan and grant applications for approval by the Department;

(4) Shall certify that all loans and grants funded with the RED C4T investment meet the eligibility requirements of this subchapter; and

(5) May make loans to new borrowers using funds generated from loan repayments received by the Recipient as a result of loans made by the Recipient under the Agreement; however, no new loans may be made after the Investment Period in the Agreement has expired or terminated.

§29.31. Prohibited Investments.

Prohibited investments under the RED C4T Program include the following:

(1) Grants or loans for activities that relate to lobbying activities, as such activities are defined under state or federal law;

(2) Grants or loans to childcare facilities, including day cares and after-school programs;

(3) Grants or loans for the refinancing of existing debt;

(4) Grants or loans involving the acquisition or holding of passive investments, such as commercial real estate ownership;

(5) Grants or loans for the repayment of delinquent federal or state income taxes;

(6) Grants or loans for the repayment of payroll or sales taxes, or other taxes required to be held in trust or escrow;

(7) Grants or loans that are, or are made in a manner that is, prohibited by federal or state laws that pertain to the investment of public money; and

(8) Such other grants or loans that the Department may deem to be Prohibited Investments, as communicated by the Department to the Recipient from time to time.

§29.32. Ineligible Persons.

The following persons or entities are ineligible to receive funding under the RED C4T Program:

(1) An employee of the Texas Department of Agriculture;

(2) A family relationship of an employee of the Texas Department of Agriculture;

(3) A principal, executive officer, director, shareholder, member, or partner of Recipient, or any subsidiary, parent, affiliate or related entity or person of Recipient;

(4) A member of the immediate family of a principal, executive officer, director, shareholder, member, or partner of Recipient;

(5) A related interest of a principal, executive officer, director, shareholder, member, or partner of Recipient;

(6) A business engaged in speculative activities that develop profits from fluctuations in price rather than through normal

course of trade, such as stock investments, commodities futures and currency trading;

(7) A business that earns more than half of its annual net revenue from lending activities, unless the business is a Community Development Financial Institution (CDFI), Community Development Corporation or a Certified Development Company;

(8) A business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants, or a multi-level marketing organization or business;

(9) A business engaged in activities that are prohibited by federal or Texas law;

(10) A business engaged in gambling enterprises, with the sole exception of a retail grocery or convenience store business that earns less than 33% of its annual net revenue from lottery sales;

(11) A person if the investment would result in violation of Chapter 176 of the Texas Local Government Code;

(12) A person (or any principal executive officer, director, shareholder, or member) who has been convicted of a felony;

(13) A person (or any principal, executive officer, director, shareholder, or member) who has demonstrated a pattern or practice of defalcation of accounts or funds;

(14) A person (or any principal executive officer, director, shareholder, or member) who has mis-certified his/her status as a minority and/or woman owned business enterprise;

(15) A person (or any principal executive officer, director, shareholder, or member) who has been debarred from participating in other federal or state programs;

(16) A person (or any principal executive officer, director, shareholder, or member) indebted to the United States of America, any agency or department of the United States of America, the state of Texas, any agency, department, instrumentality or political subdivision of the state of Texas or any other state;

(17) A person (or any principal executive officer, director, shareholder, or member) who has been convicted of, or subjected to a civil judgment for, fraud;

(18) A person (or any principal executive officer, director, shareholder, or member) who has been convicted of, or subjected to a civil judgment for, federal or state antitrust law violations;

(19) A person (or any principal executive officer, director, shareholder, or member) who has been convicted of a criminal offense relating to embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstructing of justice, or conspiracy to do the same;

(20) A person (or any principal executive officer, director, shareholder, or member) who has been convicted of a criminal offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same; and

(21) A person (or any principal executive officer, director, shareholder, or member) who has been convicted of, or subjected to a civil penalty or judgment for, violation of state or federal ethics laws.

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 September 14, 2020.

TRD-202003747
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 936-9360

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TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to existing rules at 7 Texas Administrative Code (TAC), Chapter 80, Subchapter A, §80.1, and §80.2; Subchapter C, §§80.200, 80.202 - 80.206; and Subchapter D, §80.300 and §80.301. This proposal and the rules as amended by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The rules under 7 TAC Chapter 80 implement Finance Code, Chapter 156, Residential Mortgage Loan Companies (Chapter 156). The proposed rules were identified during the department's periodic review of 7 TAC Chapter 80, conducted pursuant to Government Code, §2001.039.

Definition of a Residential Mortgage Loan Originator Changes

The proposed rules, if adopted, add several new definitions to §80.2 related to the definition of a residential mortgage loan originator. The proposed rules add a new definition for "originator," to adopt by reference the statutory definition for residential mortgage loan originator in Chapter 156, allowing for use of that shortened term throughout the rules, improving readability and reducing word count. The proposed rules add a definition for the phrase "takes a residential loan application," as used in Finance Code, §156.002(14), for purposes of determining when an individual is acting as a residential mortgage loan originator. The proposed rules add a definition for the term "application" to further define and clarify when an individual has received information constituting a residential mortgage loan application for that same purpose. The proposed rules, if adopted, also add a definition for the phrase "offers or negotiates the terms of a residential mortgage loan," as used in Finance Code, §156.002(14) for purposes of determining when an individual is acting as a residential mortgage loan originator. The proposed rules add a definition for "compensation" for that same purpose.

Other Definitions Changes

The proposed rules, if adopted, make other changes to the definitions section in §80.2. The proposed rules eliminate the existing definition for "one-to-four family residential real property," the subject matter of which is generally replaced by adding two new definitions for "dwelling" and "residential real estate," terms which are used in Finance Code, Chapter 156. The proposed

rules also eliminate the existing definition for "criminal offense," used in evaluating an individual's fitness and eligibility to be licensed by the department as a residential mortgage loan originator, as being unnecessary in the rules chapter pertaining to mortgage companies. The proposed rules also add the following new definitions: "mortgage applicant," "mortgage company," "person," and "social media site."

Required Disclosures and Advertising Changes

The proposed rules, if adopted, would make changes to the disclosures a mortgage company or its sponsored originator are required to make, as provided by §80.200. The proposed rules limit existing disclosure requirements by eliminating the requirement for a licensed mortgage company to post disclosures at its physical office. Existing requirements for posting disclosures on a website are clarified to expressly include a social media site of the mortgage company. The proposed rules impose a new requirement to disclose Nationwide Mortgage Licensing System and Registry (NMLS) identification information on all correspondence from a mortgage company or sponsored originator. The proposed rules also limit existing disclosure requirements in connection with a mortgage company's physical office, as provided by §80.206, by eliminating the requirement that a mortgage company post its hours of operation at such physical office. The proposed rules, if adopted, would make changes to the advertising requirements imposed on mortgage companies by rule, contained in §80.203. The proposed rules limit existing advertising requirements by eliminating the requirement that a mortgage company recite the address of its physical office in Texas when making an advertisement. The proposed rules further alter requirements for advertising including by: clarifying an existing requirement that advertisements on social media sites are subject to the rules; limiting existing advertising requirements by allowing a mortgage company to promote its website address on certain promotional items deemed by rule not to constitute an advertisement; clarifying that signs on the premises of a mortgage company are not subject to the advertising requirements; and clarifying that a mortgage company may advertise directly, and need not advertise by and through an originator sponsored by the mortgage company.

Duties and Responsibilities Changes

The proposed rules, if adopted, would make changes to the duties and responsibilities imposed on licensed mortgage companies by rule, contained in §80.202. The provisions of existing subsection (a) are eliminated and replaced with language causing each discrete act contained in the paragraphed list under subsection (a) to be deemed a violation of the prohibition against a mortgage company engaging in fraudulent and dishonest dealings pursuant to Tex. Fin. Code §156.303(a)(3). The prohibition against disparaging a source of income for a mortgage loan, contained in existing subsection (b), paragraph (3), is clarified to include the more likely and harmful scenario where the source of funds is inflated to secure loan approval. The provisions of existing subsection (b) are eliminated and replaced with language causing each discrete act contained in the paragraphed list under subsection (b) to be deemed a violation of the prohibition against a mortgage company engaging in improper dealings pursuant to Tex. Fin. Code §156.303(a)(3). Existing subsection (b), paragraph (3), which prohibits a mortgage company from representing to a mortgage applicant that a fee payable to the mortgage company operates as a discount point for the transaction, is clarified to prohibit any similar representation that such fee confers a financial benefit on the mortgage applicant, except in the limited circumstances set forth in the subparagraphs under existing subsection (b), paragraph (3). The provisions of existing subsection (b), paragraph (3), subparagraph (D), requiring a mortgage company to respond accurately to a question about the scope and nature of its services and any costs, are eliminated and the subject matter replaced with a new subsection (b), paragraph (4), requiring a mortgage company to respond within a reasonable time to questions from a mortgage applicant. A new subsection (d) is added to offer additional guidance on the existing requirement barring the splitting of origination fees with a mortgage applicant except in the narrow circumstances elucidated by the Consumer Financial Protection Bureau (CFPB) in Regulation X. In order to aid enforcement and prevent evasion of the requirement by those individuals who are acting in the dual capacity of an originator sponsored by the mortgage company and a real estate broker or sales agent licensed under Occupations Code, Chapter 1101, the proposed rules create a rebuttable presumption that a rebate or other transfer to the mortgage applicant made after closing is derived from his or her role as originator (a violation), and, conversely, not derived from his or her role as real estate broker or sales agent.

Books and Recordkeeping Changes

The proposed rules, if adopted, would make various changes to the requirements for a mortgage company and its sponsored originator to keep books and records, contained in §80.204. The proposed rules clarify the existing requirement that a mortgage company or its sponsored originator maintain a copy of the mortgage loan application signed by both the originator and the mortgage applicant. The proposed rules also expand existing requirements that a mortgage company maintain a log of its mortgage transactions including by requiring that such log describe the purpose for the loan and the owner's intended occupancy of the real estate securing the mortgage loan. The proposed rules also impose a new requirement to maintain records establishing the physical office of the mortgage company, and other more minor such changes.

Other Modernization and Update Changes.

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Summary of changes

The proposed rules amend Subchapter A, General Provisions.

The proposed rules amend §80.1, Scope. Capitalized terms in the existing implied subsection (a) that have not been reduced to a defined term elsewhere in the rules are eliminated. Language suggesting Chapter 80 also governs the actions of licensed residential mortgage loan originators is eliminated. A new closing sentence is added to clarify that Chapter 80 should be construed as applying to any company registered with the Department as a financial services company just as if such company were licensed by the Department as a mortgage company, as provided by Tex. Fin. Code §156.2012. (Other Modernization and Update Changes.)

The proposed rules amend §80.2, Definitions. A new definition for "application" is inserted at paragraph (1) and the existing paragraphs are renumbered accordingly. Statutory references are added to such definition to indicate its use in determining when an individual is acting as a residential mortgage loan originator. A new definition for "compensation" is inserted at para-

graph (5), and the existing paragraphs are renumbered accordingly. A new definition for the phrase "offers or negotiates the terms of a residential mortgage loan" for purposes of Tex. Fin. Code §156.002(14) is inserted at paragraph (12), and the existing paragraph renumbered accordingly. A new definition for "originator" is inserted at paragraph (13). A new definition for the phrase "takes a residential mortgage loan application" for purposes of Tex. Fin. Code 156.002(14) is inserted at paragraph (20). (Definition of a Residential Mortgage Loan Originator Changes.) The existing definition for "company" located at paragraph (4) is eliminated and its subject matter replaced with a new definition for "mortgage company" at paragraph (10) which adopts by reference the statutory definition for residential mortgage company in Chapter 156, and the existing paragraphs are renumbered accordingly. The existing definition for "criminal offense" located at paragraph (6) is eliminated. The existing definition for "one-to-four family residential real property" located at paragraph (9) is eliminated and its subject matter replaced with two new definitions for "dwelling" and "residential real estate" inserted at paragraphs (8) and (18), respectively, and the existing paragraphs are renumbered accordingly. A new definition for "mortgage applicant" is inserted at paragraph (9), replacing the existing definition for "one-to-four family residential real property." A new definition for "person" is inserted at paragraph (14). A new definition for "social media site" is inserted at paragraph (19). (Other Definitions Changes.) The implied subsection (a) is amended to add language clarifying that the definitions are also used in the department's administration and enforcement of Finance Code, Chapter 156. The existing definition for "branch office" is renumbered and amended to: eliminate capitalization of the term; add a statutory reference which uses the term; and eliminate use of the phrase "headquarters location" and, instead, replace it with the phrase "principal place of business," used to determine what a branch office is by differentiation with such principal place of business. The existing definition for "commissioner" is renumbered and amended to clarify that the commissioner is that individual appointed under Finance Code, Chapter 13. (Other Modernization and Update Changes.)

The proposed rules amend Subchapter C, Duties and Responsibilities.

The proposed rules amend §80.200, Required Disclosures. Subsection (b) is amended to eliminate the requirement that a licensed mortgage company post a notice to consumers in its physical office. The provisions in existing subsection (c), which dictate how a mortgage company displays such notice in its physical office, are eliminated. Subsection (b) is further amended to expressly require a mortgage company to post the disclosure on its social media sites. Subsection (b) is further amended to clarify that only websites and social media sites accessible by a consumer and used to conduct business are affected by the rule's requirements. New provisions are inserted in subsection (c) requiring a mortgage company to disclose its NMLS identification number, and if the correspondence is from a sponsored originator, the NMLS number of that originator. Existing subsection (a) requires that a specific disclosure be made and served on a mortgage applicant upon receipt of a mortgage application. A new subsection (d) is inserted to clarify that a determination of when an application has been received for purposes of the rule will be made in accordance with federal law and the Truth in Lending Act. (Required Disclosures and Advertising Changes.) Subsection (a) is amended to provide additional notice that the mortgage company must maintain records reflecting delivery of the disclosures required by the rule, as is also provided by existing 7 TAC §80.204. (Books and Recordkeeping Changes.) Subsection (a) is amended to eliminate language imposing the requirement on residential mortgage loan originators directly as being duplicative of similar provisions in 7 TAC §81.200. Subsection (a) is further amended to insert an introductory heading and use updated terminology. Subsection (b) is amended to add an introductory heading and use updated terminology. The new provisions of subsection (c) include an introductory heading. (Other Modernization and Update Changes.)

The proposed rules amend §80.202, Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings. The existing language of subsection (a) is eliminated and replaced with language clarifying that the commission of an act in the paragraphed list set forth under subsection (a) constitutes a violation of Tex. Fin. Code §156.303(a)(3). Existing subsection (a), paragraph (3), establishing a violation for disparaging the source of mortgage loan funds, is amended to insert language establishing a violation for inflating or amending such source of income. Existing subsection (a), paragraph (7), establishing a violation for inducing a party to breach a contract in order to secure a mortgage loan, is eliminated as duplicative of the statutory provisions of Tex. Fin. Code §156.303(a)(9), without offering any additional guidance, and the remaining paragraphs are renumbered accordingly. The existing language of subsection (b) is eliminated and replaced with language clarifying that commission of an act in the paragraphed list set forth under subsection (b) constitutes a violation of Tex. Fin. Code §156.303(a)(3). Subsection (b), paragraph (3) is amended to clarify that any representation to a mortgage applicant that an origination fee payable to the mortgage company confers a financial benefit on the mortgage applicant is violative of the rule. The provisions of existing subsection (b), paragraph (3), subparagraph (D), requiring an originator (not the mortgage company) to respond accurately to a question about the scope and nature of his or her services and any costs, are eliminated, and the subject matter replaced with a new subsection (b), paragraph (4), requiring a mortgage company to respond within a reasonable time to questions from a mortgage applicant. A new subsection (d) is inserted to offer additional guidance on the existing requirement barring the splitting of origination fees with a mortgage applicant. (Duties and Responsibilities Changes.) Subsection (a), paragraph (5) is amended to clarify that the federal Real Estate Settlement Procedures Act is implemented by the CFPB in Regulation X. Subsection (a) is further amended to include an introductory heading. Subsection (b), paragraph (2), subparagraphs (A) - (F) are amended to insert citations to federal law referenced in subsection (b). Subsection (b), paragraph (3), subparagraph (C) is eliminated and restated as new subsection (c), including with clearer language and an introductory heading. Subsection (b) is also amended to include an introductory heading. New subsection (d) includes an introductory heading. (Other Modernization and Update Changes.)

The proposed rules amend §80.203, Advertising. Subsection (b), paragraph (2) is amended to require that an advertisement by a mortgage company include the name and NMLS number of the mortgage company, and the name and NMLS number of its sponsored originator, if applicable. Subsection (b), paragraph (2) is further amended to eliminate the requirement that a mortgage company recite the mortgage company's street address in Texas when making an advertisement. Subsection (c) is amended to expressly make certain items subject to the requirements of the rule, including physical printed handouts and messages delivered through a social media site. Subsection (c)

is further amended to allow certain items already exempt from the rule's existing requirements to include the website address for the mortgage company. Subsection (c) is further amended to clarify that signs located on or adjacent to a mortgage company's physical office are exempt from the rule's requirements. A new subsection (d) is inserted allowing a mortgage company to directly advertise its services, and clarifies that it need not advertise by and through a sponsored originator. (Required Disclosures and Advertising Changes.) Subsection (a) is restated to improve clarity. Subsection (b) is restated to improve clarity and use updated terminology. New subsection (d) includes an introductory heading. (Other Modernization and Update Changes.)

The proposed rules amend §80.204, Books and Records. Subsection (b), paragraph (2) is amended to require the mortgage transaction log maintained by the mortgage company to include the following additional information: the stated purpose for the loan; and a description of the owner's intended occupancy of the subject real estate securing the loan. New provisions are inserted at subsection (b), paragraph (4) to require a mortgage company to maintain records establishing its physical office including the staff members present at such physical office, and documents establishing its right to occupy the physical office and conduct business there. (Books and Recordkeeping Changes.) Subsection (a) is amended to insert an introductory heading. Subsection (a) is further amended to clarify that the rule applies to licensed mortgage companies. Subsection (b) is amended to use updated terminology. Subsection (b), paragraph (1), subparagraph (A) is amended to clarify that the signed application the mortgage company is required to maintain in its records should be signed by each mortgage applicant and the sponsored originator. Subsection (b), paragraph (1), subparagraph (C) is amended to similarly clarify that the signed disclosure to consumers the mortgage company is required to maintain in its records should be signed by each mortgage applicant and the sponsored originator. Subsections (c) and (d) are amended to use updated terminology. Subsection (e) is amended to insert an introductory heading, use updated terminology, and to clarify that violation of the rule may result in disciplinary action broadly, and is not limited to license suspension or revocation. Subsection (f) is amended to insert an introductory heading and use updated terminology. The existing provisions of subsection (g) are eliminated as being duplicative of similar provisions in 7 TAC §81.204 and inappropriate for the rules chapter pertaining to mortgage companies. The existing provisions of subsection (h) are relocated to subsection (g), and further amended to insert an introductory heading and use updated terminology. The existing provisions of subsection (h), are restated in subsection (g) for additional clarity. (Other Modernization and Update Changes.)

The proposed rules amend §80.205, Mortgage Call Reports. Subsection (a) is amended to use updated terminology. Subsection (b) is amended to use updated terminology. Subsection (c) is amended to clarify the rule's application to originators sponsored by a mortgage company, and to use updated terminology. Subsection (d) is amended to use updated terminology and clarify that a violation of the rule may result in disciplinary action broadly, and is not limited to an administrative penalty. (Other Modernization and Update Changes.)

The proposed rules amend §80.206, Physical Office. Subsection (a) is amended to eliminate language requiring a mortgage company to post its hours of operation at its physical office. (Required Disclosures and Advertising Changes.) A new subsection (b) is proposed to cross reference 7 TAC §80.204 and the proposed new requirement to maintain records reflecting establishment of the mortgage company's physical office, to provide additional notice of such requirement and promote compliance. The existing provisions of subsection (b) meanwhile are relocated to a proposed new subsection (c). (Books and Recordkeeping Changes.) Subsection (a) is further amended to remove capitalization of the term physical office, which has not been reduced to a defined term elsewhere in the rules. Proposed new subsection (b), which replaces the existing subsection (b), includes an introductory heading. The provisions of proposed new subsection (c), derived from those in existing subsection (b), are also restated to improve clarity. (Other Modernization and Update Changes.)

The proposed rules amend Subchapter D, Compliance and Enforcement.

The proposed rules amend §81.300, Examinations. Subsection (a) is amended to use updated terminology. Subsection (b) is amended to insert an introductory heading, and is restated with updated terminology. Subsection (c) is amended to use updated terminology. Subsection (c), paragraph (1) is amended to clarify that the scope of examination will include whether the originators are appropriately sponsored by the mortgage company, and whether all branch offices have been registered with NMLS. Subsection (d) is amended to use updated terminology. Subsection (e) is amended to use updated terminology. Subsection (f) is amended to insert an introductory heading. Subsection (g) is amended to insert an introductory heading and is restated to clarify that failure to cooperate with the examination will result in disciplinary action broadly and is not limited to an administrative penalty. Subsection (h) is amended to insert an introductory heading, and is restated for clarity, including using updated terminology. (Other Modernization and Update Changes.)

The proposed rules amend §80.301, Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions. The provisions of existing subsection (c), and (e) - (i) are eliminated as being duplicative of the requirements of the Finance Code, and without offering additional guidance. The provisions of existing subsection (d) are relocated to a proposed new subsection (c) and further amended to use updated terminology. (Other Modernization and Update Changes.)

Fiscal Impact on State and Local Government

Tony Florence, director of mortgage examination for the department (director), has determined that for the first five-year period the proposed rules are 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 rules. The director has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the proposed rules.

Public Benefits

The director has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand. The proposed rules related to Required Disclosures and Advertising Changes will benefit the public by providing additional disclosure of the department's regulatory oversight of mortgage companies, and the public's opportunity to file a complaint with and seek redress from the department for a violation of Chapter 156 or the rules adopted thereunder. Such rule changes will further limit existing require-

ments enforced by the department, allowing the department to reallocate and better utilize its resources in its examination and enforcement functions, and allowing the department to pursue violations of Chapter 156 that more directly impact the public. The proposed rules related to Duties and Responsibilities Changes clarify and update the duties and responsibilities imposed on a mortgage company by rule, the compliance with which will benefit the public utilizing the services of a mortgage company licensed by the department. The proposed rules related to Books and Recordkeeping Changes will provide the department with additional information when conducting examinations of mortgage companies licensed by the department, allowing the department to better detect and pursue violations of Chapter 156 while simultaneously streamlining the examinations process for the department and mortgage companies alike.

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

The director has determined that for the first five years the proposed rules are in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

The proposed rules' changes to §80.200 require the inclusion of the mortgage company's NMLS identification information on all correspondence. Since correspondence is tailored to the recipient, it will not place a burden on the mortgage company to add the required information. A mortgage company may be using electronic forms or other pre-printed letterhead to generate correspondence. Those mortgage companies that do not already include the required information on such electronic forms may be inclined to update their electronic forms to more easily comply with the rule. However, any such costs should only be incurred on a one-time basis and are anticipated to be *de minimis*. Moreover, use of electronic forms by a mortgage company is not required by the proposed rules, and is discretionary. Physical letterhead preexisting adoption of the rule that does not include the required information may still be used but with the information added upon tailoring the correspondence for the intended recipient, at no cost.

The proposed rules' changes to §80.204 require a mortgage company to record additional information on the mortgage transaction log it is required to make under existing requirements. The additional information is already created and exists as a byproduct of the residential mortgage loan application process. The rule merely requires that the existing information be transposed to the existing mortgage transaction log for review by the department's examiners in the same manner as the other information required on the mortgage transaction log under existing requirements. A mortgage company may be using electronic forms or other pre-printed paper logs for purposes of maintaining its mortgage transaction log. A Mortgage company that use such electronic forms may be inclined to update its electronic forms to more easily comply with the rule. However, any such costs are anticipated to be *de minimis.* Moreover, the use of electronic forms by a mortgage company is not required by the proposed rules, and is discretionary. Physical logs preexisting adoption of the rule may still be used and supplemented with the required information, at no cost.

The proposed rules' changes to §80.204 also require a mortgage company to maintain records concerning its physical office. The requirement to maintain such physical office is imposed by Tex. Fin. Code §156.2041, and not a rule adopted by the department. By establishing such physical office in conformity with the statute, the mortgage company will have already created the underlying information required to be maintained by the rule. The proposed rules merely require that the information be maintained in a form that is readily accessible to the department's examiners when examining the mortgage company, and does not impose a cost.

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 rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules create a new requirement for mortgage companies to list their NMLS identification number on all correspondence sent to a mortgage applicant. The proposed rules create a new requirement for mortgage companies to maintain records establishing their physical office; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules expand an existing rule requirement by requiring that additional information be included on the required mortgage transaction log. The proposed rules limit an existing rule requirement by eliminating the requirement to post disclosures at the physical office of the mortgage company (but not eliminating such disclosures entirely). The proposed rules limit an existing rule requirement by expanding the number of items deemed not to be an advertisement and exempt from the department's advertising requirements, and further allowing such items to recite the website address of the mortgage company. The proposed rules repeal an existing rule requirement that a mortgage company post its hours of operation at its physical office. The proposed rules repeal an existing rule requirement that a mortgage company recite its physical address in Texas when making an advertisement; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. 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 rules 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 rules. 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 rules. 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 rules 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.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §80.1, §80.2

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code, Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code, Chapter 156.

§80.1. Scope.

This chapter governs the licensing, registration, and conduct of mortgage companies, financial services companies, credit union subsidiary organizations, auxiliary mortgage loan activity companies [~~Mortgage Companies, Financial Services Companies, Credit Union Subsidiary Organizations, Auxiliary Mortgage Loan Activity Companies~~], and independent contractor loan processors and underwriters [~~Independent Contractor Loan Processors and Underwriters~~] under Finance Code, Chapter 156. Pursuant to Tex. Fin. Code §156.2012(b)(7), a company registered with the Department as a financial services company is subject to the requirements of this chapter as if the company were licensed by the Department as a mortgage company and the rules contained in this chapter must be construed accordingly [~~This chapter also governs the conduct of Residential Mortgage Loan Originators who are subject to or engage in regulated activities under Finance Code, Chapter 156 and Chapter 180, except for individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code, §180.251(c). The terms "licensed" and "registered" may be used interchangeably~~].

§80.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code, Chapter 156, the following terms have the meanings indicated:

(1) "Application," as used in Tex. Fin. Code §156.002(14) and paragraph (20) of this section means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

(2) [~~(1)~~] "Branch office," as used in Tex. Fin. Code § 156.2041(a)(4), [~~"Branch Office"~~] means any office that is separate and distinct from the mortgage company's principal place of business of record with NMLS [~~headquarters location~~], whether located in Texas or not, which conducts mortgage business on residential real estate located in [~~the state of~~] Texas.

(3) [~~(2)~~] Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

(4) [~~(3)~~] "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 156.

[~~(4) "Company" means, for purposes of this chapter, a residential mortgage loan company, as that term is defined in Finance Code, §156.002.~~]

(5) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.

(6) [~~(5)~~] "Control person [~~Person~~]" means an individual that directly or indirectly exercises control over a mortgage company. Control is defined by the power, directly or indirectly, to direct the management or policies of a mortgage company, whether through ownership of securities, by contract, or otherwise. Control person includes any [~~Any~~] person that:

(A) is a director, general partner or executive officer;

(B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(C) in the case of an LLC, is a managing member; or

(D) in the case of a partnership, has the right to receive upon dissolution, or had contributed, 10% or more of the partnership's capital assets[~~, is presumed to control that company~~].

[~~(6) Criminal Offense" means any violation of any state or federal criminal statute which:~~]

[~~(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;~~]

[~~(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;~~]

[~~(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;~~]

[~~(D) involves deceiving the public by means of swindling, false advertising or the like;~~]

[~~(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;~~]

[~~(F) involves acts of violence or use of a deadly weapon;~~]

[~~(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or~~]

[~~(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.~~]

(7) (No change.)

(8) "Dwelling" means a residential structure that contains one to four units and is attached to residential real estate. The term includes an individual condominium unit, cooperative unit, or manufactured home, if it is used as a residence.

(9) "Mortgage applicant" has the meaning assigned by Tex. Fin. Code §156.002 and includes a person who contacts a mortgage company or its sponsored originator in response to a solicitation to obtain a residential mortgage loan, and a person who has not completed or started completing a formal loan application on the appropriate form (e.g. , Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

[(9) One-to-four family residential real property" means improved or unimproved real property, or any portion of or interest in any such real property, on which a one-to-four family dwelling, including a manufactured home, is being or is to be constructed or situated.]

(10) "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as that term is defined by Tex. Fin. Code §156.002.

(11) [(8)] "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Tex. Fin. Code §156.002 [Finance Code §180.002(12)].

(12) "Offers or negotiates the terms of a residential mortgage loan," as used in Tex. Fin. Code §156.002(14) means, among other things, when an individual:

(A) arranges or assists a mortgage applicant or prospective mortgage applicant in obtaining or applying to obtain, or otherwise secures an extension of consumer credit for another person, in connection with obtaining or applying to obtain a residential mortgage loan;

(B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees and other costs);

(C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms; or

(D) recommends, refers, or steers a mortgage applicant or prospective mortgage applicant to a particular originator, lender, or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the mortgage applicant or prospective mortgage applicant.

(13) "Originator" has the meaning assigned by Tex. Fin. Code §156.002 in defining "residential mortgage loan originator." Paragraphs (12) and (20) of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Tex. Fin. Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Tex. Fin. Code §180.051.

(14) "Person" means an individual, corporation, company, limited liability company, partnership or association.

(15) [(10)] "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications is [are] conducted.

(16) [(11)] "Qualifying Individual" or "Qualified Individual" has the meaning assigned by Tex. Fin. Code [shall have the same meaning as that provided in Finance Code,] §156.002 in defining "qualifying individual."[.] Additionally, the license held by the Qualifying Individual [qualifying individual] must be held in a status[,] which authorizes them to conduct regulated activities, and the individual [is] sponsored of record in NMLS by the mortgage company for which they are the Qualifying Individual [qualifying individual].

(17) [(12)] "Residential Mortgage Loan" has the meaning assigned by Tex. Fin. Code [shall have the same meaning as that provided in Finance Code,] §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling [one-to-four family residence], but is used for a commercial purpose such as a professional office, [beauty] salon, or other non-residential use, and is not used as a residence.

(18) "Residential real estate" has the meaning assigned by Tex. Fin. Code §156.002 and includes both improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.

(19) "Social media site" means any digital platform accessible by a mortgage applicant or prospective mortgage applicant where the mortgage company or sponsored originator does not typically own the hosting platform but otherwise exerts editorial control or influence over the content within their account, profile, or other space on the digital platform, from which the mortgage company or sponsored originator posts commercial messages or other content designed to solicit business.

(20) "Takes a residential mortgage loan application," as used in Tex. Fin. Code §156.002(14) in defining "residential mortgage loan originator" means when an individual receives a residential mortgage loan application for the purpose of facilitating a decision on whether to extend an offer of residential mortgage loan terms to a mortgage applicant or prospective mortgage applicant, whether the application is received directly or indirectly from the mortgage applicant or prospective mortgage applicant, and regardless of whether or not a particular lender has been identified or selected.

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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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§80.200, 80.202 - 80.206

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code, Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code, Chapter 156.

§80.200. Required Disclosures.

(a) Specific Notice to Applicant. A mortgage company or its sponsored originator must provide [~~An originator sponsored under Finance Code, Chapter 156 shall include~~] the following notice[~~, Figure: 7 TAC §80.200(a),~~] to a residential mortgage loan applicant with an initial application for a residential mortgage loan, and the mortgage company must maintain in its records evidence of the timely delivery of such disclosure:

Figure: 7 TAC §80.200(a) (No change.)

(b) Posted Notice on Mortgage Company Websites and Social Media Sites. A mortgage [~~At each physical office, and on its website, a~~] company or its sponsored [~~an~~] originator must [~~shall conspicuously~~] post in conspicuous fashion the following notice on each website and social media site of the mortgage company or sponsored originator that is accessible by a mortgage applicant or prospective mortgage applicant and either used to conduct residential mortgage loan origination business by the mortgage company or sponsored originator, or from which the mortgage company or sponsored originator advertises to solicit such business, as provided by §80.203 of this title:

Figure: 7 TAC §80.200(b) (No change.)

(c) Disclosures in Correspondence. A mortgage company must provide the following information on all correspondence sent to a mortgage applicant: [~~A notice is deemed to be conspicuously posted under subsection (b) of this section if a customer with 20/20 vision can read it from each place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted. If applicable a notice is deemed conspicuously posted if prominently displayed on the website.~~]

(1) the name of the mortgage company, followed by the mortgage company's NMLS identification number; and

(2) if the correspondence is from a sponsored originator, the name of the sponsored originator, followed by the sponsored originator's NMLS identification number.

(d) The determination of what constitutes a mortgage application for purposes of triggering the notice required by subsection (a) of this section will be made in accordance with applicable federal law determining what constitutes an application for purposes of the Truth in Lending Act, as implemented and defined by the Consumer Financial Protection Bureau in Regulation Z (12 C.F.R. §1026.2).

(e) The notice required by subsection (b) of this section is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base-level domain name) or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page. The notice required by subsection (b) of this section is deemed to be conspicuously posted on a social media site when it is readily apparent or easily accessible to the mortgage applicant or prospective mortgage applicant upon visiting the home page, profile page, account page, or similar, on such social media site, without the necessity to review various historical content posted by the mortgage company or sponsored originator in order to derive the information required by the notice, which may include an interactive link to the information with such link prominently displayed on such home page, profile page, account page, or similar.

§80.202. Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.

(a) False, Misleading or Deceptive Practices. The following conduct by a mortgage company or its sponsored originator constitutes fraudulent and dishonest dealings for purposes of Tex. Fin. Code §156.303(a)(3) [~~No company or originator may~~]:

(1) knowingly misrepresenting the mortgage company's or its sponsored originator's [~~misrepresent his or her~~] relationship to a mortgage applicant or any other party to an actual or proposed residential mortgage loan transaction;

(2) knowingly misrepresenting [~~misrepresent~~] or understating [~~understate~~] any cost, fee, interest rate, or other expense in connection with a mortgage applicant's applying for or obtaining a residential mortgage loan;

(3) knowingly overstating, inflating, altering, amending, or disparaging [~~disparage~~] any source or potential source of residential mortgage loan funds in a manner which [~~knowingly~~] disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly participating [~~participate~~] in or permitting [~~permit~~] the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a residential mortgage loan;

(5) as provided for by the Real Estate Settlement Procedures Act and Regulation X, brokering, arranging, or making [~~its implementing regulations, broker, arrange, or make~~] a residential mortgage loan in which the mortgage company [~~or originator~~] retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommending [~~recommend~~] or encouraging [~~encourage~~] default or delinquency or continuation of an existing default or delinquency by a mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

[~~(7) induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan.~~]

(7) [~~(8)~~] altering [~~alter~~] any document produced or issued by the Department [~~department~~], unless otherwise permitted by statute or a rule of the Department [~~statutory regulation~~]; or

(8) [~~(9)~~] engaging [~~engage~~] in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

(b) Improper Dealings. The following conduct by a mortgage company or its sponsored originator constitutes improper dealings for purposes of Tex. Fin. Code [~~The term "improper dealings" in Finance Code,~~] §156.303(a)(3) [~~includes, but is not limited to the following~~]:

(1) Acting negligently in performing an act for which a person is required under Finance Code, Chapter 156 to hold a license;

(2) Violating any provision of a local, State of Texas, or federal, constitution, statute, rule, ordinance, regulation, or final court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of Finance Code, Chapter 156 or this chapter including, but not limited to, the following:

(A) Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.)*;

(B) Regulation X (12 C.F.R. §1024 *et. seq.)*;

(C) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 *et seq.)*;

(D) Regulation Z (12 C.F.R. §1026 *et seq.)*;

(E) Equal Credit Opportunity Act (15 U.S.C. §1691 *et seq.)*;

(F) Regulation B; (12 C.F.R. §1002 *et seq.)*; and

(G) Texas Constitution, Article XVI, §50.

(3) Representing to a mortgage applicant that a charge or fee which is payable to the mortgage company or its sponsored originator is a "discount point" or otherwise confers a financial benefit on the mortgage applicant unless the loan closes and:

(A) The mortgage company [~~or originator~~] is the lender in the transaction. For purposes of this paragraph, the mortgage company [~~or originator~~] is deemed to be the lender if the mortgage company or sponsored originator, is the payee as evidenced on the face of the note or other written evidence of indebtedness; or

(B) The mortgage company [~~or originator,~~] is not the lender, but demonstrates by clear and convincing evidence that the lender has charged or collected discount point(s) or other fees which the mortgage company actually paid [~~or originator has remitted~~] to the lender on behalf of the mortgage applicant, to buy down the interest rate on a residential mortgage loan.

[~~(C) A company or an originator engages in a false, misleading or deceptive practice or improper dealings when in connection with the origination of a residential mortgage loan:~~]

[~~(i)~~ ~~The company or originator offers other goods or services to a consumer in a separate but related transaction and the company or originator engages in a false misleading or deceptive practice in the related transaction; or~~]

[~~(ii)~~ ~~The sponsor of an originator who offers other goods or services to a consumer in a separate but related transaction and the person engages in a false, misleading or deceptive practice in the related transaction; and the sponsor knew or should have known of the transaction.~~]

[~~(D) An originator receiving a verbal or written inquiry about his or her services shall respond accurately to any questions about the scope and nature of such services and any costs.~~]

(4) Failing to accurately respond within a reasonable time period to reasonable questions from a mortgage applicant concerning the scope and nature of the mortgage company's services and any costs.

(c) Related Transactions. A mortgage company engages in fraudulent and deceptive dealings for purposes of Tex. Fin. Code §156.303(a)(3) when, in connection with the origination of a residential mortgage loan:

(1) The mortgage company or sponsored originator offers other goods or services to a consumer in a separate but related transaction and the mortgage company or sponsored originator engages in a false misleading or deceptive practice in the related transaction; or

(2) The mortgage company or sponsored originator affiliates with another person that provides goods or services to a consumer in a separate but related transaction, and the affiliated person performs false, misleading or deceptive acts, and the mortgage company or sponsored originator to the mortgage transaction knew or should have known of the false, misleading or deceptive acts of the affiliated person and failed to take appropriate steps to prevent or limit such false, misleading or deceptive acts.

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. A mortgage company and its sponsored originator must not offer or agree to share or split any residential mortgage loan origination fees with a mortgage applicant, rebate all or part of an origination fee to a mortgage applicant, reduce their established compensation to benefit a mortgage applicant, or otherwise provide money, a cash equivalent, or anything of value to a mortgage applicant in connection with providing mortgage loan origination services unless otherwise allowable as provided by Regulation X. A sponsored originator acting in the dual capacity of an originator and real estate broker or sales agent licensed under Occupations Code, Chapter 1101 may rebate their fees legitimately earned and derived from their real estate brokerage or sales agent services to the extent allowable under applicable law governing real estate brokers or sales agents; provided, the payment or other transfer described herein occurs as a part of closing and is properly reflected in the closing disclosure for the transaction. If a payment or other transfer described herein by a mortgage company or sponsored originator acting in the dual capacity of an originator and real estate broker or sales agent occurs after closing, a rebuttable presumption exists that the payment or transfer is derived from the sponsored originator's fees for mortgage origination services, and constitutes an improper sharing or splitting of fees with the mortgage applicant. The rebuttable presumption created by this subsection may only be overcome by clear and convincing evidence established by the mortgage company or sponsored originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection (d) is deemed to constitute improper dealings for purposes of Tex. Fin. Code §156.303(a)(3).

§80.203. Advertising.

(a) A mortgage company or sponsored originator that advertises [~~Licensees who advertise~~] rates, terms, or conditions must comply with the disclosure requirements of Regulation Z.

(b) Any advertisement of residential mortgage loans or for residential mortgage loan origination services which is [~~are~~] offered by or through a mortgage company or sponsored originator must [~~shall~~] conform to the following requirements:

(1) A mortgage company or sponsored originator may [~~An advertisement shall be made~~] only advertise for such products and terms as are actually available and, if [~~their~~] availability is subject to any material requirements or limitations, the advertisement must [~~shall~~] specify those requirements or limitations.

(2) Except as provided in subsections [~~subsection~~] (c) and (d) of this section the advertisement must [~~shall~~] contain:

(A) the name of the mortgage company [~~originator~~] followed by the mortgage company's NMLS identification number; and [~~name of the sponsoring mortgage company as designated in the records of the Commissioner as of the date of the advertisement;~~]

(B) the name of the sponsored originator followed by the sponsored originator's NMLS [~~originator's Nationwide Mortgage Licensing System and Registry~~] identification number. [~~; and~~]

[~~(C) the company's physical office or branch office street address in Texas.~~]

(3) An advertisement must [~~shall~~] not make any statement or omit relevant information [~~to make any statement~~] the result of which is to present a misleading or deceptive representation [~~impression~~] to consumers.

(4) An advertisement must [~~shall otherwise~~] comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a residential mortgage loan [~~credit~~] transaction or is otherwise designed to solicit residential mortgage loan origination business for the mortgage company or sponsored originator. This includes "flyers," business cards, or other handouts, and commercial messages delivered by and through a social media site. However, the requirements of subsection (b)(2) of this section do [~~shall~~] not apply to:

(1) any advertisement which indirectly promotes a residential mortgage loan [~~credit~~] transaction and which contains only the name of the mortgage company or sponsored originator and [~~does~~] not [~~contain~~] any contact information with the exception of a website address, such as [~~the inscription of the name~~] on cups, pens or pencils, shirts or other clothing (including company uniforms and sponsored [~~a coffee mug, pencil,~~] youth league jerseys) [~~jersey~~], or other promotional items of nominal value; [~~item; or~~]

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers; or

(3) signs located on or adjacent to the mortgage company's physical office.

(d) Advertising Directly by a Mortgage Company. The provisions of subsection (b) notwithstanding, a mortgage company may advertise directly to the public and not by and through a sponsored originator, and the requirements of subsection (b)(2)(B) of this section do not apply to such advertisements. An advertisement posted, promoted, disseminated, distributed, delivered, or otherwise made by an originator sponsored by the mortgage company will not be considered an advertisement made directly by a mortgage company for purposes of this subsection.

§80.204. Books and Records.

(a) Maintenance of Records, Generally. In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 156 and this chapter, each mortgage company or sponsored originator must [~~shall~~] maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each mortgage company or sponsored originator is required to maintain, at the location specified in their official record on file with the Department [~~department~~], the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received, the mortgage company must create and maintain a residential mortgage loan file containing, [~~shall contain~~] at a minimum [~~the following~~]:

(A) a copy of the initial [~~signed and dated~~] residential mortgage loan application (including any attachments, supplements, or addenda thereto), signed and dated by each mortgage loan applicant and the sponsored originator;

(B) [~~either~~] a copy of the signed closing statement or integrated closing disclosure, documentation of the timely denial, or other documentation evidencing the disposition of the application for a residential mortgage loan;

(C) a copy of the [~~signed and dated~~] disclosure statement required by Tex. Fin. Code §156.004 [~~Finance Code, Chapter 156~~] and §80.200(a) of this title, signed and dated by each mortgage applicant and the sponsored originator [~~chapter~~];

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate locks [~~lock-ins~~] or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to mortgage applicants required by Tex. Fin. Code [~~Finance Code,~~] §343.105;

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable; and

(G) a copy of the initial integrated loan estimate disclosure, if applicable.

(2) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the name and contact information of each mortgage applicant [~~and how to contact them~~];

(B) the date of the initial residential mortgage loan application;

(C) a description of the purpose for the loan (*e.g.,* purchase, refinance, construction, etc.);

(D) a description of the owner's intended occupancy of the subject real estate *(e.g.,* primary residence, secondary residence, investment property (no occupancy), etc.);

(E) [~~(C)~~] a description of the disposition of the application for a residential mortgage loan;

(F) [~~(D)~~] the identity of the person who initially funded and/or acquired the residential mortgage loan; and

(G) [~~(E)~~] the full name of the originator and his or her NMLS [~~their Nationwide Mortgage Licensing System and Registry~~] identification number.

(3) General Business Records. General business records include [~~the following~~]:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage loan origination [~~lending~~] business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage company employees, independent contractors and all others compensated by such mortgage company [~~originator~~] in connection with the residential mortgage loan origination [~~lending~~] business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to a residential mortgage loan transaction [~~lending services~~] including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(4) Records Establishing Physical Office. A mortgage company must create and maintain records establishing its physical office including:

(A) records reflecting the names and contact information for persons serving as staff for the mortgage company assisting customers at the physical office; and

(B) records reflecting the mortgage company's right to access the physical office and conduct business of the mortgage company at such office *(e.g.,* a lease agreement or deed).

(c) A mortgage company and/or sponsored originator must [~~shall~~] maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) A mortgage company and/or sponsored originator must [~~shall~~] maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) Production of Records; Disciplinary Action. All books and records required by this section must [~~shall~~] be maintained in good order and must [~~shall~~] be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may result in disciplinary action including, but not limited to, [~~be grounds for~~] suspension or revocation of a license.

(f) Records Retention Period. All books and records required by this section must [~~shall~~] be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) Records Retention After Dissolution. Within 10 days of terminating operations, a mortgage company must provide the Department with written notice of where the required records will be maintained for the prescribed periods. If such records are transferred to another mortgage company licensed by the Department, the transferee must provide the Department with written notice within 10 days after receiving such records [~~An originator may meet applicable record-keeping requirements if his or her sponsoring company maintains the required records~~].

[~~(h) Upon termination of operations, the licensee shall notify the Commissioner, in writing, within ten days where the required records will be maintained for the prescribed periods. If such records are transferred to another licensee the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Commissioner.~~]

§80.205. Mortgage Call Reports.

(a) Call Report.

(1) A mortgage company must [~~shall~~] file a mortgage call report on a quarterly basis. The filing deadlines are set by NMLS [~~the Nationwide Mortgage Licensing System and Registry~~].

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

(3) The call report must [~~shall~~] be submitted through and in the manner and form prescribed by NMLS [~~the Nationwide Mortgage Licensing System and Registry~~].

(b) Statement of Condition Report.

(1) A mortgage company must [~~shall~~] file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report must [~~shall~~] be submitted through and in the manner and form prescribed by NMLS [~~the Nationwide Mortgage Licensing System and Registry~~].

(c) Submission of a call report or statement of condition report, by a mortgage company[,] satisfies the requirements of an originator sponsored by the mortgage company to submit a mortgage call report, as required by Tex. Fin. Code [~~under Finance Code,~~] §180.101 for the period of sponsorship, provided that the sponsored originator's information is included in the report.

(d) Failure to file a mortgage call report or a statement of condition report may result in disciplinary [~~administrative~~] action, including, but not limited to, imposition [~~which includes the assessment~~] of an administrative penalty.

§80.206. Physical Office.

(a) A physical office [~~Physical Office~~] must:

(1) have a physical or street address. A post office box or other similar designation will not suffice.

(2) be accessible to the general public as a place of business and must hold itself open on a regular basis [~~during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area~~].

(3) have at least one [~~(1)~~] staff member present to assist customers during the hours in which the physical office [~~Physical Office~~] is open.

(b) Records Establishing Physical Office. A mortgage company must create and maintain records establishing the mortgage company's physical office, as provided by §80.204 of this title.

(c) [~~(b)~~] The Physical Office [~~of a licensee~~] need not be the location where [~~at which such person's~~] required records are maintained; however, [~~but~~] the location where [~~at which~~] such [~~required~~] records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

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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SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §80.300, §80.301

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code, Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code, Chapter 156.

§80.300. Examinations.

(a) The Commissioner, or the Commissioner's designee(s), [operating through the department staff and such others as the Commissioner may, from time to time, designate] will conduct periodic examinations of a mortgage company or sponsored [an] originator as the Commissioner deems necessary.

(b) Notice of Examination. Except when the Department [department] determines that giving advance notice would impair the examination, the Department [department] will give the qualifying individual of the mortgage company advance notice of each examination. Such notice will be sent to the qualifying individual's mailing address [of record] or email [e-mail] address of record [on file] with NMLS [the department] and will specify the date on which the Department's [department's] examiners are scheduled to begin the examination. Failure [of the qualifying individual] to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records the mortgage company or sponsored originator must make [qualifying individual should have] available to facilitate the examination [for the examiner to review].

(c) Examinations will be conducted to determine compliance with Finance Code, Chapter 156 and this chapter, and will specifically address whether:

(1) All persons conducting residential mortgage loan origination activities are properly licensed and sponsored by the mortgage company in NMLS;

(2) All locations at which such activities are conducted are properly licensed and registered with NMLS;

(3) All required books and records are being maintained in accordance with §80.204 of this title (relating to Books and Records) [chapter];

(4) Legal and regulatory requirements applicable to the mortgage company and its originators [licensees] are being properly followed; and

(5) Other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapter 156.

(d) The examiners [examiner] will review a sample of residential mortgage loan files identified by the examiners [examiner] and randomly selected from the mortgage company's [residential] mortgage transaction log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiners [examiner] may require a mortgage company [or an originator], at its [their] own cost, to make copies of loan files or such other books and records as the examiners deem [examiner deems] appropriate for the preparation of or inclusion in the examination report.

(f) Confidentiality. The work papers, compilations, [workpapers,] findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, will [shall] be maintained as confidential except as required or expressly permitted by law.

(g) Failure to Cooperate; Disciplinary Action. Failure of a mortgage company or a [an] sponsored originator to cooperate with the examination or failure to grant the examiners [examiner] access to books, records, documents, operations, and facilities may result in disciplinary action [will subject the company or originator to enforcement actions by the Commissioner,] including, but not limited to, imposition of an administrative penalty [penalties].

(h) Reimbursement for Costs. When the Department [department] must travel outside of Texas [out-of-state] to conduct an examination of a mortgage company or a sponsored [an] originator because the required records are maintained at a location outside of Texas [the state], the mortgage company or sponsored originator will be required to reimburse the Department [department] for the actual costs incurred by [cost] the Department [department incurs] in connection with such [out-of-state] travel including, but not limited to, transportation, lodging, meals, [employee travel time, telephone and facsimile] communications, courier service and any other reasonably related costs.

§80.301. Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions.

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

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

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

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

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

[(g) If the Commissioner has reasonable cause to believe that a licensee has violated or is about to violate Finance Code, Chapter 156, this chapter, or an order issued pursuant to this chapter, the Commissioner may, without notice and hearing, issue an order to cease and

~~desist a particular action or an order to take affirmative action, or both, to enforce compliance with Finance Code, Chapter 156 and this chapter. Any such order must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom an order is made requests a hearing, the Commissioner shall set and give notice of a hearing to be held in accordance with this chapter and Government Code, Chapter 2001. Based on the findings of fact and conclusions of law, the Commissioner may find by order that a violation has or has not occurred.~~]

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

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

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

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TRD-202003741
Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to existing rules at 7 Texas Administrative Code (TAC), Chapter 81, Subchapter A, §§81.1 - 81.3; Subchapter C, §§81.200, 81.202 - 81.206; and Subchapter D, §81.300, and §81.301. This proposal and the rules as amended by this proposal are referred to collectively as the "proposed rules."

Explanation of and justification for the rules

The rules under 7 TAC Chapter 81 implement Finance Code, Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157. The proposed rules were identified during the department's periodic review of 7 TAC Chapter 81, conducted pursuant to Government Code, §2001.039.

Definition of a Residential Mortgage Loan Originator Changes

The proposed rules, if adopted, add several new definitions to §81.2 related to the definition of a residential mortgage loan originator. The proposed rules eliminate the existing definition for "residential mortgage loan originator," the subject matter of which is replaced by adding a new definition for "originator," to adopt by reference the statutory definition for residential mortgage loan originator in Chapter 157 and the Texas SAFE Act, allowing for use of that shortened term throughout the rules, improving readability and reducing word count. The proposed rules add a definition for the phrase "takes a residential loan application," as used in Finance Code, §157.002(6) and §180.002(19) for purposes of determining when an individual is acting as a residential mortgage loan originator. The proposed rules add a definition for the term "application" to further define and clarify when an individual has received information constituting a residential mortgage loan application for that same purpose. The proposed rules, if adopted, also add a definition for the phrase "offers or negotiates the terms of a residential mortgage loan," as used in Finance Code, §157.002(6) and §180.002(19) for purposes of determining when an individual is acting as a residential mortgage loan originator. The proposed rules add a definition for "compensation" for that same purpose.

Other Definitions Changes

The proposed rules, if adopted, make other changes to the definitions section in §81.2. The proposed rules add the following new definitions: "dwelling," "mortgage applicant," "mortgage company," "Nationwide Mortgage Licensing System and Registry," "Recovery Fund," "residential real estate," and "social media site."

Required Disclosures and Advertising Changes

The proposed rules, if adopted, would make changes to the disclosures a mortgage banker or originator is required to make, as provided by §81.200. The proposed rules limit existing disclosure requirements by eliminating the requirement for a mortgage banker or originator to post disclosures at a physical office. Existing requirements for posting disclosures on a website are clarified to expressly include a social media site of the mortgage banker or originator. The proposed rules impose a new requirement to disclose Nationwide Mortgage Licensing System and Registry (NMLS) identification information on all correspondence from an originator. The proposed rules also limit existing requirements in connection with a mortgage banker's physical office, as provided by 7 TAC §81.206, by eliminating the requirement that a mortgage banker post its hours of operation at such physical office. The proposed rules, if adopted, would make changes to the advertising requirements imposed on mortgage bankers and originators by rule, contained in §81.203. The proposed rules limit existing advertising requirements by eliminating the requirement that a mortgage banker or its sponsored originator recite the mortgage banker's address when making an advertisement. The proposed rules further alter requirements for advertising including by: clarifying an existing requirement that advertisements on social media sites are subject to the rules; limiting existing advertising requirements by allowing a mortgage banker or originator to promote a website address on certain promotional items deemed by rule not to constitute an advertisement; clarifying that signs on the premises of a mortgage banker or originator are not subject to the advertising requirements; and clarifying that a mortgage banker may advertise directly, and need not advertise by and through an originator sponsored by the mortgage banker.

Duties and Responsibilities Changes

The proposed rules, if adopted, would make changes to the duties and responsibilities imposed on mortgage bankers and originators by rule, contained in §81.202. The provisions of existing subsection (a) are eliminated and replaced with language causing each discrete act contained in the paragraphed list under subsection (a) to be deemed a violation of the prohibition against a mortgage banker or originator engaging in fraudulent and dishonest dealings pursuant to Tex. Fin. Code §157.009(d) and §157.024(a)(3), deceptive practices for purposes of Tex. Fin. Code §180.153(2), and a scheme to defraud a person for purposes of Tex. Fin. Code §180.153(1). The prohibition against disparaging a source of income for a mortgage loan, contained in existing subsection (a), paragraph (3), is clarified to include the more likely and harmful scenario where the source of funds is inflated to secure loan approval. The provisions of existing subsection (b) are eliminated and replaced with language causing each discrete act contained in the paragraphed list under subsection (b) to be deemed a violation of the prohibition against a mortgage banker or originator engaging in improper dealings pursuant to Tex. Fin. Code §157.009(d) and § 157.024(a)(3), and unfair practices for purposes of Tex. Fin. Code §180.153(2). Existing subsection (b), paragraph (3), which prohibits a mortgage banker or originator from representing to a mortgage applicant that a fee payable to the mortgage banker or originator operates as a discount point for the transaction, is clarified to prohibit any similar representation that such fee confers a financial benefit on the mortgage applicant, except in the limited circumstances set forth in the subparagraphs under existing subsection (b), paragraph (3). The provisions of existing subsection (d), requiring an originator to respond accurately to a question about the scope and nature of his or her services, are eliminated and the subject matter replaced with a new subsection (b), paragraph (4), requiring a mortgage banker or originator to respond within a reasonable time to reasonable questions from a mortgage applicant. New provisions are inserted in subsection (d) to offer additional guidance on the existing requirement barring the splitting of origination fees with a mortgage applicant except in the narrow circumstances elucidated by the Consumer Financial Protection Bureau (CFPB) in Regulation X. In order to aid enforcement and prevent evasion of the requirement by those individuals who are acting in the dual capacity of an originator and a real estate broker or sales agent licensed under Occupations Code, Chapter 1101, the proposed rules create a rebuttable presumption that a rebate or other transfer to the mortgage applicant made after closing is derived from his or her role as originator (a violation), and conversely, not derived from his or her role as real estate broker or sales agent.

Books and Recordkeeping Changes

The proposed rules, if adopted, would make various changes to the requirements for a mortgage banker or originator to keep books and records, contained in §81.204. The proposed rules clarify the existing requirement that a mortgage banker or originator maintain a copy of the mortgage loan application signed by both the originator and the mortgage applicant. The proposed rules also expand existing requirements that a mortgage banker or originator maintain a log of mortgage transactions including by requiring that such log describe the purpose for the loan and the owner's intended occupancy of the real estate securing the mortgage loan.

Other Modernization and Update Changes.

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

SUMMARY OF CHANGES

The proposed rules amend Subchapter A, General Provisions.

The proposed rules amend §81.1, Scope. The implied subsection (a) is amended to eliminate language conflating licensed and registered status concerning application of 7 TAC Chapter 81. (Other Modernization and Update Changes.)

The proposed rules amend §81.2, Definitions. A new definition for "application" is inserted at paragraph (1) and the existing paragraphs are renumbered accordingly. Statutory references are added to such definition to indicate its use in determining when an individual is acting as a residential mortgage loan originator. A new definition for "compensation" is inserted at paragraph (5), and the existing paragraphs renumbered accordingly. A new definition for the phrase "offers or negotiates the terms of a residential mortgage loan" for purposes of Tex. Fin. Code §157.002(6) and §180.002(19) is inserted at paragraph (12). The existing definition for "residential mortgage loan originator" located at paragraph (8) is eliminated and its subject matter replaced by a new definition for "originator," inserted at paragraph (13). A new definition for the phrase "takes a residential mortgage loan application" for purposes of Tex. Fin. Code §157.002(6) and §180.002(19) is inserted at paragraph (19). (Definition of a Residential Mortgage Loan Originator Changes.) A new definition for "dwelling" is inserted at paragraph (7). A new definition for "mortgage applicant," which adopts by reference the statutory definition assigned by Tex. Fin. Code § 156.002, is inserted at paragraph (8), replacing the existing definition for "residential mortgage loan originator". A new definition for "mortgage company," which adopts by reference the statutory definition for residential mortgage company in Chapter 157, is inserted at paragraph (10). A new definition for "Nationwide Mortgage Licensing System and Registry," which adopts by reference the statutory definition assigned by Chapter 157 and the Texas SAFE Act, is inserted at paragraph (11). A new definition for "social media site" is inserted at paragraph (18). (Other Definitions Changes.) The existing implied subsection (a) is amended to add language clarifying that the definitions are also used in the department's administration and enforcement of Chapter 157 and the Texas SAFE Act. The existing definition for "commissioner" is renumbered and amended to clarify that the commissioner is that individual appointed under Finance Code, Chapter 13. (Other Modernization and Update Changes.)

The proposed rules amend §81.3, Interpretations. The existing implied subsection (a) is amended to add language clarifying that the commissioner may also publish written interpretations of the Texas SAFE Act, in addition to Chapter 157. (Other Modernization and Update Changes.)

The proposed rules amend Subchapter C, Duties and Responsibilities.

The proposed rules amend §81.200, Required Disclosures. The language of existing subsection (b) is eliminated and replaced with new language imposing the requirement for a mortgage company to make disclosures, as provided by 7 TAC §80.200(a), on the originators sponsored by such mortgage company. Existing subsection (c) is amended to eliminate the requirement that a mortgage banker or originator post a notice to consumers at a physical office. The provisions in existing subsection (d), which dictate how a mortgage banker or originator displays such notice at a physical office, are eliminated, and replaced with

new language imposing the requirement for a mortgage company to make disclosures on its website and social media sites, as provided by 7 TAC §80.200(b), on the originators sponsored by such mortgage company. Existing subsection (c) is further amended to expressly require a mortgage banker to post the disclosure required by the rule on its social media sites and to clarify that only websites and social media sites accessible by a consumer and used to conduct business are affected by the rule's requirements. New provisions are inserted in subsection (e) requiring an originator to disclose their NMLS identification number on correspondence sent to a mortgage applicant. A new subsection (f) is inserted to clarify that a determination of when an application has been received for purposes of the rule will be made in accordance with federal law and the Truth in Lending Act. (Required Disclosures and Advertising Changes.) The subject matter of existing subsection (b), providing additional notice that a mortgage banker is required to maintain records evidencing delivery of required disclosures, as required by 7 TAC §81.204, is eliminated and addressed with new language inserted in subsection (a). Subsection (b) is further amended to clarify that an originator sponsored by a mortgage company must maintain records reflecting delivery of the disclosures required the rule, as provided by existing 7 TAC §81.204. (Books and Recordkeeping Changes.) Subsection (a) is further amended to insert an introductory heading. Subsection (b) is further amended to insert an introductory heading. Subsection (c) is further amended to insert an introductory heading. Subsection (d) is further amended to insert an introductory heading. New subsection (e) includes an introductory heading. (Other Modernization and Update Changes.)

The proposed rules amend §81.202, Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings. The existing language of subsection (a) is eliminated and replaced with language clarifying that the commission of an act in the paragraphed list set forth under subsection (a) constitutes a violation of Tex. Fin. Code §§157.009(d), 157.024(a)(3), and 180.153(1). Existing subsection (a), paragraph (3), establishing a violation for disparaging the source of mortgage loan funds, is amended to insert language establishing a violation for inflating or amending such source of income. Existing subsection (a), paragraph (7), establishing a violation for inducing a party to breach a contract in order to secure a mortgage loan, is eliminated as duplicative of the statutory provisions of Tex. Fin. Code §157.024(a)(7) without offering any additional guidance, and the remaining paragraphs are renumbered accordingly. The existing language of subsection (b) is eliminated and replaced with language clarifying that commission of an act in the paragraphed list set forth under subsection (b) constitutes a violation of Tex. Fin. Code §§157.009(d), 157.024(a)(3), and 180.153(2). Subsection (b), paragraph (3) is amended to clarify that any representation to a mortgage applicant that an origination fee payable to the mortgage banker or originator confers a financial benefit on the mortgage applicant is violative of the rule. The provisions of existing subsection (d), requiring an originator to respond accurately to a question about the scope and nature of their services and any costs, are eliminated, and the subject matter replaced with a new subsection (b), paragraph (4), requiring a mortgage banker or originator to respond within a reasonable time to reasonable questions from a mortgage applicant. New provisions are inserted in subsection (d) to offer additional guidance on the existing requirement barring the splitting of origination fees with a mortgage applicant except in the narrow circumstances elucidated by the CFPB in Regulation X. (Duties and Responsibilities Changes.) Subsection (a), paragraph (5) is amended to clarify that the federal Real Estate Settlement Procedures Act is implemented by the CFPB in Regulation X. Subsection (a) is further amended to insert an introductory heading. Subsection (b), paragraph (2), subparagraphs (A) - (F) are amended to insert citations to federal law referenced in subsection (b). Subsection (b) is further amended to insert an introductory heading. Existing subsection (c), which establishes a violation for engaging in fraudulent dealings in a transaction related to the mortgage application, is restated with clearer language and eliminates duplicative language in existing subsection (c), paragraph (3). Subsection (c) is further amended to insert an introductory heading. Subsection (d) is amended to insert an introductory heading. (Other Modernization and Update Changes.)

The proposed rules amend §81.203, Advertising. Subsection (b), paragraph (2) is amended to require that an advertisement by a mortgage banker or mortgage company include the name and NMLS number of the mortgage banker or mortgage company, and the name and NMLS number of the sponsored originator. Subsection (b), paragraph (2) is further amended to eliminate the requirement that a mortgage banker recite the mortgage banker's street address in Texas when making an advertisement. Subsection (c) is amended to expressly make certain forms of advertising subject to the requirements of the rule, including physical printed handouts and messages delivered through a social media site. Subsection (c) is further amended to allow promotional items already exempt from the rule's requirements to include the website address for the mortgage banker or originator. Subsection (c) is further amended to clarify that signs located on or adjacent to a mortgage banker's or originator's physical office are exempt from the rule's requirements. A new subsection (d) is inserted allowing a mortgage banker to directly advertise its services, and clarifies that it need not advertise by and through a sponsored originator. (Required Disclosures and Advertising Changes.) Subsection (a) is restated to clarify that the requirements of the rule apply to mortgage bankers. Subsection (b) is amended to use updated terminology. Subsection (c) is amended to use updated terminology. New subsection (d) includes an introductory heading. (Other Modernization and Update Changes.)

The proposed rules amend §81.204, Books and Records. Subsection (b), paragraph (1), subparagraph (C) is amended to require an originator sponsored by a mortgage company to maintain a copy of the disclosure required of mortgage companies by Tex. Fin. Code §156.004 and 7 TAC §80.200. Subsection (b), paragraph (2) is amended to require the mortgage transaction log maintained by an originator to include the following additional information: the stated purpose for the loan; and a description of the owner's intended occupancy of the subject real estate securing the loan. (Books and Recordkeeping Changes.) Subsection (a) is amended to insert an introductory heading and use updated terminology. Subsection (b), paragraph (1), subparagraph (A) is amended to clarify that the signed application the originator is required to maintain in their records should be signed by each mortgage applicant and the originator. Subsection (b) is further amended to use updated terminology, and an introductory heading is inserted at subsection (b), paragraph (1). Subsection (c) is amended to use updated terminology. Subsection (d) is amended to use updated terminology. Subsection (e) is amended to insert an introductory heading, and to clarify that violation of the rule may result in disciplinary action broadly, and is not limited to license suspension or revocation. Subsection (f) is amended to insert an introductory heading. Subsection (g) is amended to clarify that an originator sponsored by a mort-

gage company meets applicable recordkeeping requirements if the mortgage company maintains such records on their behalf. Subsection (h) is amended to insert an introductory heading, and restated to improve clarity. (Other Modernization and Update Changes.)

The proposed rules amend §81.205, Mortgage Call Reports. Subsection (a) is amended to use updated terminology. Subsection (b) is amended to use updated terminology. Subsection (c) is amended to clarify the rule's application to originators sponsored by a mortgage banker, and to use updated terminology. Subsection (d) is amended to use updated terminology and clarify that a violation of the rule may result in disciplinary action broadly, and is not limited to an administrative penalty. (Other Modernization and Update Changes.)

The proposed rules amend §81.206, Physical Office. Subsection (a) is amended to eliminate language requiring a mortgage banker to post its hours of operation at a physical office. (Required Disclosures and Advertising Changes.) The existing provisions of subsection (b), clarifying that an originator sponsored by a mortgage banker need not store their books and records at a physical office, are eliminated as unnecessary. (Books and Recordkeeping Changes.) Having eliminated subsection (b), subsection (a) is amended and converted to an implied subsection (a). Subsection (a) is further amended to remove capitalization of the term physical office, which has not been reduced to a defined term elsewhere in the rules. (Other Modernization and Update Changes.)

The proposed rules amend Subchapter D, Compliance and Enforcement.

The proposed rules amend §81.300, Examinations. Subsection (a) is amended to clarify that the rule applies to all originators licensed by the department, and not just those sponsored by a mortgage banker. Subsection (a) is further amended to use updated terminology. Subsection (b) is amended to insert an introductory heading, and is restated with updated terminology. Subsection (c) is amended to use updated terminology. Subsection (c), paragraph (1) is amended to clarify that the scope of examination will include whether the originators are appropriately sponsored by the examined entity, and whether all branch offices have been registered with NMLS. Subsection (d) is amended to use updated terminology. Subsection (e) is amended to use updated terminology. Subsection (f) is amended to insert an introductory heading. Subsection (g) is amended to insert an introductory heading and is restated to clarify that failure to cooperate with the examination will result in disciplinary action broadly and is not limited to an administrative penalty. Subsection (h) is amended to insert an introductory heading, and is restated for clarity, including using updated terminology. (Other Modernization and Update Changes.)

The proposed rules amend §81.301, Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions. The provisions of existing subsection (c) are eliminated as being duplicative of the requirements of the Finance Code, and without offering additional guidance. The provisions of existing subsection (d) are relocated to subsection (c). (Other Modernization and Update Changes.)

Fiscal Impact on State and Local Government

Tony Florence, director of mortgage examination for the department (director), has determined that for the first five-year period the proposed rules are 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 rules. The director has further determined that for the first five-year period the rules are in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the proposed rules.

Public Benefits

The director has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand. The proposed rules related to Required Disclosures and Advertising Changes will benefit the public by providing additional disclosure of the department's regulatory oversight of mortgage bankers and originators, and the public's opportunity to file a complaint with and seek redress from the department for a violation of Chapter 157 or the Texas SAFE Act, or the rules adopted thereunder. Such rule changes will further limit existing requirements enforced by the department, allowing the department to reallocate and better utilize its resources in its examination and enforcement functions, allowing the department to pursue violations of Chapter 157 and the Texas SAFE Act that more directly impact the public. The proposed rules related to Duties and Responsibilities Changes clarify and update the duties and responsibilities imposed on a mortgage banker or originator by rule, the compliance with which will benefit the public utilizing the services of a mortgage banker registered with or an originator licensed by the department. The proposed rules related to Books and Recordkeeping Changes will provide the department with additional information when conducting examinations of mortgage bankers registered with or originators licensed by the department, allowing the department to better detect and pursue violations of Chapter 157 and the Texas SAFE Act while simultaneously streamlining the examinations process for the department and mortgage bankers and originators alike.

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

The director has determined that for the first five years the proposed rules are in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

The proposed rules' changes to §81.200 require the inclusion of the originator's NMLS identification information on all correspondence. Since correspondence is tailored to the recipient, it will not place a burden on the originator to add the required information. An originator may be using electronic forms or other pre-printed letterhead to generate correspondence. Those originators that do not already include the required information on such electronic forms may be inclined to update their electronic forms to more easily comply with the rule. However, any such costs should only be incurred on a one-time basis and are anticipated to be *de minimis.* Moreover, use of electronic forms is not required by the proposed rules, and is discretionary. Physical letterhead preexisting adoption of the rule that does not include the required information may still be used but with the information added upon tailoring the correspondence for the intended recipient, at no cost.

The proposed rules' changes to §81.204 require a mortgage banker or originator to record additional information on the mortgage transaction log it is required to make under existing requirements. The additional information is already created and exists as a byproduct of the residential mortgage loan application

process. The rule merely requires that the existing information be transposed to the existing mortgage transaction log for review by the department's examiners in the same manner as the other information required on the mortgage transaction log under existing requirements. A mortgage banker or originator may be using electronic forms or other pre-printed paper logs for purposes of maintaining its mortgage transaction log. A mortgage banker or originator that uses such electronic forms may be inclined to update their electronic forms to more easily comply with the rule. However, any such costs are anticipated to be *de minimis.* Moreover, the use of electronic forms is not required by the proposed rules, and is discretionary. Physical logs preexisting adoption of the rule may still be used and supplemented with the required information, at no cost.

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 rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules create a new requirement for originators to list their NMLS identification number on all correspondence sent to a mortgage applicant; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules expand an existing rule requirement by requiring that additional information be included on the required mortgage transaction log. The proposed rules limit an existing rule requirement by eliminating the requirement to post disclosures at a physical office of the mortgage banker (but not eliminating such disclosures entirely). The proposed rules limit an existing rule requirement by expanding the number of items deemed not to be an advertisement and exempt from the department's advertising requirements, and further allowing such items to recite the website address of the mortgage banker or originator. The proposed rules repeal an existing rule requirement requiring that a mortgage banker post its hours of operation at a physical office. The proposed rules repeal an existing rule requirement that a mortgage banker recite a physical address when making an advertisement; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. 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 rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated costs to persons required to comply with the proposed rules. 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 rules. 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 rules 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.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§81.1 - 81.3

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code, Chapter 157 and Chapter 180.

§81.1. Scope.

This chapter governs the licensing, registration, and conduct of residential mortgage loan originators and mortgage bankers under Finance Code, Chapter 157 and Chapter 180, except for individuals engaged in authorized activity subject to the authority of a regulatory official under Tex. Fin. Code [~~Finance Code,~~] §180.251(c). [~~The terms "licensed" and "registered" may be used interchangeably.~~]

§81.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code, Chapter 157 and Chapter 180, the following terms have the meanings indicated:

(1) "Application," as used in Tex. Fin. Code §§157.002(6) and 180.002(19), and paragraph (19) of this section means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

(2) [~~(1)~~] "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

(3) [~~(2)~~] "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 157.

(4) [~~(3)~~] "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or

(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.

(5) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.

(6) [~~(4)~~] "Department" means the Department of Savings and Mortgage Lending.

(7) "Dwelling" means a residential structure that contains one to four units and is attached to residential real estate. The term includes an individual condominium unit, cooperative unit, or manufactured home, if it is used as a residence.

(8) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts a mortgage banker or originator in response to a solicitation) to obtain a residential mortgage loan, and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

(9) [~~(5)~~] "Mortgage banker" has the meaning assigned by Tex. Fin. Code [~~shall have the same meaning as that provided in Finance Code~~] §157.002.

[~~(6) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted.~~]

(10) "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as that term is defined by Tex. Fin. Code §157.002.

(11) "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002.

(12) "Offers or negotiates the terms of a residential mortgage loan," as used in Tex. Fin. Code §157.002(6) and §180.002(19) means, among other things, when an individual:

(A) arranges or assists a mortgage applicant or prospective mortgage applicant in obtaining or applying to obtain, or otherwise secures an extension of consumer credit for another person, in connection with obtaining or applying to obtain a residential mortgage loan;

(B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees and other costs);

(C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms; or

(D) recommends, refers, or steers a mortgage applicant or prospective mortgage applicant to a particular originator, lender, or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the mortgage applicant or prospective mortgage applicant.

(13) "Originator" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002 in defining "residential mortgage loan originator." Paragraphs (12) and (19) of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Tex. Fin. Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Tex. Fin. Code §180.051.

(14) "Physical office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications is conducted.

(15) "Recovery Fund" means the fund administered and maintained by the Commissioner for the recovery of actual damages by persons aggrieved by a licensed residential mortgage loan originator, established pursuant to Tex. Fin. Code §13.016.

(16) [~~(7)~~] "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §157.002 and [~~shall have the meaning as provided in Finance Code,~~] §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling [~~one-to-four family residence~~], but is used for a commercial purpose such as a professional office, [~~beauty~~] salon, or other non-residential use, and is not used as a residence.

(17) "Residential real estate" has the meaning assigned by Tex. Fin. Code §180.002 and includes both improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.

(18) "Social media site" means any digital platform accessible by a mortgage applicant or prospective mortgage applicant where the mortgage banker or sponsored originator does not typically own the hosting platform but otherwise exerts editorial control or influence over the content within their account, profile, or other space on the digital platform, from which the mortgage banker or sponsored originator posts commercial messages or other content designed to solicit business.

(19) "Takes a residential mortgage loan application," as used in Tex. Fin. Code §157.002(6) and §180.002(19) in defining "residential mortgage loan originator" means when an individual receives a residential mortgage loan application for the purpose of facilitating a decision on whether to extend an offer of residential mortgage loan terms to a mortgage applicant or prospective mortgage applicant, whether the application is received directly or indirectly from the mortgage applicant or prospective mortgage applicant, and regardless of whether or not a particular lender has been identified or selected.

[(8) Residential mortgage loan originator" has the meaning assigned in Finance Code, §180.002.]

§81.3. Interpretations.

In order to provide clarification as to how Finance Code, Chapter 157 and Chapter 180 will be construed and implemented, the Commissioner may, from time to time, publish written interpretations of Finance Code, Chapter 157 and Chapter 180, and this chapter.

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

Filed with the Office of the Secretary of State on Sepember 14, 2020.

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Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§81.200, 81.202 - 81.206

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code, Chapter 157 and Chapter 180.

§81.200. Required Disclosures.

(a) Specific Notice to Applicant by Mortgage Banker. An originator sponsored by a mortgage banker under Finance Code, Chapter 157 must provide [shall include] the following notice[, Figure: 7 TAC §81.200(a),] to a residential mortgage loan applicant with an initial application for a residential mortgage loan, and the mortgage banker and its sponsored originator must maintain in their records, evidence of timely delivery of such disclosure:
Figure: 7 TAC §81.200(a) (No change.)

(b) Specific Notice to Applicant by Mortgage Company. An originator sponsored by a mortgage company under Finance Code, Chapter 156 must provide a residential mortgage loan applicant with the notice required by §80.200(a) of this title at the time of the initial application for a residential mortgage loan and must maintain or otherwise ensure the mortgage company maintains in its records, evidence of timely delivery of such disclosure [A mortgage banker or originator shall maintain in its records evidence of timely delivery of the disclosure in subsection (a) of this section].

(c) Posted Notice on Mortgage Banker Websites and Social Media Sites. A mortgage banker or its sponsored originator must post in conspicuous fashion the following notice on each website and social media site of the mortgage banker or sponsored originator that is accessible by a mortgage applicant or prospective mortgage applicant and either used to conduct residential mortgage loan origination business by the mortgage banker or sponsored originator, or from which the mortgage banker or sponsored originator advertises to solicit such business, as provided by §81.203 of this title [At each physical office, and on its website, a mortgage banker or an originator shall conspicuously post the following notice]:
Figure: 7 TAC §81.200(c) (No change.)

(d) Posted Notice on Mortgage Company Websites and Social Media Sites. An originator sponsored by a mortgage company under Finance Code, Chapter 156 must comply with the requirements of §80.200(b) of this title [A notice is deemed to be conspicuously posted under subsection (c) of this section if a customer with 20/20 vision can read it from each place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted. If applicable, a notice is deemed conspicuously posted if prominently displayed on the website].

(e) Disclosures in Correspondence. An originator must provide the following information on all correspondence sent to a mortgage applicant:

(1) the name of the mortgage banker or mortgage company sponsoring the originator, followed by its NMLS identification number; and

(2) the name of the originator, followed by the originator's NMLS identification number.

(f) The determination of what constitutes a mortgage application for purposes of triggering the notice required by subsections (a) and (b) of this section will be made in accordance with applicable federal law determining what constitutes an application for purposes of the Truth in Lending Act, as implemented and defined by the Consumer Financial Protection Bureau in Regulation Z (12 C.F.R. §1026.2).

(g) The notice under subsection (c) of this section is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base-level domain name), or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page. The notice under subsection (c) of this section is deemed to be conspicuously posted on a social media site when it is readily apparent or otherwise easily accessible to the mortgage applicant or prospective mortgage applicant upon visiting the home page, profile page, account page, or similar, on such social media site, without the necessity to review various historical content posted by the mortgage banker or sponsored originator in order to derive the information required by the notice, which may include an interactive link to the information with such link prominently displayed on such home page, profile page, account page, or similar.

§81.202. Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.

(a) False, Misleading or Deceptive Practices. The following conduct by a mortgage banker or an originator constitutes fraudulent and dishonest dealings for purposes of Tex. Fin. Code §157.009(d) and §157.024(a)(3), deceptive practices for purposes of Tex. Fin. Code §180.153(2), and a scheme to defraud a person for purposes of Tex. Fin. Code §180.153(1): [No originator may]:

(1) knowingly misrepresenting the mortgage banker's or originator's [misrepresent his or her] relationship to a residential mortgage loan applicant or any other party to an actual or proposed residential mortgage loan transaction;

(2) knowingly misrepresenting [misrepresent] or understating [understate] any cost, fee, interest rate, or other expense

in connection with a residential mortgage loan applicant's applying for or obtaining a residential mortgage loan;

(3) knowingly overstating, inflating, altering, amending or disparaging [~~disparage~~] any source or potential source of residential mortgage loan funds in a manner which [~~knowingly~~] disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly participating [~~participate~~] in or permitting [~~permit~~] the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a residential mortgage loan;

(5) as provided for by the Real Estate Settlement Procedures Act and Regulation X, brokering, arranging, or making [~~its implementing regulations, broker, arrange, or make~~] a residential mortgage loan in which the originator retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommending [~~recommend~~] or encouraging [~~encourage~~] default or delinquency or continuation of an existing default or delinquency by a residential mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

[~~(7) induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan.~~]

(7) [~~(8)~~] altering [~~alter~~] any document produced or issued by the Department, unless otherwise permitted by statute or [~~regulation; or~~] a rule of the Department.

(8) [~~(9)~~] engaging [~~engage~~] in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

(b) Improper and Unfair Dealings. The following conduct by a mortgage banker or an originator constitutes improper dealings for purposes of Tex. Fin. Code §157.009(d) and §157.024(a)(3), and unfair practices for purposes of Tex. Fin. Code §180.153(2) [~~The term "improper dealings" in Finance Code, §157.024(a)(3) includes, but is not limited to the following~~]:

(1) Acting negligently in performing an act for which a person is required under Finance Code, Chapter 157 to hold a license;

(2) Violating any provision of a local, State of Texas, or federal, constitution, statute, rule, ordinance, regulation, or final court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of Finance Code, Chapter 157 or Chapter 180, or this chapter, including, but not limited to, the following:

(A) Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.);

(B) Regulation X (12 C.F.R. §1024 et seq.);

(C) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.);

(D) Regulation Z (12 C.F.R. §1026 et seq.);

(E) Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.);

(F) Regulation B (12 C.F.R. §1002 et seq.); and

(G) Texas Constitution, Article XVI, §50.

(3) Representing to a mortgage applicant that a charge or fee which is payable to the mortgage banker or originator is a "discount point" or otherwise confers a financial benefit on the mortgage applicant unless the loan closes and:

(A) the mortgage banker or mortgage company sponsoring the originator is the lender in the transaction. For purposes of this paragraph, the mortgage banker or mortgage company sponsoring the originator is deemed to be the lender if such entity is the payee as evidenced on the face of the note or other written evidence of indebtedness; or

(B) the mortgage banker or mortgage company sponsoring the originator is not the lender, but demonstrates by clear and convincing evidence that the lender has charged or collected discount point(s) or other fees which the mortgage banker or mortgage company sponsoring the originator has actually paid to the lender on behalf of the mortgage applicant, to buy down the interest rate on a residential mortgage loan.

(4) Failing to accurately respond within a reasonable time period to reasonable questions from a mortgage applicant concerning the scope and nature of the mortgage banker's or originator's services and any costs.

(c) Related Transactions. A mortgage banker or originator engages in a fraudulent and deceptive dealings for purposes of Tex. Fin. Code §157.009(d) and §157.024(a)(3), deceptive practices for purposes of Tex. Fin. Code §180.153(2), and a scheme to defraud a person for purposes of Tex. Fin. Code §180.153(1) if, [~~false, misleading or deceptive practice or improper dealings~~] when in connection with the origination of a mortgage loan:

(1) The mortgage banker or originator offers other goods or services to a consumer in a separate but related transaction and the mortgage banker or originator engages in a false misleading or deceptive practice in the related transaction; or

(2) The mortgage banker or originator affiliates with another person that provides goods or services to a consumer in a separate but related transaction and the affiliated person performs false, misleading or deceptive acts, and the mortgage banker or originator to the mortgage transaction knew or should have known of the false, misleading or deceptive acts. [~~The originator offers other goods or services to a consumer in a separate but related transaction and the mortgage banker or originator engages in a false, misleading or deceptive practice in the related transaction, and the mortgage banker knew or should have known of the transaction; or~~]

[~~(3) A mortgage banker or originator affiliates with a second originator who offers other goods or services to a consumer in a separate but related transaction, and the second originator engages in a false, misleading or deceptive practice in the related transaction when the mortgage banker or originator participates with the second originator in the separate transaction or when the mortgage banker allows the second originator to originate loans in the name of the mortgage banker and the mortgage banker knew or should have known of the related transaction performed by the second originator.~~]

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. A mortgage banker or originator must not offer or agree to share or split any loan origination fees with a mortgage applicant, rebate all or a part of an origination fee to a mortgage applicant, reduce their established compensation to benefit a mortgage applicant, or otherwise provide money, a cash equivalent, or anything of value to a mortgage applicant in connection with providing mortgage loan origination services unless otherwise allowable as provided by Regulation X. An originator acting in the dual capacity of an originator and real

estate sales broker or agent licensed under Occupations Code, Chapter 1101 may rebate his or her fees legitimately earned and derived from his or her real estate brokerage or sales agent services to the extent allowable under applicable law governing real estate brokers or sales agents; provided, the payment or other transfer described herein occurs as a part of closing and is properly reflected in the closing disclosure for the transaction. If a payment or other transfer described herein by an originator acting in the dual capacity of an originator and real estate broker or sales agent occurs after closing, a rebuttable presumption exists that the payment or transfer is derived from the originator's fees for mortgage origination services, and constitutes an improper sharing or splitting of fees with the mortgage applicant. The rebuttable presumption created by this subsection may only be overcome by clear and convincing evidence established by the mortgage banker or originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection (d) is be deemed to constitute improper dealings for purposes of Tex. Fin. Code §157.009(d) and §157.024(a)(3), and unfair practices for purposes of Tex. Fin. Code §180.153(2) [~~An originator receiving a verbal or written inquiry about his or her services shall respond accurately to any questions about the scope and nature of such services and any costs~~].

§81.203. Advertising.

(a) A mortgage banker or originator that advertises [~~Licensees who advertise~~] rates, terms, or conditions must comply with the disclosure requirements of Regulation Z.

(b) Any advertisement of residential mortgage loans or for residential mortgage loan origination services which is [~~are~~] offered by or through a mortgage banker or originator must [~~shall~~] conform to the following requirements:

(1) A mortgage banker or originator may [~~An advertisement shall be made~~] only advertise for such products and terms as are actually available and, if [~~their~~] availability is subject to any material requirements or limitations, the advertisement must [~~shall~~] specify those requirements or limitations. [~~;~~]

(2) Except as provided in subsections [~~subsection~~] (c) and (d) of this section, the advertisement must [~~shall~~] contain:

(A) the name of the mortgage banker or mortgage company followed by its NMLS identification number [~~originator followed by the name of the sponsoring mortgage banker, as designated in the records of the Commissioner as of the date of the advertisement~~]; and

(B) the name of the sponsored originator followed by the sponsored originator's NMLS identification number. [~~originator's Nationwide Mortgage Licensing System and Registry identification number; and~~]

[~~(C) the mortgage banker's physical office address. If a physical office exists in this State, the advertisement must contain that address; otherwise, it must contain the address of a location registered with the department.~~]

(3) An advertisement must [~~shall~~] not make any statement or omit relevant information [~~any statement~~] the result of which is to present a misleading or deceptive representation [~~impression~~] to consumers. [~~; and~~]

(4) An advertisement must [~~shall otherwise~~] comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a residential mortgage loan [~~credit~~] transactionor is otherwise designed to solicit residential mortgage loan origination business for the mortgage banker or originator. This includes "flyers," business cards, or other handouts, and commercial messages delivered by and through a social media site. However, the requirements of subsection (b)(2) of this section do [~~shall~~] not apply to:

(1) any advertisement which indirectly promotes a residential mortgage loan [~~credit~~] transaction and which contains only the name of the mortgage banker or originator and [~~does~~] not [~~contain~~] any contact information with the exception of a website address, such as [~~the inscription of the name~~] on cups [~~a coffee mug~~], pens or pencils [~~pencil~~], shirts or other clothing (including company uniforms and sponsored youth league jerseys) [~~jersey~~], or other promotional items of nominal value[~~item~~]; [~~or~~]

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers; or

(3) signs located on or adjacent to the mortgage banker's or originator's physical office.

(d) Advertising Directly by a Mortgage Banker. The provisions of subsection (b) notwithstanding, a mortgage banker may advertise directly to the public and not by and through a sponsored originator, and the requirements of subsection (b)(2)(B) of this section do not apply to such advertisements. An advertisement posted, promoted, disseminated, distributed, delivered, or otherwise made by an originator sponsored by the mortgage banker will not be considered an advertisement made directly by a mortgage banker for the purposes of this subsection.

§81.204. Books and Records.

(a) Maintenance of Records, Generally. In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapters [~~Chapter~~] 157 and 180, and this chapter, each originator must [~~shall~~] maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each originator is required to maintain, at the location specified in their official record on file with the Department [~~department~~], the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received, the originator must create and maintain a [~~A~~] residential mortgage loan file containing, [~~for each mortgage loan application received; each file shall contain~~] at a minimum [~~the following~~]:

(A) a copy of the initial [~~signed and dated~~] mortgage loan application (including any attachments, supplements, or addenda thereto), signed and dated by each mortgage applicant and the originator;

(B) [~~either~~] a copy of the signed closing statement or integrated closing disclosure, documentation of the timely denial, or other documentation evidencing the disposition of the application for a residential mortgage loan;

(C) for an originator sponsored by a mortgage banker, a copy of the disclosure statement required by Tex. Fin. Code [~~Finance Code,~~] §157.0021 and §81.200(a) of this title; or, for an originator sponsored by a mortgage company, a copy of the disclosure statement

required by Tex. Fin. Code §156.004 and §80.200(a) of this title [~~chapter~~];

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate locks [~~lock-ins~~] or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to mortgage applicants required by Tex. Fin. Code [~~Finance Code,~~] §343.105;

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable; and

(G) a copy of the initial integrated loan estimate disclosure, if applicable.

(2) Mortgage Transaction Log. A [~~residential~~] mortgage transaction log, maintained on a current basis[~~,~~](which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the name and contact information of each mortgage applicant [~~and how to contact them~~];

(B) the date of the initial residential mortgage loan application;

(C) a description of the purpose for the loan (e.g., purchase, refinance, construction, etc.);

(D) a description of the owner's intended occupancy of the subject real estate (*e.g.,* primary residence, secondary residence, investment property (no occupancy), etc.);

(E) [~~(C)~~] a description of the disposition of the application for a residential mortgage loan;

(F) [~~(D)~~] the identity of the person who initially funded and/or acquired the residential mortgage loan [~~and information as to how to contact them~~]; and

(G) [~~(E)~~] the full name of the originator and his or her NMLS [~~their Nationwide Mortgage Licensing System and Registry~~] identification number.

(3) General Business Records. General business records include [~~the following~~]:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage loan origination business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a [~~residential~~] mortgage [~~loan~~] applicant, including a record of the date and amount of all such payments actually made by each applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage banker employees, independent contractors and others compensated by such originator in connection with the residential mortgage loan origination [~~lending~~] business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to a residential mortgage loan transaction [~~lending services~~] including, but not limited to, delegations of underwriting authority, price agreements for goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(c) Each originator must [~~shall~~] maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) Each originator must [~~shall~~] maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) Production of Records; Disciplinary Action. All books and records required by this section must [~~shall~~] be maintained in good order and must [~~shall~~] be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may result in disciplinary action including, but not limited to, [~~be grounds for~~] suspension or revocation of a license.

(f) Records Retention Period. All books and records required by this section must [~~shall~~] be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) An originator may meet applicable recordkeeping requirements if his or her sponsoring mortgage banker or mortgage company maintains the required records. Upon termination of a mortgage banker's sponsorship of an originator, that originator's records must [~~shall~~] remain with the mortgage banker or be transferred to the new sponsoring mortgage banker. Upon written request from a former originator, a former mortgage banker may release to his or her former originator copies of records relating to residential mortgage loans handled by such former originator.

(h) Records Retention After Dissolution. Within 10 days of terminating operations, [~~Upon the termination of operations as~~] a mortgage banker or originator must provide the Department with written notice of [~~, the mortgage banker or originator shall notify the Commissioner in writing, within ten days~~] where the required records will be maintained for the prescribed periods. If such records are transferred to another mortgage banker[~~,~~] registered with the Department, the transferee must provide the Department with written notice within 10 days after receiving such records [~~shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Commissioner~~].

§81.205. Mortgage Call Reports.

(a) Call Report.

(1) A mortgage banker must [~~shall~~] file a mortgage call report on a quarterly basis. The filing deadlines are set by NMLS [~~the Nationwide Mortgage Licensing System and Registry~~].

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

(3) The call report must [shall] be submitted through and in the manner and form prescribed by NMLS [the Nationwide Mortgage Licensing System and Registry].

(b) Statement of Condition Report.

(1) A mortgage banker must [shall] file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report must [shall] be submitted through and in the manner and form prescribed by NMLS [the Nationwide Mortgage Licensing System and Registry].

(c) Submission of a call report or statement of condition report, by a mortgage banker, satisfies the requirements of an originator sponsored by the mortgage banker to submit a mortgage call report, as required by Tex. Fin. Code [under Finance Code,] §180.101 for the period of sponsorship, provided that the sponsored originator's information is included in the report.

(d) Failure to file a mortgage call report or statement of condition report may result in disciplinary [administrative] action[,] including, but not limited to, imposition [which includes the assessment] of an administrative penalty.

§81.206. Physical Office.

[(a)] A physical office [Physical Office] must:

(1) have a physical or street address. A post office box or other similar designation will not suffice.

(2) be accessible to the general public as a place of business and must hold itself open on a regular basis [during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area].

(3) have at least one [(1)] staff member present to assist customers during the hours in which the physical office [Physical Office] is open.

[(b) The Physical Office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours].

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 Sepember 14, 2020.

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Iain A. Berry
Associate General Counsel
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SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §81.300, §81.301

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code, Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code, Chapter 156.

§81.300. Examinations.

(a) The Commissioner, or the Commissioner's designee(s), [operating through the department staff and such others as the Commissioner may, from time to time, designate] will conduct periodic examinations of a mortgage company or sponsored [an] originator as the Commissioner deems necessary.

(b) Notice of Examination. Except when the Department [department] determines that giving advance notice would impair the examination, the Department [department] will give the qualifying individual of the mortgage company advance notice of each examination. Such notice will be sent to the qualifying individual's mailing address [of record] or email [e-mail] address of record [on file] with NMLS [the department] and will specify the date on which the Department's [department's] examiners are scheduled to begin the examination. Failure [of the qualifying individual] to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records the mortgage company or sponsored originator must make [qualifying individual should have] available to facilitate the examination [for the examiner to review].

(c) Examinations will be conducted to determine compliance with Finance Code, Chapter 156 and this chapter, and will specifically address whether:

(1) All persons conducting residential mortgage loan origination activities are properly licensed and sponsored by the mortgage company in NMLS;

(2) All locations at which such activities are conducted are properly licensed and registered with NMLS;

(3) All required books and records are being maintained in accordance with §80.204 of this title [chapter];

(4) Legal and regulatory requirements applicable to the mortgage company and its originators [licensees] are being properly followed; and

(5) Other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapter 156.

(d) The examiners [examiner] will review a sample of residential mortgage loan files identified by the examiners [examiner] and randomly selected from the mortgage company's [residential] mortgage transaction log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiners [examiner] may require a mortgage company [or an originator], at its [their] own cost, to make copies of loan files or such other books and records as the examiners deem [examiner

deems] appropriate for the preparation of or inclusion in the examination report.

(f) Confidentiality. The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, will [shall] be maintained as confidential except as required or expressly permitted by law.

(g) Failure to Cooperate; Disciplinary Action. Failure of a mortgage company or a [an] sponsored originator to cooperate with the examination or failure to grant the examiners [examiner] access to books, records, documents, operations, and facilities may result in disciplinary action [will subject the company or originator to enforcement actions by the Commissioner,] including, but not limited to, imposition of an administrative penalty [penalties].

(h) Reimbursement for Costs. When the Department [department] must travel outside of Texas [out-of-state] to conduct an examination of a mortgage company or a [an] sponsored originator because the required records are maintained at a location outside of Texas [the state], the mortgage company or sponsored originator will be required to reimburse the Department [department] for the actual costs incurred by [cost] the Department [department incurs] in connection with such [out-of-state] travel including, but not limited to, transportation, lodging, meals, [employee travel time, telephone and facsimile] communications, courier service and any other reasonably related costs.

§81.301. Investigations.

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

[(c) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 157.]

(c) [(d)] Reasonable cause will be deemed to exist if the Commissioner has received information from a source the Commissioner [he or she] has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 157.

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 Sepember 14, 2020.

TRD-202003744
Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 475-1535

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 110. ATHLETIC TRAINERS

16 TAC §110.24, §110.25

The Texas Department of Licensing and Regulation (Department) proposes amendments to the existing rules at 16 Texas Administrative Code (TAC), Chapter 110, §110.24 and §110.25, regarding the Athletic Trainers Program. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 110 implement Texas Occupations Code, Chapter 451.

The proposed rules are necessary to implement House Bill (HB) 2059, 86th Legislature, Regular Session (2019). HB 2059 requires athletic trainers and other health care practitioners to complete a human trafficking prevention training course in order to renew their license. The Executive Commissioner of the Health and Human Services Commission (HHSC) approves human trafficking prevention courses, including at least one course that is available without charge, and posts a list of approved courses on the HHSC website. The statutory provisions created by HB 2059 are located in Texas Occupations Code, Chapter 116. The proposed rules implement this training requirement and allow the training to count toward the required minimum continuing education for athletic trainers.

The proposed change to §110.24 was presented to and discussed by the Advisory Board of Athletic Trainers (Advisory Board) at its meeting on June 22, 2020. The Advisory Board did not make any changes to the proposed amendment. The Advisory Board voted and recommended that the proposed change to §110.24 be published in the *Texas Register* for public comment. Additionally, the Advisory Board discussed allowing the training to count toward continuing education requirements.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §110.24 by requiring athletic trainers to complete the human trafficking prevention training required under Texas Occupations Code, Chapter 116 and to provide proof of completion as prescribed by the Department.

The proposed rules amend §110.25 by allowing an HHSC-approved human trafficking prevention training course to count toward continuing education requirements. The proposed rules would allow licensees to claim one clock-hour of credit for each clock-hour spent on the training course.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. The proposed rules will not affect the amount of resources or personnel needed by the Department, and local governments do not enforce or administer the proposed rule.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules. The proposed rules will not increase or decrease the amount of fees paid to the Department, and local governments do not enforce or administer the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare

a local employment impact statement under Texas Government Code §2001.022. The human trafficking prevention training required by HB 2059 and the proposed rules may be completed without cost to the licensee. Additionally, the proposed rules will not change the number of individuals who are licensed athletic trainers or are seeking to become licensed athletic trainers. Therefore, the proposed rules will not have an impact on local employment.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be training licensees to identify the signs of human trafficking and assist in the prevention of human trafficking. Additionally, because at least one human trafficking prevention course will be offered free of charge, the proposed rules may reduce continuing education costs for licensees.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. HB 2059 requires HHSC to approve at least one human trafficking prevention course that is available free of charge.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. While some athletic trainers may operate small or micro-businesses and may be located in rural communities, the proposed rules do not have any anticipated adverse economic effect. The proposed rules do not impose additional fees, nor do they create requirements that would cause athletic trainers or small or micro-businesses to expend funds for equipment, staff, supplies, or infrastructure. Moreover, although licensees will be required to expend time completing a human trafficking training, this requirement is imposed by HB 2059, and any cost of attending the required course once every two years will not have an adverse impact on a small or micro-business or rural community. Finally, the proposed rules will not decrease the availability of licensed athletic trainers in rural communities or increase the cost of their services in these communities. Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

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

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules implement HB 2059 by expanding the renewal requirements for licensees. Licensees are now required to complete human trafficking prevention training for each license renewal, and the training may count toward minimum continuing education requirements.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at https://ga.tdlr.texas.gov:1443/form/gcerules; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 451, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 451. No other statutes, articles, or codes are affected by the proposed rules.

§110.24. License Renewal.

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

(c) For each license renewal on or after September 1, 2020, the licensee must complete the human trafficking prevention training required under Texas Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(d) [~~(c)~~] Expiration of license.

(1) A person whose license has expired may not hold himself or herself out as an athletic trainer; imply that he or she has the title of "licensed athletic trainer," "athletic trainer" or "sports trainer," or use "LAT," "AT," or "LATC" or any facsimile of those titles in any manner.

(2) A person whose license has expired may not perform the activities of an athletic trainer.

§110.25. Continuing Education Requirements.

(a) (No change.)

(b) Continuing education taken by a licensee for renewal[~~,~~] shall be acceptable if the experience falls in one or more of the following categories:

(1) academic courses at a regionally accredited college or university related to sports medicine;

(2) clinical courses related to athletic training and/or sports medicine;

(3) in-service educational programs, training programs, institutes, seminars, workshops and conferences in sports medicine or athletic training;

(4) instructing or presenting education programs or activities without compensation at an academic course, in-service educational programs, training programs, institutes, seminars, workshops and conferences in athletic training or sports medicine, not to exceed five clock-hours each continuing education period;

(5) publishing a book or an article in a peer review journal relating to athletic training or sports medicine, not to exceed five clock-hours each continuing education period;

(6) serving as a skills examiner at the state licensure examination, not to exceed one clock-hour of continuing education credit for each examination date for a maximum of four clock-hours of credit each continuing education period; [~~or~~]

(7) successful completion of an online or distance education program in athletic training or sports medicine; or[~~.~~]

(8) a human trafficking prevention training course approved by the Health and Human Services Commission in accordance with Occupations Code, Chapter 116.

(c) Continuing education experience shall be credited as follows:

(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the basis of two clock-hours of credit for each semester hour successfully completed for credit or audit, as evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs which meet the criteria of subsection (b)(2), (3), or (8) [~~(b)(2) or (3)~~], shall be credited on a one-for-one basis, with one clock-hour of credit for each clock-hour spent in the continuing education experience.

(3) Successful completion of courses described in subsection (b)(7), is evidenced by a certificate of completion presented by the sponsoring organization of the online or distance education program.

(4) Approval by the department must be obtained for each continuing education program as described in subsections (b)(1) - (7) [~~subsection (b)~~], unless continuing education credit is granted by a national, regional or state health care professional association.

(5) Successful completion of courses related to athletic training and/or sports medicine as described in subsection (b)(2) and (3), is evidenced by a certificate of completion or attendance that is issued by the sponsoring organization of the course.

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

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

Filed with the Office of the Secretary of State on September 14, 2020.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 475-4879

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 302. IDD-BH TRAINING

SUBCHAPTER A. MENTAL HEALTH FIRST AID [~~PREVENTION STANDARDS~~]

26 TAC §§302.1, 302.5, 302.7, 302.9

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §302.1, concerning Purpose; §302.5, concerning Definitions; §302.7, concerning Mental Health First Aid Training Protocols; and §302.9, concerning Local Mental Health Authority Responsibilities.

BACKGROUND AND PURPOSE

The purpose of the proposal is to include Local Behavioral Health Authorities (LBHAs) in the requirements for Local Mental Health Authorities (LMHAs) to provide mental health first aid (MHFA) training to public school district employees, higher education employees, and community members. The proposed amendments update rules to ensure consistency with statute; remove references to managed care organizations; clarify the roles of LMHAs and LBHAs in providing training; and outline guidelines for LMHAs and LBHAs to follow.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §302.1, Purpose, updates terms, clarifies the entities or persons who shall receive the training, and states that the MHFA curriculum is owned and updated by the National Council for Behavioral Health.

The proposed amendment to §302.5, Definitions, removes outdated terms and references to the "Department of State Health Services" and "managed care organization". HHSC is added as a new term under definitions. The definitions for "LBHA" and "LMHA" are reorganized.

The proposed amendment to §302.7, Mental Health First Aid Training Protocols, clarifies that LMHA and LBHA employees

must be qualified, as required under Texas Health and Safety Code §1001.202(d). The amendment adds new subsection (b) which allows two or more LMHAs and LBHAs to collaborate and share resources to provide training. The amendment also relabels current subsection (b) to subsection (c).

The proposed amendment to §302.9, Local Mental Health Authority Responsibilities, renames the section to include LBHAs and adds new subsections (b) - (g) providing training requirements to ensure consistency with statute.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

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

(6) the proposed rules will not expand, limit, or repeal existing rules;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. LMHAs and LBHAs contracting with HHSC are considered quasi-governmental entities and are not considered small business, micro-business, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and they are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Sonja Gaines, Deputy Executive Commissioner for IDD and Behavioral Health Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be improving the health and safety of the citizens of Texas by training as many people as possible to recognize the signs and symptoms of mental illness and substance use.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules as there are no requirements to alter current business practices. The proposed rules provide clarity and update current agency practices to align with existing statute.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Carrie Hoffman at (512) 656-6585 in the HHSC Medical and Social Services Division, Office of Mental Health Coordination.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R050" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§1001.201 - 1001.207 which authorizes HHSC to administer the Mental Health First Aid Program and sets forth program requirements.

The amendments affect Texas Government Code §531.0055 and Texas Health and Safety Code §§1001.201 - 1001.207.

§302.1. Purpose.

(a) The purpose of this subchapter is to set forth the standards and provide the criteria for mental health first aid (MHFA) [~~prevention~~] training provided by a [~~to~~] local mental health authority (LMHA) [~~authorities (LMHAs)~~] and a [~~the~~] local behavioral health authority (LBHA)[,] for [~~which is a managed care organization (MCO) (collectively LMHA, LBHA and MCO are referred to in this subchapter as LMHAs),~~] their respective contractors, public school district employees, higher education employees, and community members [~~and educators~~] located within an LMHA and an LBHA [~~the LMHA's~~] service area, as required by Texas Health and Safety Code, Chapter 1001, Subchapter H, §§1001.201 - 1001.206.

(b) The MHFA curriculum is owned and updated by the National Council for Behavioral Health.

§302.5. Definitions.

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

[(1) Department--The Department of State Health Services (DSHS).]

[(2) Local mental health authority (LMHA)--An entity designated as the local mental health authority by the department in accordance with the Texas Health and Safety Code, §533.035(a). For purposes of this subchapter, the term includes an entity designated as a local behavioral health authority.]

[(3) Local behavioral health authority (LBHA)--An entity designated as a local behavioral health authority by the department in accordance with Texas Health and Safety Code, §533.0356.]

(1) [(4)] Educator--A person who is required to hold a certificate issued under the Education Code, Subchapter B, Chapter 21, specifically; a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, school nurse, or school counselor.

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

[(5) Managed care organization (MCO)--An entity that has a current Texas Department of Insurance certificate of authority to operate as a Health Maintenance Organization (HMO) in the Texas Insurance Code, Chapter 843, or as an approved nonprofit health corporation in the Texas Insurance Code, Chapter 844, and that provides mental health community services pursuant to a contract with the department.]

(3) Local behavioral health authority (LBHA)--An entity designated as a local behavioral health authority by HHSC in accordance with Texas Health and Safety Code, §533.0356.

(4) Local mental health authority (LMHA)--An entity designated as the local mental health authority by HHSC in accordance with Texas Health and Safety Code, §531.002(a) and §533.035.

(5) [(6)] Mental health first aid (MHFA)--The assistance provided to a person who is developing a mental health issue or who is experiencing a mental health crisis until appropriate professional treatment is received or until the crisis resolves.

§302.7. Mental Health First Aid Training Protocols.

(a) Any person approved to train local mental health authority (LMHA) and local behavioral health authority (LBHA) [LMHA] employees or contractors as mental health first aid (MHFA) [MHFA] trainers shall be qualified , pursuant to Texas Health and Safety Code, §1001.202(d), to provide training in:

(1) the potential risk factors and warning signs for various mental illnesses, including depression, anxiety, trauma, psychosis, eating disorders, substance abuse disorders, and self-injury;

(2) the prevalence of various mental illnesses in the United States and the need to reduce the stigma associated with mental illness;

(3) an action plan used by employees or contractors that involves the use of skills, resources, and knowledge to assess a situation and develop and implement an appropriate intervention to assist a person experiencing a mental health crisis to obtain appropriate, professional care; and

(4) the evidence-based professional, peer, social, and self-help resources available to help individuals with mental illness.

(b) Two or more LMHAs and LBHAs may collaborate and share resources to provide training for employees or contractors of the authorities under this section.

(c) [(b)] All persons or entities that train LMHA and LBHA employees or contractors as MHFA trainers shall be certified by an authority of:

(1) MHFA-USA;

(2) MHFA-Australia; or

(3) other entities [entity(ies)] approved by HHSC [the department].

§302.9. Local Mental Health Authority and Local Behavioral Health Authority Responsibilities.

(a) The local mental health authorities (LMHAs) and local behavioral health authorities (LBHAs) [LMHA] are [is] responsible for ensuring their contractors provide mental health first aid (MHFA) [MHFA] training to educators and non-educators consistent with the MHFA protocol, as required by Texas Health and Safety Code, §1001.203(d). [The LMHA shall ensure that training is taught without modification, substitution or subtraction of the MHFA-USA or MHFA-Australia, as applicable, content or format unless authorized by the department-approved training entities set forth in §412.4(b) of this title (relating to Mental Health First Aid Training Protocols).]

(b) An MHFA training must:

(1) be conducted by a person trained as an MHFA trainer;

(2) provide participants with the skills necessary to help an individual experiencing a mental health crisis until the individual is able to obtain appropriate professional care; and

(3) include:

(A) instruction in a five-step strategy for helping an individual experiencing a mental health crisis, including assessing risk, listening respectfully to and supporting the individual, and identifying professional help and other supports for the individual;

(B) an introduction to the risk factors and warning signs for mental illness and substance abuse problems;

(C) experiential activities to increase participants' understanding of the impact of mental illness on individuals and families; and

(D) a presentation of evidence-supported treatment and self-help strategies.

(c) An LMHA and LBHA may contract with a regional education service center to provide an MHFA training program to university employees, school district employees, and school resource officers under this section.

(d) Two or more LMHAs or LBHAs may collaborate and share resources to develop and operate an MHFA training program under this section.

(e) The LMHA and LBHA shall ensure that training is taught without modification, substitution or subtraction of the MHFA-USA or MHFA-Australia, as applicable, content or format unless authorized by HHSC-approved training entities set forth in §302.7 of this subchapter (relating to Mental Health First Aid Training Protocols).

(f) [(b)] [The] LMHAs [LMHA] and LBHAs are [is] responsible for ensuring their contractors comply with the provisions of this subchapter and applicable provisions of the contract between HHSC [the department] and the LMHA and LBHA.

(g) The LMHA and LBHA must submit the annual Plan for Mental Health First Aid Training Programs by July 1 of each state fiscal year, as required by Texas Health and Safety Code, §1001.204. The LMHA and LBHA must submit the information for the annual report

by September 30 of each year, as required by Texas Health and Safety Code, §1001.205.

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 September 4, 2020.

TRD-202003681
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 656-6585

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CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM
SUBCHAPTER D. MENTAL HEALTH SERVICES--ADMISSION, CONTINUITY, AND DISCHARGE
DIVISION 5. DISCHARGE AND ABSENCES FROM A STATE MENTAL HEALTH FACILITY OR FACILITY WITH A CONTRACTED PSYCHIATRIC BED

26 TAC §306.204

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 306, Subchapter D, Division 1, an amendment to §306.204, concerning Discharge of an Individual Involuntarily Receiving Treatment.

BACKGROUND AND PURPOSE

The purpose of this proposal is to implement §574.081(c-2) of the Texas Health and Safety Code, as amended by Senate Bill (S.B.) 362, 86th Legislature, Regular Session, 2019. The proposed amendment outlines requirements for private mental health facilities with a contracted psychiatric bed (CPB) through HHSC, or funded and operated by a local mental health authority (LMHA) or local behavioral health authority (LBHA), to provide psychoactive medication, and any other medication prescribed to counteract adverse side effects of psychoactive medication, at the time an individual receiving court-ordered inpatient mental health services is furloughed or discharged from a facility with a CPB. The facility with a CPB is only required to provide the medication if funding to cover the cost of the medications is available to be paid to the facility for this purpose from HHSC. The facility with a CPB is not required to provide or pay for more than a seven day supply of the medication.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §306.204 adds new paragraph (3) in subsection (c), which requires facilities with CPBs to provide psychoactive medication and medication to counteract adverse side effects of psychoactive medications at the time an individual receiving court-ordered inpatient mental health services is furloughed or discharged. The requirement is contingent on available funding from HHSC to cover the cost of the medication. The amendment also renumbers the current paragraph (3) to paragraph (4).

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there is no anticipated cost to state government. Enforcing or administering the rule also does not have foreseeable implications relating to costs or revenues of local government.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

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

(5) the proposed rule will create a new rule;

(6) the proposed rule will expand existing rules;

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

(8) HHSC has insufficient information to determine the proposed rule's effect on the state's economy.

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

Trey Wood has also determined that there could be an adverse economic effect on small businesses. There are approximately 30 facilities with CPBs that may qualify as small businesses, but HHSC does not have sufficient information to determine which facilities with CPBs qualify. In addition, LMHAs and LBHAs do not qualify as small businesses, micro businesses, or rural communities.

HHSC determined that there are no alternative methods to achieve the purpose of the proposed rule since this is in accordance with statutory requirement S.B. 362, 86th Legislature, Regular Session, 2019.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Sonja Gaines, Deputy Executive Commissioner for IDD and Behavioral Health Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be that the proposed rule would require facilities with CPBs to provide psychoactive medication and medication to counteract adverse side effects of psychoactive medication to individuals re-

ceiving court-ordered inpatient mental health services while on furlough or at discharge.

Trey Wood has also determined that for the first five years the rule is in effect, there could be an anticipated cost to persons required to comply with the rule as proposed. The proposed rule would require private facilities with CPBs to provide psychoactive medication and medication to counteract adverse side effects of psychoactive medication to individuals receiving court-ordered inpatient mental health services while on furlough or at discharge.

Senate Bill 362, 86th Legislature, Regular Session, 2019 appropriated $1.7 million to HHSC for the 2020-2021 biennium. These funds will be provided by HHSC to LMHAs and LBHAs, who work with facilities with CPBs, to address the cost of compliance with the rule. The estimated cost to provide seven days of medications at discharge may vary depending on civil commitments in need of medication and the types and quantity of medicines provided. As a result, HHSC does not have sufficient evidence to estimate each individual LMHA's, LBHA's or private facility's cost to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Raven Thousand at (512) 838-4390 in HHSC IDD and Behavioral Health Services, Behavioral Health Services Section, Crisis Services Unit.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R043" in the subject line.

STATUTORY AUTHORITY

The proposed amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, Texas Health and Safety Code §534.053 requires the Executive Commissioner of HHSC to adopt rules ensuring the provision of community-based mental health services and §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractors. Texas Health and Safety Code §574.081 requires HHSC to adopt rules related to medication provided to individuals discharged or furloughed from court-ordered inpatient mental health treatment. The proposed amendment implements Texas Health and Safety Code §574.081.

§306.204. Discharge of an Individual Involuntarily Receiving Treatment.

(a) Discharge from emergency detention.

(1) Except as provided by §306.178 of this subchapter (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with Texas Health and Safety Code §573.021(b) and §573.023(b), an SMHF or facility with a CPB immediately discharges an individual under emergency detention if:

(A) the SMHF administrator, administrator of the facility with a CPB, or designee concludes, based on a physician's determination, the individual no longer meets the criteria in §306.176(c)(1) of this subchapter (relating to Admission Criteria for a Facility with a Contracted Psychiatric Bed Authorized by an LMHA or LBHA or for a State Mental Health Facility for Emergency Detention); or

(B) except as provided in paragraph (2) of this subsection:

(i) 48 hours has elapsed from the time the individual was presented to the SMHF or facility with a CPB; and

(ii) the SMHF or facility with a CPB has not obtained a court order for further detention of the individual.

(2) In accordance with Texas Health and Safety Code §573.021(b), if the 48-hour period described in paragraph (1)(B)(i) of this subsection ends on a Saturday, Sunday, or legal holiday, or before 4:00 p.m. on the next business day after the individual was presented to the SMHF or facility with a CPB, the SMHF or facility with a CPB detains the individual until 4:00 p.m. on such business day.

(b) Discharge under order of protective custody. Except as provided by §306.178 of this subchapter and in accordance with Texas Health and Safety Code §574.028, an SMHF or facility with a CPB immediately discharges an individual under an order of protective custody if:

(1) the SMHF administrator, facility with a CPB administrator, or designee determines that, based on a physician's determination, the individual no longer meets the criteria described in Texas Health and Safety Code §574.022(a);

(2) the SMHF administrator, facility with a CPB administrator, or designee does not receive notice that the individual's continued detention is authorized after a probable cause hearing held within the time period prescribed by Texas Health and Safety Code §574.025(b);

(3) a final order for court-ordered inpatient mental health services has not been entered within the time period prescribed by Texas Health and Safety Code §574.005; or

(4) an order to release the individual is issued in accordance with Texas Health and Safety Code §574.028(a).

(c) Discharge under court-ordered inpatient mental health services.

(1) Except as provided by §306.178 of this subchapter and in accordance with Texas Health and Safety Code §574.085 and §574.086(a), an SMHF or facility with a CPB immediately discharges an individual under a temporary or extended order for inpatient mental health services if:

(A) the order for inpatient mental health services expires; or

(B) the SMHF administrator, administrator of the facility with a CPB, or designee concludes that, based on a physician's determination, the individual no longer meets the criteria for court-ordered inpatient mental health services.

(2) In accordance with Texas Health and Safety Code §574.086(b), before discharging an individual in accordance with paragraph (1) of this subsection, the SMHF administrator, administrator of the facility with a CPB, or designee considers whether the individual should receive court-ordered outpatient mental health services in accordance with a modified order described in Texas Health and Safety Code §574.061.

(3) In accordance with Texas Health and Safety Code §574.081, at the time an individual receiving court-ordered inpatient mental health services is furloughed or discharged from a facility with a CPB, a facility with a CPB is responsible for providing or paying for psychoactive medication and any other medication prescribed to counteract adverse side effects of psychoactive medication.

(A) A facility with a CPB is only required to provide or pay for these medications if funding to cover the cost of the medications is available to be paid to the facility for this purpose from HHSC.

(B) The facility with a CPB must provide or pay for the medications in an amount sufficient to last until the individual can see a physician, or provider with prescriptive authority, but the facility with a CPB is not required to provide or pay for more than a seven-day supply.

(4) [~~(3)~~] Individuals committed under Texas Code of Criminal Procedure, Chapter 46B or 46C may only be discharged as provided by §306.202(f) of this division (relating to Special Considerations for Discharge Planning).

(d) Discharge packet. An SMHF administrator, administrator of a facility with a CPB, or designee forwards a discharge packet, as provided in §306.201(h) of this division (relating to Discharge Planning), of any individual committed under the Texas Code of Criminal Procedure to the jail and the LMHA or LBHA in conjunction with state and federal privacy laws.

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 September 9, 2020.

TRD-202003703
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 838-4390

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CHAPTER 307. BEHAVIORAL HEALTH PROGRAMS
SUBCHAPTER D. OUTPATIENT COMPETENCY RESTORATION

26 TAC §§307.151, 307.153, 307.155, 307.157, 307.159, 307.161, 307.163, 307.165, 307.167, 307.169, 307.171, 307.173, 307.175

The Executive Commissioner of the Health and Human Services Commission (HHSC) proposes new Subchapter D, concerning Outpatient Competency Restoration in Title 26, Chapter 307. The new subchapter consists of §307.151, concerning Purpose; §307.153, concerning Application; §307.155, concerning Definitions; §307.157, concerning Criteria for Admission to an Outpatient Competency Restoration Program; §307.159, concerning Recommendation Regarding Outpatient Competency Restoration Program Admission; §307.161, concerning General Service Requirements; §307.163, concerning Assessment, Reassessment, and Court Reporting; §307.165, concerning Discharge Requirements; §307.167, concerning Data; §307.169, concerning Written Policies and Procedures; §307.171, concerning Staff Member Training; §307.173, concerning Rights; and §307.175, concerning Compliance with Statutes and Rules.

BACKGROUND AND PURPOSE

The proposed new rules implement amendments made to the Code of Criminal Procedure, Chapter 46B by Senate Bill (S.B.) 1326 (85th Legislature, Regular Session, 2017) that added competency restoration to outpatient treatment options. Specifically, S.B. 1326 states that an individual charged with certain crimes may be released on bail and ordered to participate in an outpatient competency restoration (OCR) program contingent upon the availability of the service and an evaluation of the individual's level of risk to the community. This proposal establishes standards for entities that contract with HHSC to provide OCR services.

SECTION-BY-SECTION SUMMARY

Proposed new §307.151 establishes the purpose of the subchapter.

Proposed new §307.153 indicates the subchapter applies to local mental health authorities (LMHAs), local behavioral health authorities (LBHAs), and LMHA or LBHA subcontractors; and private providers under contract with HHSC and its subcontractors delivering OCR services.

Proposed new §307.155 provides definitions for terminology used in the subchapter.

Proposed new §307.157 describes criteria for admission to an OCR program.

Proposed new §307.159 describes assessment, documentation, and reporting procedures an OCR provider must follow when making a recommendation to the court regarding an individual's eligibility to receive OCR services.

Proposed new §307.161 describes general service requirements such as the provision of OCR services in multiple learning formats; the use telecommunications or information technology; and the availability of appropriate prescribed regimen of medical, psychiatric, or psychological care or treatment.

Proposed new §307.163 requires OCR providers to regularly evaluate an individual's ability to attain competency and report on the individuals progress to the court within specified time frames.

Proposed new §307.165 describes OCR provider requirements for planned and unplanned discharges, continuity of care, and court collaboration.

Proposed new §307.167 describes the bi-annual data OCR providers must collect and report to HHSC.

Proposed new §307.169 describes required policies and procedures OCR providers must develop.

Proposed new §307.171 describes staff training and documentation requirements.

Proposed new §307.173 requires an OCR provider to provide information to an individual regarding the individual's rights.

Proposed new §307.175 identifies specific state and federal laws an OCR provider must comply with, in addition to any applicable federal or state laws or rules.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create a new rule;

(6) the proposed rules will not expand, limit, or repeal existing rules;

(7) the proposed rules will increase the number of individuals subject to the rules; and

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

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

Trey Wood has also determined that there could be an adverse economic effect on small businesses, micro-businesses, or rural communities. LMHAs and LBHAs contracting with HHSC are considered quasi-governmental entities and are not considered small business, micro-business, or rural communities. HHSC does not have sufficient information to determine which potential private providers under contract with HHSC and their subcontractors qualify as small businesses, micro-businesses, or rural communities to estimate economic impact.

HHSC has determined that there are no alternative methods to this proposed rule that would protect the health, safety, and welfare of the residents of Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Sonja Gaines, Deputy Executive Commissioner of IDD and Behavioral Health Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from establishing minimum standards to ensure consistency in OCR programs.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs. The proposed rule provides standards to ensure consistency in OCR programs, including eligibility, admission, assessment, reassessment, staff training, reporting, policies and procedures, discharge requirements, and patient rights. HHSC does not have sufficient information to estimate the fiscal impact for potential private providers under contract with HHSC and their subcontractors. LMHAs and LBHAs are not required to change any business practices.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 18R054" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §§534.052 and 534.058, which authorize the Executive Commissioner to develop rules and standards for services provided by community centers and their subcontractors; and Texas Code of Criminal Procedure Articles 46B.0095, 46B.077, 46B.0711, 46B.079, 46B.0805, 46B.082, 46B.083, and 46B.086, which set forth requirements for OCR programs.

The proposed new sections affect Texas Government Code §531.0055 and Texas Health and Safety Code §§534.052 and 534.058.

§307.151. Purpose.

The purpose of this subchapter is to provide standards for outpatient competency restoration (OCR) services provided to individuals ordered to participate in an OCR program pursuant to the Texas Code of Criminal Procedure Chapter 46B.

§307.153. Application.

This subchapter applies to:

(1) local mental health authorities (LMHA), local behavioral health authorities (LBHA), and LMHA or LBHA subcontractors that administer OCR programs; and

(2) private providers, and any subcontractors, under contract with the Texas Health and Human Services Commission to administer an OCR program.

§307.155. Definitions.

The following words and terms, when used in this subchapter, have the following meanings.

(1) Adaptive behavior--The effectiveness with which, or degree to which, an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group.

(2) Competency restoration--The treatment or education process for restoring an individual's ability to consult with the individual's attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the individual.

(3) Court--A court of law presided over by a judge, judges, or a magistrate in civil and criminal cases.

(4) HHSC--Texas Health and Human Services Commission.

(5) ID--Intellectual disability. A significantly sub-average general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(6) Individual--A person receiving services under this subchapter.

(7) IST--Incompetent to stand trial. The term has the meaning described in Texas Code of Criminal Procedure Article 46B.003.

(8) LBHA--Local behavioral health authority. An entity designated as an LBHA by HHSC in accordance with Texas Health and Safety Code §533.0356.

(9) LIDDA--Local intellectual and developmental disability authority. An entity designated as a LIDDA by HHSC in accordance with Texas Health and Safety Code §533A.035(a).

(10) LMHA--Local mental health authority. An entity designated as an LMHA by HHSC in accordance with Texas Health and Safety Code §533.035.

(11) Medical record--An organized account of information relevant to the medical services provided to an individual, including an individual's history, present illness, findings on examination, treatment and discharge plans, details of direct and indirect care and services, and notes on progress.

(12) OCR--Outpatient competency restoration. A community-based program with the specific objective of attaining restoration to competency pursuant to Texas Code of Criminal Procedure Chapter 46B.

(13) OCR provider--An entity identified in §307.153 of this subchapter (relating to Application) that provides OCR services.

(14) Ombudsman--The Ombudsman for Behavioral Health Access to Care established by Texas Government Code §531.02251, including care for mental health conditions and substance use disorders.

(15) Subcontractor--A person or entity that contracts with an OCR provider to provide OCR services.

(16) TAC--Texas Administrative Code.

§307.157. Criteria for Admission to an Outpatient Competency Restoration Program.

(a) To be eligible to participate in an OCR program, a court must order an individual's participation after determining that an appropriate OCR program is available for the individual and determining that the individual:

(1) is incompetent to stand trial;

(2) is not a danger to others;

(3) may be safely treated on an outpatient basis with the specific objective to attain competency; and

(4) is charged with an offense eligible for OCR pursuant to Texas Code of Criminal Procedure Chapter 46B.

(b) An individual is ineligible to receive OCR services if a court determines the individual is unlikely to restore to competency in the foreseeable future.

§307.159. Recommendation Regarding Outpatient Competency Restoration Program Admission.

(a) If a court determines an individual is IST, the OCR provider must assess the individual to determine whether OCR services are appropriate by ensuring the following assessments are conducted:

(1) a clinical assessment, including substance use history; and

(2) a risk of violence assessment.

(b) If an OCR provider determines that OCR services are appropriate for an individual, the provider must:

(1) inform the court, in writing, that the individual is being recommended for admission into the OCR program; and

(2) submit a comprehensive plan to the court listing services the individual will be provided, including:

(A) competency restoration education;

(B) access to housing resources;

(C) access to transportation resources; and

(D) a regimen of medical, psychiatric, or psychological care or treatment; and

(3) identify the persons responsible for providing treatment to the individual.

(c) If an OCR provider determines that OCR services are inappropriate for an individual, the provider must:

(1) inform the court, in writing, of the individual's ineligibility for admission into the OCR program; and

(2) document reasons for ineligibility in the individual's record.

§307.161. General Service Requirements.

An OCR provider:

(1) must make competency restoration education available in multiple learning formats, which may include:

(A) discussion;

(B) written text;

(C) recorded video; and

(D) experiential learning, such as role-playing or mock trial;

(2) must ensure an individual who requires accommodations receives adapted materials and approaches as needed, including accommodations for language barriers and disabilities;

(3) must make available an appropriate prescribed regimen of medical, psychiatric, or psychological care or treatment, including administration of psychoactive medication in accordance with 25 TAC Chapter 414, Subchapter I (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services); and

(4) may use telecommunications or information technology to provide competency restoration services that are compliant with the Health Insurance Portability and Accountability Act.

§307.163. Assessment, Reassessment and Court Reporting.

An OCR provider must:

(1) regularly evaluate the individual's progress towards attainment of competency to stand trial and likeliness to restore to competency in the foreseeable future; and

(2) report the individual's progress toward achieving competency to the court in accordance with Texas Code of Criminal Procedure, Article 46B.079:

(A) no later than the 14th day after the date competency restoration services begin;

(B) at least once each 30-day period following the date of the first report to the court after competency restoration services begin, if the individual is active in the program; and

(C) promptly report to the court the individual's attainment of competency or whether the individual is not likely to restore to competency in the foreseeable future.

§307.165. Discharge Requirements.

(a) When an OCR provider discharges an individual from OCR services upon completion of court-ordered participation in the OCR program, the OCR program must provide continuity of care services by coordinating the individual's continued services and supports after discharge from the OCR program. Discharge planning includes:

(1) a plan for maintaining housing and utilities for three months or more after discharge;

(2) coordination of ongoing services through an LMHA, LBHA, LIDDA, or other outpatient service to ensure continuity of care;

(3) the provision of medication and documentation of a scheduled psychiatric follow-up appointment after discharge;

(4) completion of all appropriate benefits applications on behalf of any individual, including signing up for long-term subsidized housing;

(5) confirmation that an assisted living facility to which an individual is referred is licensed under Texas Health and Safety Code Chapter 247 and Chapter 553 of this title (relating to Licensing Standards for Assisted Living Facilities) by contacting the HHSC Assisted Living Facility Licensing and Certification Unit, if applicable;

(6) coordination of appropriate transfer to an inpatient treatment facility, if applicable;

(7) coordination of appropriate transfer if returned to custody; and

(8) facilitation of service coordination with the LMHA, LBHA, or LIDDA of the individual's county of residence to ensure the individual's continuity of care.

(b) For an unplanned discharge, an OCR provider must:

(1) notify the court of unplanned discharges;

(2) make efforts to assist in facilitating service coordination with the LMHA, LBHA, or LIDDA in the individual's county of residence to ensure the individual's continuity of care; and

(3) document continuity of care efforts in the individual's medical record.

(c) An OCR provider must document the reasons for the individual's failure to complete the OCR program in the individual's record, if applicable.

(d) Before an individual is discharged from an OCR program, an OCR provider must collaborate with courts to encourage timely resolution of legal issues.

§307.167. Data.

In a format specified by HHSC, an OCR provider must collect and report data to HHSC biannually, within 30 days after the end of the second quarter and 30 days after the end of the state fiscal year, on the OCR program, including:

(1) the number of individuals charged with a felony ordered to the OCR program;

(2) the number of individuals charged with a misdemeanor ordered to the OCR program;

(3) the number of individuals who withdraw from the OCR program without the court's authorization;

(4) the number of individuals receiving an additional charge of a Class B misdemeanor or a higher category of offense while ordered to the OCR program;

(5) the number of individuals restored to competency within the time frame allotted by statute;

(6) the mean number of days from the day the court orders OCR to the day the individual begins participation in the OCR program;

(7) the mean number of days for an individual charged with a felony to restore to competency;

(8) the mean number of days for an individual charged with a misdemeanor to restore to competency;

(9) the number of individuals charged with a felony not restored to competency, for whom an extension was sought;

(10) the number of individuals charged with a misdemeanor not restored to competency, for whom an extension was sought;

(11) the number of individuals not restored to competency;

(12) the total costs associated with operating the OCR program; and

(13) the type of services provided other than psychiatric services and competency restoration education.

§307.169. Written Policies and Procedures.

An OCR provider must develop and implement written policies and procedures that outline processes for:

(1) maintaining a list of each staff member providing OCR services, including the staff members':

(A) position and credentials;

(B) reporting structure; and

(C) responsibilities;

(2) maintaining staff member training records;

(3) describing an individual's eligibility and ineligibility criteria for OCR services;

(4) screening an individual's appropriateness for OCR services;

(5) admitting an individual;

(6) developing a restoration plan;

(7) delivering all required components of competency restoration;

(8) admitting an individual:

(A) who has been referred by another LMHA, LBHA, or LIDDA who is within close physical proximity to the OCR program;

(B) who is without an OCR program in their service area; and

(C) where OCR services are potentially appropriate;

(9) documenting the types of services provided in the OCR program other than competency restoration services in accordance with §307.161 of this subchapter (relating to General Service Requirements);

(10) regularly monitoring, evaluating, and documenting the individual's progress towards attainment of competency to stand trial and likeliness to restore to competency in the foreseeable future in accordance with §307.163 of this subchapter (relating to Assessment, Reassessment, and Court Reporting);

(11) notifying the court:

(A) that the initial restoration period will expire and when it will expire;

(B) if the individual has attained competency or is not likely to attain competency in the foreseeable future;

(C) if an extension for continued restoration services is requested as specified in the Texas Code of Criminal Procedure Article 46B.080; and

(D) the individual's readiness to return to court;

(12) complying with reporting procedures specified in Texas Code of Criminal Procedure, Article 46B.079;

(13) preparing for an individual's planned or unplanned discharge from the OCR program and ensuring continuity of care in accordance with §307.165 of this subchapter (relating to Discharge Requirements), as appropriate; and

(14) educating individuals about their rights and participation in the OCR program.

§307.171. Staff Member Training.

An OCR provider must ensure staff members complete training and document evidence of training in the following:

(1) trauma informed care;

(2) cultural competency;

(3) rights of persons receiving OCR services in accordance with §307.173 of this subchapter (relating to Rights);

(4) identifying, preventing, and reporting abuse, neglect, and exploitation to the Texas Department of Family and Protective Services at 1-800-252-5400 or online at www.txabusehotline.org in accordance with applicable state laws and rules; and

(5) using a protocol for preventing and managing aggressive behavior, including de-escalation intervention techniques in accordance with 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services).

§307.173. Rights.

(a) An OCR provider must:

(1) inform the individual receiving OCR services of the individual's rights in accordance with 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services) or 40 TAC Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability), as applicable;

(2) provide the individual with a copy of the rights handbook published for an individual receiving mental health services or an individual with an ID; and

(3) explain to the individual receiving OCR services how to initiate a complaint and how to contact:

(A) the Ombudsman for complaints against the OCR provider; and

(B) the Texas protection and advocacy agency.

(b) The individual may contact the Ombudsman for additional information and resources, at any time, by calling toll-free at 1-800-252-8154 or online at hhs.texas.gov/ombudsman.

§307.175. Compliance with Statutes and Rules.

In addition to any applicable federal or state law or rule, an OCR provider must comply with:

(1) Texas Health and Safety Code Chapter 574;

(2) Texas Code of Criminal Procedure Chapter 46B;

(3) Health Insurance Portability and Accountability Act of 1996 and other applicable federal and state laws, including:

(A) Texas Health and Safety Code Chapter 241, Subchapter G;

(B) Texas Health and Safety Code Chapter 595;

(C) Texas Health and Safety Code Chapter 611; and

(D) Texas Health and Safety Code §533.009 and §614.017;

(4) 25 TAC Chapter 405, Subchapter K (relating to Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers) as it relates to community-based services and community centers; and

(5) Chapter 306, Subchapter A of this title (relating to Standards for Services to Individuals with Co-occurring Psychiatric and Substance Use Disorders (COPSD)).

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 September 4, 2020.

TRD-202003682
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 838-4352

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER E. NOTICE OF TOLL-FREE TELEPHONE NUMBERS AND PROCEDURES FOR OBTAINING INFORMATION AND FILING COMPLAINTS

28 TAC §1.601

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §1.601, relating to notice of toll-free numbers and information and complaint procedures. The amendment to §1.601 implements Insurance Code §521.005(b), concerning the appropriate wording and appearance of the notice accompanying policies.

EXPLANATION. The Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures is adopted by §1.601(a)(2)(C) to inform workers' compensation policyholders of whom to contact if they have a problem with their premium. The Spanish version of the notice form currently lists an email address that the National Council on Compensation Insurance (NCCI) plans to stop using. Amending §1.601 will correct the email address for NCCI, Dispute Resolution Services, in the Spanish translation version of the workers' compensation notice form, Figure: 28 TAC §1.601(a)(2)(C). Following this proposal, TDI anticipates adopting the amendment to be effective July 1, 2021.

Insurance Code §521.005(a) requires each insurance policy delivered or issued for delivery in Texas to include a brief written notice that includes:

(1) a suggested procedure to be followed by a policyholder with a dispute concerning a claim or premium;

(2) TDI's name and address; and

(3) TDI's toll-free telephone number for information and complaints.

Insurance Code §521.005(b) requires the Commissioner to adopt appropriate wording for these notices.

The proposed amendment is described in the following paragraph.

Section §1.601(a)(2)(C). The proposed amendment to Figure: 28 TAC §1.601(a)(2)(C) changes the email address of regulatoryassurance@ncci.com to regulatoryoperations@ncci.com in the Spanish version of the notice form. This change is necessary to ensure the Spanish version has the correct email address to contact NCCI and so that the information is consistent with the English version of the notice form.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David Muckerheide, assistant director of the Property and Casualty Lines Office, has determined that during each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendment does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendment.

Mr. Muckerheide does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Mr. Muckerheide expects that administering and enforcing the proposed amendment will have the public benefit of helping consumers know where and how to get help with workers' compensation premium problems by listing the correct email address for NCCI in the Spanish translation of the notice form.

Mr. Muckerheide expects that while the proposed amendment will necessitate updating a form, it will not impose an economic cost on those required to comply with the amendment. TDI anticipates that making the proposed change to the notice form will require a short amount of administrative time. The administrative time may be reduced or eliminated if an insurer prepares the change at the same time it makes any routine updates to its insurance forms or computer programs. Under the current requirements of §1.601, the form must be provided at the time of delivery with all policies, bonds, annuity contracts, certificates, or evidences of coverage that are delivered, issued for delivery, or renewed in Texas. The proposed amendment does not change that, so there will be no costs associated with providing the updated form beyond those required by the current rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses because it requires only a minor change to a form. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. In addition, no additional rule amendments are required under Government Code §2001.0045, because the proposed amendment to §1.601 reduces the regulatory burden of the rule imposed on regulated persons.

TDI expects the proposed amendment to reduce regulatory burden on companies by reducing confusion about where and how to get help with workers' compensation premium problems. Less confusion should result in more efficient and timely handling of questions and complaints. It should also increase the opportunity for companies to informally resolve more questions or concerns before they file a complaint with TDI, which necessitates a formal response.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendment is in effect, the proposed rule:

--will not create or eliminate a government program;

--will not require the creation of new employee positions or the elimination of existing employee positions;

--will not require an increase or decrease in future legislative appropriations to the agency;

--will not require an increase or decrease in fees paid to the agency;

--will not create a new regulation;

--will not expand, limit, or repeal an existing regulation;

--will not increase or decrease the number of individuals subject to the rule's applicability; and

--will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on October 26, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period and separate from any comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be received by TDI no later than 5:00 p.m., central time, on October 26, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes the amendment to §1.601 under Insurance Code §§521.005(b) and 36.001.

Insurance Code §521.005(b) provides that the Commissioner adopt appropriate wording for the notice required by the section.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The amendment to §1.601 implements Insurance Code §521.005.

§1.601. Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures.

(a) Purpose and applicability.

(1) (No change.)

(2) The notice must be provided at the time of delivery with all policies, bonds, annuity contracts, certificates, or evidences of coverage that are delivered, issued for delivery, or renewed in Texas by insurers or HMOs. When insurers add a certificate holder, annuitant, or enrollee to a group policy or group plan, insurers must also provide the notice when the certificate, annuity contract, or evidence of coverage is delivered.

(A) (No change.)

(B) (No change.)

(C) The form of the notice for workers' compensation must be consistent with Figure: 28 TAC §1.601(a)(2)(C) and the requirements of subsection (b) of this section. The form of notice is not required to be filed with the department.

Figure: 28 TAC §1.601(a)(2)(C)

[~~Figure:~~ ~~28 TAC §1.601(a)(2)(C)~~]

(b) - (e) (No change.)

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

Filed with the Office of the Secretary of State on September 10, 2020.

TRD-202003715
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 676-6584

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CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

The Texas Department of Insurance proposes to amend 28 TAC §§3.3701, 3.3702, 3.3705, 3.3709, 3.3720 - 3.3723, and to repeal 28 TAC §3.9208, concerning preferred provider benefit plans (PPBPs) and exclusive provider benefit plans (EPBPs). Section 3.3701 implements House Bill 1757, 86th Legislature, Regular Session (2019); §§3.3702, 3.3720, 3.3721, 3.3722, and 3.3723 implement House Bill 3911, 86th Legislature, Regular Session (2019); and §§3.3702, 3.3705, and 3.3722 implement Senate Bill 1742, 86th Legislature, Regular Session (2019). The amendments also eliminate certain health care provider network adequacy review requirements that are duplicative of reviews conducted by the Health and Human Services Commission (HHSC) for provider networks associated with the Texas Children's Health Insurance Program (CHIP), Medicaid, or the State Rural Health Care System.

EXPLANATION. Amending §§3.3701, 3.3702, 3.3705, 3.3709, 3.3720 - 3.3723 implements HB 1757, HB 3911, and Article 1 of SB 1742. HB 1757 amended Insurance Code Chapter 1451, Subchapter C to add pharmacists among other health care providers in Subchapter C giving an insured the authority to select a pharmacist as a health care provider under the insured's health insurance policy.

HB 3911 amended Insurance Code §1301.0056 to provide that the Commissioner examine both PPBPs and EPBPs at least once every three years. The examinations should include qualifying examinations. Previously, the statute only required that EPBPs be examined at least once every five years.

Article 1 of SB 1742 amended Insurance Code Chapter 1451, Subchapter K to add more detailed requirements for health care provider directories, including a requirement for more information regarding facilities and facility-based physicians.

The amendments to §3.3709 and §3.3722 and the repeal of §3.9208 eliminate certain network adequacy review requirements for a PPBP or EPBP written by an insurer for a contract with HHSC to provide services under CHIP, Medicaid, or with the State Rural Health Care System. HHSC conducts its own network adequacy reviews of insurers with which it contracts that are duplicative of TDI's review. The changes will conserve agency resources and reduce the regulatory burden and costs imposed on HHSC program participants.

The proposed amendments to the sections are described in the following paragraphs.

Section 3.3701. Applicability and Scope. An amendment to Subsection (c) modifies the reference to provisions to which 28 TAC Chapter 3, Subchapter X is subject, changing the reference to the specific sections of Insurance Code Chapter 1451, Subchapter C to cite the subchapter as a whole, in order to simplify the citation and incorporate the section added to the subchapter by HB 1757. The amendment also reorganizes the referenced provisions into numerical order.

Section 3.3702. Definitions. Amendments to this section implement HB 3911 and SB 1742. The proposed amendments to Subchapter X, Division 2 generally broaden the division's applicability to both PPBP and EPBP networks. The definition of "exclusive provider network" in §3.3702(b)(7) is being amended to broaden its applicability to both PPBP and EPBP networks to conform to the generally broadened applicability of Subchapter X, Division 2. Specifically, the amendments replace the defined term "exclusive provider network" with "provider network" and add a reference to PPBPs where EPBPs are referenced in that definition. The amendments also move the new definition of "provider network" to §3.3702(b)(16) to keep the definitions in alphabetical order. As a result of the relocation of the definition of "provider network," §3.3702(b)(8) - (15) are renumbered. The definition of "facility" in current §3.3702(b)(8) is amended by replacing the definition with a reference to the new definition of "facility" in Insurance Code §1451.501. The definition of "facility-based physician" in current §3.3702(b)(9) is amended by deleting the "or" and adding the words "or an assistant surgeon." Amending §3.3702(8) - (9) aligns the definitions with the new definitions of "facility" and "facility-based physician" in Insurance Code §1451.501 added by SB 1742. In addition to these amendments, the period at the end of §3.3702(b) is changed to a colon and the word "subparagraphs" in §3.3702(b)(17)(C) is capitalized, for consistency with agency rule drafting style.

Section 3.3705. Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations. Amendments to this section implement SB 1742 and clarify existing requirements. Section 3.3705(b)(12) is amended by requiring a provider's "street address" instead of "location" and a provider's telephone number and specialty, if any, in order to align with the requirements of Insurance Code §1451.504 and §1451.505 as amended by SB 1742. Section 3.3705(c) is amended to replace the specific provider listing submission instructions with directions to follow submission instructions on TDI's website. This amendment will allow TDI to specify an electronic means of submitting notices and update submission instructions as needed. The amendment to §3.3705(l) clarifies the second sentence to make it more readable and the reference to §3.3705(l)(1) - (9) is expanded to include new Paragraphs (10) and (11). Section 3.3705(l)(2) is amended by deleting the current "and" and adding the words "and assistant surgeons" at the end of the paragraph to align with the new definition of "facility-based physician" in Insurance Code §1451.501 added by SB 1742. Amendments add new §3.3705(l)(10) and (11) to implement the new facility and facility-based physician provider directory information requirements in Insurance Code §1451.504 as amended by SB 1742. Section 3.3705(q)(1) is amended by replacing the direction to mail the notice with directions to follow submission instructions on TDI's website. This amendment will allow TDI to specify an electronic means of submitting notices and update submission instructions as needed. In addition to these amendments, the words "subsection," "paragraph," "paragraphs," "subparagraph," and "subparagraphs" are capitalized where they appear throughout the section, for consistency with agency rule drafting style.

Section 3.3709. Annual Network Adequacy Report. An amendment to this section adds new §3.3709(e). This subsection provides that §3.3709 does not apply to a PPBP or EPBP written by an insurer for a contract with HHSC to provide services under CHIP, Medicaid, or with the State Rural Health Care System. TDI's review of the annual network adequacy report is duplicative of HHSC's review of its contractors' networks. In addition to this amendment, the words "subsection" and "paragraphs" are capitalized where they appear in the section, for consistency with agency rule drafting style.

Division 2. Preferred and Exclusive Provider Benefit Plan Requirements. The heading for Division 2 is revised to add the words "Preferred and." This amendment is made to reflect that some of the sections in the division are being expanded to apply to both PPBPs and EPBPs.

Section 3.3720. Preferred and Exclusive Provider Benefit Plan Requirements. The heading of §3.3720 is amended to add the words "Preferred and," and the text is revised to specify which sections are applicable to both PPBPs and EPBPs, and which sections are applicable only to EPBPs. The amendments to this section implement HB 3911 by making §§3.3721 - 3.3723 applicable to both PPBPs and EPBPs instead of only EPBPs while specifying that §3.3724 and §3.3725 remain applicable only to EPBPs.

Section 3.3721. Preferred and Exclusive Provider Benefit Plan Network Approval Required. The heading of §3.3721 is amended to add the words "Preferred and," and the text of the section is revised to address both PPBPs and EPBPs. The amendments to this section implement HB 3911 by making provider benefit plan network approval required for both PPBPs and EPBPs instead of only EPBPs. Both PPBPs and EPBPs are now required to undergo qualifying examinations under Insurance Code §1301.0056 as amended by HB 3911.

Section 3.3722. Application for Preferred and Exclusive Provider Benefit Plan Approval; Qualifying Examination; Network Modifications. The heading of §3.3722 is amended to add the words "Preferred and," and the text of Subsections (a), (c)(4)(B), and (c)(7) is revised to address both PPBPs and EPBPs. These amendments implement HB 3911 by making this section applicable to both PPBPs and EPBPs instead of only EPBPs. Section 3.3722(a) is amended by replacing the direction to mail the application with a reference to follow submission instructions on TDI's website. This amendment will allow TDI to specify an electronic means of submitting applications and update submission instructions as needed. New §3.3722(c)(9)(C) - (D) is added to implement the new facility and facility-based physician provider directory information requirements in Insurance Code §1451.504 from SB 1742. New §3.3722(f) is added, which provides that §3.3722(c)(9) and (d)(3) do not apply to a PPBP or EPBP written by an insurer for a contract with HHSC to provide services under CHIP, Medicaid, or with the State Rural Health Care System from submitting network configuration information or applying for approval for network modifications under §3.3722. It is not necessary for TDI to review network configuration information or require an application for approval for network modifications because it is duplicative of HHSC's review of its contractors' networks. In addition to these amendments, the words "subsection," "paragraph," and "paragraphs" are capitalized where they

appear throughout the section, for consistency with agency rule drafting style.

Section 3.3723. Examinations. Amendments to this section implement HB 3911 and clarify applicable law. Section 3.3723(a) is amended to address both PPBPs and EPBPs and to require an examination at least once every three years instead of five years. Both PPBPs and EPBPs must now be examined at least once every three years under Insurance Code §1301.0056 as amended by HB 3911. Section 3.3723(b) is amended to clarify that examinations are conducted pursuant to Insurance Code Chapter 1301 in addition to the other listed authorities.

Section 3.9208. Provider Network: Accessibility and Availability. TDI proposes the repeal of §3.9208. Repeal of this section removes the requirement that EPBPs subject to Subchapter KK must comply with the network accessibility and availability requirements as outlined in 28 TAC §11.1607. Section 3.9208 is not necessary, because the requirements of §11.1607 are duplicative of HHSC's review of its contractors' networks.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Debra Diaz-Lara, director of the Managed Care Quality Assurance Office, has determined that during each year of the first five years the proposed amendments and repeal are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Diaz-Lara does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments and repeal are in effect, Ms. Diaz-Lara expects that administering the proposed amendments and repeal will have the public benefits of ensuring that TDI's rules conform to Insurance Code §§1301.0056, 1451.128, 1451.501, 1451.504, and 1451.505, conserve agency resources, and reduce the regulatory burden and costs imposed on participants in HHSC's CHIP, Medicaid program, and State Rural Health Care System.

Ms. Diaz-Lara expects that the proposed amendments and repeal will not increase the cost of compliance with Insurance Code §§1301.0056, 1451.128, 1451.504, and 1451.505 because they do not impose requirements beyond those in statute. Insurance Code §1301.0056 provides that the Commissioner examine PPBPs and EPBPs at least once every three years, and that such examinations include qualifying examinations. Insurance Code §1451.128 gives an insured the authority to select a pharmacist as a health care provider under the insured's health insurance policy. Insurance Code §1451.504 and §1451.505 require certain information be included in a provider directory. As a result, the cost associated with complying with these requirements does not result from the enforcement or administration of the proposed amendments and repeal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments and repeal will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. Because the proposed rule is designed to implement Insurance Code §§1301.0056, 1451.128, 1451.501, 1451.504, and 1451.505, any economic impact results from the statute itself. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045. In addition, the proposed rule implements Insurance Code §1301.0056, as added by HB 3911; Insurance Code §1451.128, as added by HB 1757; and Insurance Code §§1451.501, 1451.504, and 1451.505, as added by SB 1742. The proposed rule also reduces the burden and responsibilities imposed on regulated persons and decreases the persons' cost for compliance with the rules by eliminating certain network adequacy review requirements for a PPBP or EPBP written by an insurer for a contract with HHSC to provide services under CHIP, Medicaid, or with the State Rural Health Care System.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand and eliminate existing regulations and will repeal an existing regulation;

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

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on October 26, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be received by the department no later than 5:00 p.m., central time, on October 26, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

SUBCHAPTER X. PREFERRED AND EXCLUSIVE PROVIDER PLANS

DIVISION 1. GENERAL REQUIREMENTS

28 TAC §§3.3701, 3.3702, 3.3705, 3.3709

STATUTORY AUTHORITY. TDI proposes §§3.3701, 3.3702, 3.3705, and 3.3709 under Insurance Code §§1301.007, 1301.1591, and 36.001.

Insurance Code §1301.007 provides that the Commissioner adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to Texas residents.

Insurance Code §1301.1591 allows the Commissioner to adopt rules as necessary to implement Insurance Code §1301.1591, which requires an insurer offering a PPBP or EPBP to list network providers on its website. The rules may govern the form and content of the information required.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The amendment to §3.3701 implements Insurance Code §1451.128. The amendments to §3.3702 implement Insurance Code §1301.0056. The amendments to §3.3702 and §3.3705 implement Insurance Code §§1451.501, 1451.504, and 1451.505. The amendment to §3.3709 affects Insurance Code Chapter 1301.

§3.3701. Applicability and Scope.

(a) Except as otherwise specified in this subchapter, this subchapter applies to any preferred provider benefit plan or exclusive provider benefit plan as specified in this subsection.

(1) This subchapter applies to any preferred or exclusive provider benefit plan policy that is offered, delivered, issued for delivery, or renewed on or after 150 days from the effective date of this section. Any preferred or exclusive provider benefit plan policy delivered, issued for delivery, or renewed prior to this applicability date is subject to the statutes and provisions of this subchapter in effect at the time the policy was delivered, issued for delivery, or renewed.

(2) This subchapter does not apply to:

(A) provisions for dental care benefits in any health insurance policy; or

(B) an exclusive provider benefit plan regulated under Subchapter KK of this chapter (relating to Exclusive Provider Benefit Plan) written by an insurer pursuant to a contract with the Texas Health and Human Services Commission to provide services under the Texas Children's Health Insurance Program, Medicaid, or with the Statewide Rural Health Care System.

(b) This subchapter is not an interpretation of and has no application to any law requiring licensure to act as a principal or agent in the insurance or related businesses including, but not limited to, health maintenance organizations.

(c) The provisions of this subchapter are subject to [~~the~~] Insurance Code Chapter 1301; Insurance Code §§1353.001, 1353.002, 1451.001, 1451.053, and 1451.054; and Insurance Code Chapter 1451, Subchapter C [~~§§1451.001, 1451.053, and 1451.054; Chapter 1301; §§1451.101 - 1451.127; and §1353.001 and §1353.002~~] as they relate to insurers and the practitioners named therein.

(d) These sections do not create a private cause of action for damages or create a standard of care, obligation, or duty that provides a basis for a private cause of action. These sections do not abrogate a statutory or common law cause of action, administrative remedy, or defense otherwise available.

(e) If a court of competent jurisdiction holds that any provision of this subchapter or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

(f) A provision of this title applicable to a preferred provider benefit plan is applicable to an exclusive provider benefit plan unless specified otherwise.

§3.3702. Definitions.

(a) Words and terms defined in Insurance Code Chapter 1301 have the same meaning when used in this subchapter, unless the context clearly indicates otherwise.

(b) The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise: [~~:~~]

(1) Adverse determination--As defined in Insurance Code §4201.002(1).

(2) Allowed amount--The amount of a billed charge that an insurer determines to be covered for services provided by a non-preferred provider. The allowed amount includes both the insurer's payment and any applicable deductible, copayment, or coinsurance amounts for which the insured is responsible.

(3) Billed charges--The charges for medical care or health care services included on a claim submitted by a physician or provider.

(4) Complainant--As defined in §21.2502 of this title (relating to Definitions).

(5) Complaint--As defined in §21.2502 of this title.

(6) Contract holder--An individual who holds an individual health insurance policy, or an organization that holds a group health insurance policy.

[~~(7) Exclusive provider network--The collective group of physicians and health care providers available to an insured under an exclusive provider benefit plan and directly or indirectly contracted with the insurer of an exclusive provider benefit plan to provide medical or health care services to individuals insured under the plan.~~]

(7) [~~(8)~~] Facility--As defined in Health and Safety Code §324.001(7).

[~~(A) an ambulatory surgical center licensed under Health and Safety Code Chapter 243;~~]

[~~(B) a birthing center licensed under Health and Safety Code Chapter 244; or~~]

[~~(C) a hospital licensed under Health and Safety Code Chapter 241.~~]

(8) [~~(9)~~] Facility-based physician--A radiologist, an anesthesiologist, a pathologist, an emergency department physician, [~~or~~] a neonatologist, or an assistant surgeon:

(A) to whom a facility has granted clinical privileges; and

(B) who provides services to patients of the facility under those clinical privileges.

(9) [~~(10)~~] Health care provider or provider--As defined in Insurance Code §1301.001(1-a).

(10) [~~(11)~~] Health maintenance organization (HMO)--As defined in Insurance Code §843.002(14).

(11) [~~(12)~~] In-network--Medical or health care treatment, services, or supplies furnished by a preferred provider, or a claim filed by a preferred provider for the treatment, services, or supplies.

(12) [~~(13)~~] NCQA--The National Committee for Quality Assurance, which reviews and accredits managed care plans.

(13) [~~(14)~~] Nonpreferred provider--A physician or health care provider, or an organization of physicians or health care providers, that does not have a contract with the insurer to provide medical care or health care on a preferred benefit basis to insureds covered by a health insurance policy issued by the insurer.

(14) [~~(15)~~] Out-of-network--Medical or health care treatment services, or supplies furnished by a nonpreferred provider, or a claim filed by a nonpreferred provider for the treatment, services, or supplies.

(15) [~~(16)~~] Pediatric practitioner--A physician or provider with appropriate education, training, and experience whose practice is limited to providing medical and health care services to children and young adults.

(16) Provider network--The collective group of physicians and health care providers available to an insured under a preferred or exclusive provider benefit plan and directly or indirectly contracted with the insurer of a preferred or exclusive provider benefit plan to provide medical or health care services to individuals insured under the plan.

(17) Rural area--

(A) a county with a population of 50,000 or less as determined by the United States Census Bureau in the most recent decennial census report;

(B) an area that is not designated as an urbanized area by the United States Census Bureau in the most recent decennial census report; or

(C) any other area designated as rural under rules adopted by the commissioner, notwithstanding Subparagraphs [~~subparagraphs~~] (A) and (B) of this paragraph.

(18) Urgent care--Medical or health care services provided in a situation other than an emergency that are typically provided in a setting such as a physician or individual provider's office or urgent care center, as a result of an acute injury or illness that is severe or painful enough to lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that the person's condition, illness, or injury is of such a nature that failure to obtain treatment within a reasonable period of time would result in serious deterioration of the condition of the person's health.

(19) Utilization review--As defined in Insurance Code §4201.002(13).

§3.3705. Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations.

(a) Readability. All health insurance policies, health benefit plan certificates, endorsements, amendments, applications or riders are required to be written in a readable and understandable format that meets the requirements of §3.602 of this chapter (relating to Plain Language Requirements).

(b) Disclosure of terms and conditions of the policy. The insurer is required, on request, to provide to a current or prospective group contract holder or a current or prospective insured an accurate written description of the terms and conditions of the policy that allows the current or prospective group contract holder or current or prospective insured to make comparisons and informed decisions before selecting among health care plans. An insurer may utilize its handbook to satisfy this requirement provided that the insurer complies with all requirements set forth in this subsection including the level of disclosure required. The written description must be in a readable and understandable format, by category, and must include a clear, complete, and accurate description of these items in the following order:

(1) a statement that the entity providing the coverage is an insurance company; the name of the insurance company; that, in the case of a preferred provider benefit plan, the insurance contract contains preferred provider benefits; and, in the case of an exclusive provider benefit plan, that the contract only provides benefits for services received from preferred providers, except as otherwise noted in the contract and written description or as otherwise required by law;

(2) a toll free number, unless exempted by statute or rule, and address to enable a current or prospective group contract holder or a current or prospective insured to obtain additional information;

(3) an explanation of the distinction between preferred and nonpreferred providers;

(4) all covered services and benefits, including payment for services of a preferred provider and a nonpreferred provider, and prescription drug coverage, both generic and name brand;

(5) emergency care services and benefits and information on access to after-hours care;

(6) out-of-area services and benefits;

(7) an explanation of the insured's financial responsibility for payment for any premiums, deductibles, copayments, coinsurance or other out-of-pocket expenses for noncovered or nonpreferred services;

(8) any limitations and exclusions, including the existence of any drug formulary limitations, and any limitations regarding preexisting conditions;

(9) any authorization requirements, including preauthorization review, concurrent review, post-service review, and post-payment review; and any penalties or reductions in benefits resulting from the failure to obtain any required authorizations;

(10) provisions for continuity of treatment in the event of termination of a preferred provider's participation in the plan;

(11) a summary of complaint resolution procedures, if any, and a statement that the insurer is prohibited from retaliating against the insured because the insured or another person has filed a complaint on behalf of the insured, or against a physician or provider who, on behalf of the insured, has reasonably filed a complaint against the insurer or appealed a decision of the insurer;

(12) a current list of preferred providers and complete descriptions of the provider networks, including the name, street address, telephone number, and specialty, if any, of each physician and health care provider [~~names and locations of physicians and health care providers~~], and a disclosure of which preferred providers will not accept new patients. Both of these items may be provided electronically, if notice is also provided in the disclosure required by this subsection regarding how a nonelectronic copy may be obtained free of charge;

(13) the service area(s); and

(14) information that is updated at least annually regarding the following network demographics for each service area, if the preferred provider benefit plan is not offered on a statewide service area basis, or for each of the 11 regions specified in §3.3711 of this title (relating to Geographic Regions), if the plan is offered on a statewide service area basis:

(A) the number of insureds in the service area or region;

(B) for each provider area of practice, including at a minimum internal medicine, family/general practice, pediatric practitioner practice, obstetrics and gynecology, anesthesiology, psychiatry, and general surgery, the number of preferred providers, as well as an indication of whether an active access plan pursuant to §3.3709 of this title (relating to Annual Network Adequacy Report; Access Plan) applies to the services furnished by that class of provider in the service area or region and how such access plan may be obtained or viewed, if applicable; and

(C) for hospitals, the number of preferred provider hospitals in the service area or region, as well as an indication of whether an active access plan pursuant to §3.3709 of this title applies to hospital services in that service area or region and how the access plan may be obtained or viewed.

(15) information that is updated at least annually regarding whether any waivers or local market access plans approved pursuant to §3.3707 of this title (relating to Waiver Due to Failure to Contract in Local Markets) apply to the plan and that complies with the following:

(A) if a waiver or a local market access plan applies to facility services or to internal medicine, family or general practice, pediatric practitioner practice, obstetrics and gynecology, anesthesiology, psychiatry, or general surgery services, this must be specifically noted;

(B) the information may be categorized by service area or county if the preferred provider benefit plan is not offered on a statewide service area basis, and, if by county, the aggregate of counties is not more than those within a region; or for each of the 11 regions specified in §3.3711 of this title (relating to Geographic Regions), if the plan is offered on a statewide service area basis; and

(C) the information must identify how to obtain or view the local market access plan.

(c) Filing required. A copy of the written description required in Subsection [~~subsection~~] (b) of this section must be filed with the department with the initial filing of the preferred provider benefit plan and within 60 days of any material changes being made in the information required in Subsection [~~subsection~~] (b) of this section. Submission of listings of preferred providers as required in Subsection [~~subsection~~] (b)(12) of this section may be made electronically in a format acceptable to the department or by submitting with the filing the Internet website address at which the department may view the current provider listing. Acceptable formats include Microsoft Word and Excel documents. Submit provider listings as specified on the department's website. [~~Electronic submission of the provider listing, if applicable, must be submitted to the following email address: Life-Health@tdi.texas.gov. Nonelectronic filings must be submitted to the department at: Life/Health and HMO Intake Team, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.~~]

(d) Promotional disclosures required. The preferred provider benefit plan and all promotional, solicitation, and advertising material concerning the preferred provider benefit plan must clearly describe the distinction between preferred and nonpreferred providers. Any illustration of preferred provider benefits must be in close proximity to an equally prominent description of basic benefits, except in the case of an exclusive provider benefit plan.

(e) Internet website disclosures. Insurers that maintain an Internet website providing information regarding the insurer or the health insurance policies offered by the insurer for use by current or prospective insureds or group contract holders must provide:

(1) an Internet-based provider listing for use by current and prospective insureds and group contract holders;

(2) an Internet-based listing of the state regions, counties, or three-digit ZIP Code areas within the insurer's service area(s), indicating as appropriate for each region, county or ZIP Code area, as applicable, that the insurer has:

(A) determined that its network meets the network adequacy requirements of this subchapter; or

(B) determined that its network does not meet the network adequacy requirements of this subchapter; and

(3) an Internet-based listing of the information specified for disclosure in Subsection [~~subsection~~] (b) of this section.

(f) Notice of rights under a network plan required. An insurer must include the notice specified in Figure: 28 TAC §3.3705(f)(1) for a preferred provider benefit plan that is not an exclusive provider benefit plan, or Figure: 28 TAC §3.3705(f)(2) for an exclusive provider benefit plan, in all policies, certificates, disclosures of policy terms and conditions provided to comply with Subsection [~~subsection~~] (b) of this section, and outlines of coverage in at least 12-point font:

(1) Preferred provider benefit plan notice.
Figure: 28 TAC §3.3705(f)(1) (No change.)

(2) Exclusive provider benefit plan notice.
Figure: 28 TAC §3.3705(f)(2) (No change.)

(g) Untrue or misleading information prohibited. No insurer, or agent or representative of an insurer, may cause or permit the use or distribution of information which is untrue or misleading.

(h) Disclosure concerning access to preferred provider listing. The insurer must provide notice to all insureds at least annually describing how the insured may access a current listing of all preferred providers on a cost-free basis. The notice must include, at a minimum, information concerning how to obtain a nonelectronic copy of the listing and a telephone number through which insureds may obtain assistance during regular business hours to find available preferred providers.

(i) Required updates of available provider listings. The insurer must ensure that it updates all electronic or nonelectronic listings of preferred providers made available to insureds at least every three months.

(j) Annual provision of provider listing required in certain cases. If no Internet-based preferred provider listing or other method of identifying current preferred providers is maintained for use by insureds, the insurer must distribute a current preferred provider listing to all insureds no less than annually by mail, or by an alternative method of delivery if an alternative method is agreed to by the insured, group policyholder on behalf of the group, or certificate holder.

(k) Reliance on provider listing in certain cases. A claim for services rendered by a nonpreferred provider must be paid in the same manner as if no preferred provider had been available under §3.3708(b) - (d) of this title (relating to Payment of Certain Basic Benefit Claims and Related Disclosures) and §3.3725(d) - (f) of this title (relating to

Payment of Certain Out-of-Network Claims), as applicable, if an insured demonstrates that:

(1) in obtaining services, the insured reasonably relied upon a statement that a physician or provider was a preferred provider as specified in:

(A) a provider listing; or

(B) provider information on the insurer's website;

(2) the provider listing or website information was obtained from the insurer, the insurer's website, or the website of a third party designated by the insurer to provide such information for use by its insureds;

(3) the provider listing or website information was obtained not more than 30 days prior to the date of services; and

(4) the provider listing or website information obtained indicates that the provider is a preferred provider within the insurer's network.

(l) Additional listing-specific disclosure requirements. In all preferred provider listings, including any Internet-based postings [~~of information made available~~] by the insurer [~~to provide information~~] to insureds about preferred providers, the insurer must comply with the requirements in Paragraphs [~~paragraphs~~] (1) - (11) [~~(9)~~] of this subsection.

(1) The provider information must include a method for insureds to identify those hospitals that have contractually agreed with the insurer to facilitate the usage of preferred providers as specified in Subparagraphs [~~subparagraphs~~] (A) and (B) of this paragraph.

(A) The hospital will exercise good faith efforts to accommodate requests from insureds to utilize preferred providers.

(B) In those instances in which a particular facility-based physician or physician group is assigned at least 48 hours prior to services being rendered, the hospital will provide the insured with information that is:

(i) furnished at least 24 hours prior to services being rendered; and

(ii) sufficient to enable the insured to identify the physician or physician group with enough specificity to permit the insured to determine, along with preferred provider listings made available by the insurer, whether the assigned facility-based physician or physician group is a preferred provider.

(2) The provider information must include a method for insureds to identify, for each preferred provider hospital, the percentage of the total dollar amount of claims filed with the insurer by or on behalf of facility-based physicians that are not under contract with the insurer. The information must be available by class of facility-based physician, including radiologists, anesthesiologists, pathologists, emergency department physicians, [~~and~~] neonatologists, and assistant surgeons.

(3) In determining the percentages specified in Paragraph [~~paragraph~~] (2) of this subsection, an insurer may consider claims filed in a 12-month period designated by the insurer ending not more than 12 months before the date the information specified in Paragraph [~~paragraph~~] (2) of this subsection is provided to the insured.

(4) The provider information must indicate whether each preferred provider is accepting new patients.

(5) The provider information must provide a method by which insureds may notify the insurer of inaccurate information in the listing, with specific reference to:

(A) information about the provider's contract status; and

(B) whether the provider is accepting new patients.

(6) The provider information must provide a method by which insureds may identify preferred provider facility-based physicians able to provide services at preferred provider facilities.

(7) The provider information must be provided in at least 10 point font.

(8) The provider information must specifically identify those facilities at which the insurer has no contracts with a class of facility-based provider, specifying the applicable provider class.

(9) The provider information must be dated.

(10) For each health care provider that is a facility included in the listing, the insurer must:

(A) create separate headings under the facility name for radiologists, anesthesiologists, pathologists, emergency department physicians, neonatologists, and assistant surgeons;

(B) under each heading described by Subparagraph (A) of this paragraph, list each preferred facility-based physician practicing in the specialty corresponding with that heading;

(C) for the facility and each facility-based physician described by Subparagraph (B) of this paragraph, clearly indicate each health benefit plan issued by the insurer that may provide coverage for the services provided by that facility, physician, or facility-based physician group;

(D) for each facility-based physician described by Subparagraph (B) of this paragraph, include the name, street address, telephone number, and any physician group in which the facility-based physician practices; and

(E) include the facility in a listing of all facilities and indicate:

(i) the name of the facility;

(ii) the municipality in which the facility is located or county in which the facility is located if the facility is in the unincorporated area of the county; and

(iii) each health benefit plan issued by the insurer that may provide coverage for the services provided by the facility.

(11) The listing must list each facility-based physician individually and, if a physician belongs to a physician group, also as part of the physician group.

(m) Annual policyholder notice concerning use of a local market access plan. An insurer operating a preferred provider benefit plan that relies on a local market access plan as specified in §3.3707 of this title (relating to Waiver Due to Failure to Contract in Local Markets) must provide notice of this fact to each individual and group policyholder participating in the plan at policy issuance and at least 30 days prior to renewal of an existing policy. The notice must include:

(1) a link to any webpage listing of regions, counties, or ZIP codes made available pursuant to Subsection [~~subsection~~] (e)(2) of this section;

(2) information on how to obtain or view any local market access plan or plans the insurer uses; and

(3) a link to the department's website where the department posts information relevant to the grant of waivers.

(n) Disclosure of substantial decrease in the availability of certain preferred providers. An insurer is required to provide notice as specified in this subsection of a substantial decrease in the availability of preferred facility-based physicians at a preferred provider facility.

(1) A decrease is substantial if:

(A) the contract between the insurer and any facility-based physician group that comprises 75 percent or more of the preferred providers for that specialty at the facility terminates; or

(B) the contract between the facility and any facility-based physician group that comprises 75 percent or more of the preferred providers for that specialty at the facility terminates, and the insurer receives notice as required under §3.3703(a)(26) of this title (relating to Contracting Requirements).

(2) Notwithstanding Paragraph [~~paragraph~~] (1) of this subsection, no notice of a substantial decrease is required if the requirements specified in either Subparagraph [~~subparagraph~~] (A) or (B) of this paragraph are met:

(A) alternative preferred providers of the same specialty as the physician group that terminates a contract as specified in Paragraph [~~paragraph~~] (1) of this subsection are made available to insureds at the facility so the percentage level of preferred providers of that specialty at the facility is returned to a level equal to or greater than the percentage level that was available prior to the substantial decrease; or

(B) the insurer provides to the department, by e-mail to mcqa@tdi.texas.gov, a certification of the insurer's determination that the termination of the provider contract has not caused the preferred provider service delivery network for any plan supported by the network to be noncompliant with the adequacy standards specified in §3.3704 of this title (relating to Freedom of Choice; Availability of Preferred Providers), as those standards apply to the applicable provider specialty.

(3) An insurer must prominently post notice of any contract termination specified in Paragraph [~~paragraph~~] (1)(A) or (B) of this subsection and the resulting decrease in availability of preferred providers on the portion of the insurer's website where its provider listing is available to insureds.

(4) Notice of any contract termination specified in Paragraph [~~paragraph~~] (1)(A) or (B) of this subsection and of the decrease in availability of providers must be maintained on the insurer's website until the earlier of:

(A) the date on which adequate preferred providers of the same specialty become available to insureds at the facility at the percentage level specified in Paragraph [~~paragraph~~] (2)(A) of this subsection;

(B) six months from the date that the insurer initially posts the notice; or

(C) the date on which the insurer provides to the department, by e-mail to mcqa@tdi.texas.gov, a certification as specified in Paragraph [~~paragraph~~] (2)(B) of this subsection indicating the insurer's determination that the termination of provider contract does not cause non-compliance with adequacy standards.

(5) An insurer must post notice as specified in Paragraph [~~paragraph~~] (3) of this subsection and update its Internet-based preferred provider listing as soon as practicable and in no case later than two business days after:

(A) the effective date of the contract termination as specified in Paragraph [~~paragraph~~] (1)(A) of this subsection; or

(B) the later of:

(i) the date on which an insurer receives notice of a contract termination as specified in Paragraph [~~paragraph~~] (1)(B) of this subsection; or

(ii) the effective date of the contract termination as specified in Paragraph [~~paragraph~~] (1)(B) of this subsection.

(o) Disclosures concerning reimbursement of out-of-network services. An insurer must make disclosures in all insurance policies, certificates, and outlines of coverage concerning the reimbursement of out-of-network services as specified in this subsection.

(1) An insurer must disclose how reimbursements of nonpreferred providers will be determined.

(2) Except in an exclusive provider benefit plan, if an insurer reimburses nonpreferred providers based directly or indirectly on data regarding usual, customary, or reasonable charges by providers, the insurer must disclose the source of the data, how the data is used in determining reimbursements, and the existence of any reduction that will be applied in determining the reimbursement to nonpreferred providers.

(3) Except in an exclusive provider benefit plan, if an insurer bases reimbursement of nonpreferred providers on any amount other than full billed charges, the insurer must:

(A) disclose that the insurer's reimbursement of claims for nonpreferred providers may be less than the billed charge for the service;

(B) disclose that the insured may be liable to the nonpreferred provider for any amounts not paid by the insurer;

(C) provide a description of the methodology by which the reimbursement amount for nonpreferred providers is calculated; and

(D) provide to insureds a method to obtain a real time estimate of the amount of reimbursement that will be paid to a nonpreferred provider for a particular service.

(p) Plan designations. A preferred provider benefit plan that utilizes a preferred provider service delivery network that complies with the network adequacy requirements for hospitals under §3.3704 of this title without reliance on an access plan may be designated by the insurer as having an "Approved Hospital Care Network" (AHCN). If a preferred provider benefit plan utilizes a preferred provider service delivery network that does not comply with the network adequacy requirements for hospitals specified in §3.3704 of this title, the insurer is required to disclose that the plan has a "Limited Hospital Care Network":

(1) on the insurer's outline of coverage; and

(2) on the cover page of any provider listing describing the network.

(q) Loss of status as an AHCN. If a preferred provider benefit plan designated as an AHCN under Subsection [~~subsection~~] (p) of this section no longer complies with the network adequacy requirements for hospitals under §3.3704 of this title and does not correct such noncompliant status within 30 days of becoming noncompliant, the insurer must:

(1) notify the department in writing concerning such change in status as specified on the department's website [~~at Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104~~];

(2) cease marketing the plan as an AHCN; and

(3) inform all insureds of such change of status at the time of renewal.

§3.3709. Annual Network Adequacy Report.

(a) Network adequacy report required. An insurer must file a network adequacy report with the department on or before April 1 of each year and prior to marketing any plan in a new service area.

(b) General content of report. The report required in Subsection [~~subsection~~] (a) of this section must specify:

(1) the trade name of each preferred provider benefit plan in which insureds currently participate;

(2) the applicable service area of each plan; and

(3) whether the preferred provider service delivery network supporting each plan is adequate under the standards in §3.3704 of this title (relating to Freedom of Choice; Availability of Preferred Providers).

(c) Additional content applicable only to annual reports. As part of the annual report on network adequacy, each insurer must provide additional demographic data as specified in Paragraphs [~~paragraphs~~] (1) - (6) of this subsection for the previous calendar year. The data must be reported on the basis of each of the geographic regions specified in §3.3711 of this title (relating to Geographic Regions). If none of the insurer's preferred provider benefit plans includes a service area that is located within a particular geographic region, the insurer must specify in the report that there is no applicable data for that region. The report must include the number of:

(1) claims for out-of-network benefits, excluding claims paid at the preferred benefit coinsurance level;

(2) claims for out-of-network benefits that were paid at the preferred benefit coinsurance level;

(3) complaints by nonpreferred providers;

(4) complaints by insureds relating to the dollar amount of the insurer's payment for basic benefits or concerning balance billing;

(5) complaints by insureds relating to the availability of preferred providers; and

(6) complaints by insureds relating to the accuracy of preferred provider listings.

(d) Filing the report. The annual report required under this section must be submitted electronically in a format acceptable to the department. Acceptable formats include Microsoft Word and Excel documents. The report must be submitted to the following email address: LifeHealth@tdi.texas.gov.

(e) Exceptions. This section does not apply to a preferred or exclusive provider benefit plan written by an insurer for a contract with the Health and Human Services Commission to provide services under the Texas Children's Health Insurance Program (CHIP), Medicaid, or with the State Rural Health Care System.

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 September 11, 2020.

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DIVISION 2. PREFERRED AND EXCLUSIVE PROVIDER PLANS REQUIREMENTS

28 TAC §§3.3720 - 3.3723

STATUTORY AUTHORITY. TDI proposes amendments to §§3.3720 -3.3723 under Insurance Code §§1301.007, 1301.1591 and 36.001.

Insurance Code §1301.007 requires the Commissioner adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to Texas residents.

Insurance Code §1301.1591 allows the Commissioner to adopt rules as necessary to implement Insurance Code §1301.1591, which requires an insurer offering an PPBP or EPBP to list network providers on its website. The rules may govern the form and content of the information required.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The amendments to §§3.3720 - 3.3723 implement Insurance Code §1301.0056, as enacted by HB 3911. The amendments to §3.3722 implement Insurance Code §1451.504, as enacted by SB 1742, and affect Insurance Code Chapter 1301.

§3.3720. Preferred and Exclusive Provider Benefit Plan Requirements.

Sections 3.3721 - 3.3723 of this title (relating to Preferred and Exclusive Provider Benefit Plan Network Approval, Application for Preferred and Exclusive Provider Benefit Plan Approval and Qualifying Examination, and Examinations) [~~The provisions of this division~~] apply [~~only~~] to preferred and exclusive provider benefit plans offered pursuant to Insurance Code Chapter 1301 in commercial markets. Sections 3.3274 - 3.3725 of this title (relating to Quality Improvement Program and Payment of Certain Out-of-Network Claims) apply only to exclusive provider benefit plans offered pursuant to Insurance Code Chapter 1301 in commercial markets.

§3.3721. Preferred and Exclusive Provider Benefit Plan Network Approval Required.

An insurer may not offer, deliver, or issue for delivery a preferred or [~~an~~] exclusive provider benefit plan in this state unless the commissioner has completed a qualifying examination to determine compliance with Insurance Code Chapter 1301 and this subchapter and has approved the insurer's [~~exclusive~~] provider network in the service area.

§3.3722. Application for Preferred and Exclusive Provider Benefit Plan Approval; Qualifying Examination; Network Modifications.

(a) Where to file application. An insurer that seeks to offer a preferred or [~~an~~] exclusive provider benefit plan must file an application for approval with the Texas Department of Insurance as specified on the department's website [~~at the following address:~~

~~Texas Department of Insurance, Mail Code 106-1A, P.O. Box 149104, Austin, Texas 78714-9104~~]. A form titled Application for Approval of [~~Exclusive~~] Provider Benefit Plan is available on the department's website at www.tdi.texas.gov/forms. An insurer may use this form to prepare the application.

(b) Filing requirements.

(1) An applicant must provide the department with a complete application that includes the elements in the order set forth in Subsection [~~subsection~~] (c) of this section.

(2) All pages must be clearly legible and numbered.

(3) If the application is revised or supplemented during the review process, the applicant must submit a transmittal letter describing the revision or supplement plus the specified revision or supplement.

(4) If a page is to be revised, a complete new page must be submitted with the changed item or information clearly marked.

(c) Contents of application. A complete application includes the elements specified in Paragraphs [~~paragraphs~~] (1) - (12) of this subsection.

(1) The applicant must provide a statement that the filing is:

(A) an application for approval; or

(B) a modification to an approved application.

(2) The applicant must provide organizational information for the applicant, including:

(A) the full name of the applicant;

(B) the applicant's Texas Department of Insurance license or certificate number;

(C) the applicant's home office address, including city, state, and ZIP code; and

(D) the applicant's telephone number.

(3) The applicant must provide the name and telephone number of an individual to be the contact person who will facilitate requests from the department regarding the application.

(4) The applicant must provide an attestation signed by the applicant's corporate president, corporate secretary, or the president's or secretary's authorized representative that:

(A) the person has read the application, is familiar with its contents, and asserts that all of the information submitted in the application, including the attachments, is true and complete; and

(B) the network, including any requested or granted waiver and any access plan as applicable, is adequate for the services to be provided under the preferred or exclusive provider benefit plan.

(5) The applicant must provide a description and a map of the service area, with key and scale, identifying the area to be served by geographic region(s), county(ies), or ZIP code(s). If the map is in color, the original and all copies must also be in color.

(6) The applicant must provide a list of all plan documents and each document's associated form filing ID number or the form number of each plan document that is pending the department's approval or review.

(7) The applicant must provide the form(s) of physician contract(s) and provider contract(s) that include the provisions required in §3.3703 of this title (relating to Contracting Requirements) or an attestation by the insurer's corporate president, corporate secretary, or the president's or secretary's authorized representative that the physician and provider contracts applicable to services provided under the preferred or exclusive provider benefit plan comply with the requirements of Insurance Code Chapter 1301 and this subchapter.

(8) The applicant must provide a description of the quality improvement program and work plan that includes a process for medical peer review required by Insurance Code §1301.0051 and that explains arrangements for sharing pertinent medical records between preferred providers and for ensuring the records' confidentiality.

(9) The applicant must provide network configuration information, including:

(A) maps for each specialty demonstrating the location and distribution of the physician and provider network within the proposed service area by geographic region(s), county(ies) or ZIP code(s); and

(B) lists of:

(i) physicians and individual providers who are preferred providers, including license type and specialization and an indication of whether they are accepting new patients; and

(ii) institutional providers that are preferred providers.

(C) For each health care provider that is a facility included in the list under Subparagraph (B) of this paragraph, the applicant must:

(i) create separate headings under the facility name for radiologists, anesthesiologists, pathologists, emergency department physicians, neonatologists, and assistant surgeons;

(ii) under each heading described by Clause (i) of this subparagraph, list each preferred facility-based physician practicing in the specialty corresponding with that heading;

(iii) for the facility and each facility-based physician described by Clause (ii) of this subparagraph, clearly indicate each health benefit plan issued by the insurer that may provide coverage for the services provided by that facility, physician, or facility-based physician group;

(iv) for each facility-based physician described by Clause (ii) of this subparagraph, include the name, street address, telephone number, and any physician group in which the facility-based physician practices; and

(v) include the facility in a listing of all facilities and indicate:

(I) the name of the facility;

(II) the municipality in which the facility is located or county in which the facility is located if the facility is in the unincorporated area of the county; and

(III) each health benefit plan issued by the insurer that may provide coverage for the services provided by the facility.

(D) The list required by Subparagraph (B) of this paragraph must list each facility-based physician individually and, if a physician belongs to a physician group, also as part of the physician group.

(10) The applicant must provide documentation demonstrating that its plan documents and procedures are compliant with §3.3725(a) of this title (relating to Payment of Certain Out-of-Network Claims) and that the policy contains, without regard to whether the

physician or provider furnishing the services has a contractual or other arrangement to provide items or services to insureds, the provisions and procedures for coverage of emergency care services as set forth in §3.3725 of this title.

(11) The applicant must provide documentation demonstrating that the insurer maintains a complaint system that provides reasonable procedures to resolve a written complaint initiated by a complainant.

(12) The applicant must provide notification of the physical address of all books and records described in Subsection [~~subsection~~] (d) of this section.

(d) Qualifying examinations; documents to be available. The following documents must be available during the qualifying examination at the physical address designated by the insurer pursuant to Subsection [~~subsection~~] (c)(12) of this section:

(1) quality improvement--program description and work plan as required by §3.3724 of this title (relating to Quality Improvement Program);

(2) utilization management--program description, policies and procedures, criteria used to determine medical necessity, and examples of adverse determination letters, adverse determination logs, and independent review organization logs;

(3) network configuration information demonstrating adequacy of the exclusive provider network, as outlined in Subsection [~~subsection~~] (c)(9) of this section, and all executed physician and provider contracts applicable to the network, which may be satisfied by contract forms and executed signature pages;

(4) credentialing files;

(5) all written materials to be presented to prospective insureds that discuss the exclusive provider network available to insureds under the plan and how preferred and nonpreferred physicians or providers will be paid under the plan;

(6) the policy and certificate of insurance; and

(7) a complaint log that is categorized and completed in accord with §21.2504 of this title (relating to Complaint Record; Required Elements; Explanation and Instructions).

(e) Network modifications.

(1) An insurer must file an application for approval with the department before the insurer may make changes to network configuration that impact the adequacy of the network, expand an existing service area, reduce an existing service area, or add a new service area.

(2) Pursuant to Paragraph [~~paragraph~~] (1) of this subsection, if an insurer submits any of the following items to the department and then replaces or materially changes them, the insurer must submit the new item or any amendments to an existing item along with an indication of the changes:

(A) descriptions and maps of the service area, as required by Subsection [~~subsection~~] (c)(5) of this section;

(B) forms of contracts, as described in Subsection [~~subsection~~] (c) of this section; or

(C) network configuration information, as required by Subsection [~~subsection~~] (c)(9) of this section.

(3) Before the department grants approval of a service area expansion or reduction application, the insurer must comply with the requirements of §3.3724 of this title in the existing service areas and in the proposed service areas.

(4) An insurer must file with the department any information other than the information described in Paragraph [~~paragraph~~] (2) of this subsection that amends, supplements, or replaces the items required under Subsection [~~subsection~~] (c) of this section no later than 30 days after the implementation of any change.

(f) Exceptions. Paragraphs (c)(9) and (d)(3) and Subsection (e) of this section do not apply to a preferred or exclusive provider benefit plan written by an insurer for a contract with the Health and Human Services Commission to provide services under the Texas Children's Health Insurance Program (CHIP), Medicaid, or with the State Rural Health Care System.

§3.3723. Examinations.

(a) The commissioner may conduct an examination relating to a preferred or [~~an~~] exclusive provider benefit plan as often as the commissioner considers necessary, but no less than once every three [~~five~~] years.

(b) On-site financial, market conduct, complaint, or quality of care exams will be conducted pursuant to Insurance Code Chapter 401, Subchapter B; Insurance Code Chapter 751; Insurance Code Chapter 1301; and §7.83 of this title (relating to Appeal of Examination Reports).

(c) An insurer must make its books and records relating to its operations available to the department to facilitate an examination.

(d) On request of the commissioner, an insurer must provide to the commissioner a copy of any contract, agreement, or other arrangement between the insurer and a physician or provider. Documentation provided to the commissioner under this subsection will be maintained as confidential as specified in Insurance Code §1301.0056.

(e) The commissioner may examine and use the records of an insurer, including records of a quality of care program and records of a medical peer review committee, as necessary to implement the purposes of this subchapter, including commencement and prosecution of an enforcement action under Insurance Code Title 2, Subtitle B, and §3.3710 of this title (relating to Failure to Provide an Adequate Network). Information obtained under this subsection will be maintained as confidential as specified in Insurance Code §1301.0056. In this subsection, "medical peer review committee" has the meaning assigned by the Occupations Code §151.002.

(f) The following documents must be available for review at the physical address designated by the insurer pursuant to §3.3722(c)(12) of this title (relating to Application for Exclusive Provider Benefit Plan Approval; Qualifying Examination; Network Modifications):

(1) quality improvement--program description, work plans, program evaluations, and committee and subcommittee meeting minutes;

(2) utilization management--program description, policies and procedures, criteria used to determine medical necessity, and templates of adverse determination letters; adverse determination logs, including all levels of appeal; and utilization management files;

(3) complaints--complaint files and complaint logs, including documentation and details of actions taken. All complaints must be categorized and completed in accord with §21.2504 of this title (relating to Complaint Record; Required Elements; Explanation and Instructions);

(4) satisfaction surveys--any insured, physician, and provider satisfaction surveys, and any insured disenrollment and termination logs;

(5) network configuration information as required by §3.3722(c)(9) of this title demonstrating adequacy of the exclusive provider network;

(6) credentialing--credentialing files; and

(7) reports--any reports the insurer submits to a governmental entity.

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 September 1, 2020.

TRD-202003721
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 676-6584

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SUBCHAPTER KK. EXCLUSIVE PROVIDER BENEFIT PLAN

28 TAC §3.9208

STATUTORY AUTHORITY. TDI proposes the repeal of §3.9208 under Insurance Code §1301.007 and §36.001.

Insurance Code §1301.007 requires the Commissioner adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to Texas residents.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The repeal of §3.9208 affects Insurance Code Chapter 1301.

§3.9208. Provider Network: Accessibility and Availability.

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 September 1, 2020.

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James Person
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER HH. STANDARDS FOR REASONABLE COST CONTROL AND UTILIZATION REVIEW FOR CHEMICAL DEPENDENCY TREATMENT CENTERS

The Texas Department of Insurance (TDI) proposes to repeal 28 TAC §§3.8001 - 3.8030, which established chemical dependency treatment standards, including cost control and utilization review standards, and adopt new 28 TAC §3.8001 regulating chemical dependency treatment standards.

EXPLANATION. The proposed repeal of §§3.8001 - 3.8030 and proposed adoption of new §3.8001 implements Insurance Code §1368.007. Section 1368.007 requires that TDI adopt by rule chemical dependency treatment standards for use by insurers, other third-party reimbursement sources, and chemical dependency treatment centers. These standards must provide for (1) reasonable control of costs necessary for inpatient and outpatient treatment of chemical dependency, including guidelines for treatment periods; and (2) appropriate utilization review of treatment, as well as necessary extensions of treatment.

Proposed new §3.8001 requires insurers, other third-party reimbursement sources, and chemical dependency treatment providers to use chemical dependency treatment standards of care in 25 TAC, Chapter 448, Subchapter I, the rules adopted by the Texas Health and Human Services Commission (HHSC). Using HHSC's standards in conjunction with 28 TAC Chapter 19 (relating to Licensing and Regulation of Insurance Professionals) and Insurance Code Chapter 4201, concerning Utilization Review Agents, serve as a means to comply with §1368.007 to control costs and conduct utilization review.

Regulated persons must manage the sometimes-irreconcilable chemical dependency treatment standards of TDI and HHSC. By adopting HHSC's standards, TDI will reduce regulatory burdens and costs imposed on regulated persons. Also, HHSC already regulates health care facilities, health care professionals, and public health, giving it access to current medical and scientific standards. The following two paragraphs summarize the proposal:

Repeal of §§3.8001 - 3.8030. TDI proposes to repeal §§3.8001 - 3.8030.

New §3.8001. Chemical Dependency Treatment Standards. New §3.8001 provides that insurers, other third-party reimbursement sources, and chemical dependency treatment providers must use the chemical dependency treatment standards in 25 TAC, Chapter 448, Subchapter I (relating to treatment program services).

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Debra Diaz-Lara, director of the Managed Care and Quality Assurance Office of the Texas Department of Insurance, has determined that there will be no resulting measurable fiscal impact on state and local governments to enforce or administer the section during each year of the first five years the proposed repeal and new section are in effect other than that imposed by the statute. The bases of that determination were that (1) the proposed amendments do not increase or decrease state revenues or expenditures, and (2) local governments are not involved in enforcing or complying with the proposed new rule.

Ms. Diaz-Lara does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed repeal and new section are in effect, Ms. Diaz-Lara expects that administering the proposed repeal and

new section will have the public benefit of ensuring that TDI's rules conform to Insurance Code §1368.007. Regulated persons will no longer need to manage sometimes-irreconcilable chemical dependency standards that TDI and HHSC adopt, reducing regulatory burdens and costs imposed. The proposed changes will help chemical dependency treatment services be more efficient and effective and provide an appropriate continuum of care that will enable individuals seeking those services to lead lives as productive members of society, free from the burdens associated with chemical dependency. Also, the health, safety, and welfare of Texas insureds and those receiving chemical dependency treatment services will be protected.

Ms. Diaz-Lara expects that the proposed repeal and adoption of the new section will not increase the cost of compliance with Insurance Code §1368.007, because the proposal does not impose requirements other than those necessary to comply with the statute.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposal will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses or rural communities, because the proposed amendments do not impose a cost on regulated persons. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that the proposal does not impose a cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed rule is in effect, the proposed rule or its implementation:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to TDI;

- will not require an increase or decrease in fees paid to the agency;

- will create a new regulation;

- will repeal and replace an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively nor adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that the proposal does not affect private real property interests or restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on October 26, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be received by the department no later than 5:00 p.m., central time, on October 26, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

28 TAC §§3.8001 - 3.8005, 3.8007 - 3.8030

STATUTORY AUTHORITY. TDI proposes the repeal of §§3.8001 - 3.8030 under Insurance Code §1368.007 and §36.001.

Insurance Code §1368.007 requires that TDI adopt by rule chemical dependency treatment standards for use by insurers, other third-party reimbursement sources, and chemical dependency treatment centers. These standards must provide for (1) reasonable control of costs necessary for inpatient and outpatient treatment of chemical dependency, including guidelines for treatment periods; and (2) appropriate utilization review of treatment as well as necessary extensions of treatment.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The repeal of §§3.8001 - 3.8030 affects Insurance Code §1368.007.

§3.8001. Definitions.
§3.8002. Purpose and General Provisions.
§3.8003. Criteria.
§3.8004. Admission and Monitoring.
§3.8005. Utilization Review.
§3.8007. Admission Criteria for Inpatient (Hospital or 24-hour Residential) Detoxification Services.
§3.8008. Continued Stay Criteria for Inpatient (Hospital or 24-hour Residential) Detoxification Services.
§3.8009. Discharge Criteria for Inpatient (Hospital or 24-hour Residential) Detoxification Services.
§3.8010. Recommended Length of Stay for Inpatient (Hospital or 24-hour Residential) Detoxification Services.
§3.8011. Admission Criteria for Inpatient Rehabilitation/Treatment (Hospital or 24-hour Residential) Services.
§3.8012. Continued Stay Criteria for Inpatient Rehabilitation/Treatment (Hospital or 24-hour Residential) Services.
§3.8013. Discharge Criteria for Inpatient Rehabilitation/Treatment (Hospital or 24-hour Residential) Services.
§3.8014. Recommended Length of Stay for Inpatient Rehabilitation/Treatment (Hospital or 24-hour Residential) Services.
§3.8015. Admission Criteria for Partial Hospitalization Services.
§3.8016. Continued Stay Criteria for Partial Hospitalization Services.
§3.8017. Discharge Criteria for Partial Hospitalization Services.
§3.8018. Recommended Length of Stay for Partial Hospitalization Services.
§3.8019. Admission Criteria for Intensive Outpatient Rehabilitation/Treatment Service.
§3.8020. Continued Stay Criteria for Intensive Outpatient Rehabilitation/Treatment Service.
§3.8021. Discharge Criteria for Intensive Outpatient Rehabilitation/Treatment Service.

§3.8022. Recommended Length of Stay for Intensive Outpatient Rehabilitation Treatment Service.

§3.8023. Admission Criteria for Outpatient Treatment Service.

§3.8024. Continued Stay Criteria for Outpatient Treatment Services.

§3.8025. Discharge Criteria for Outpatient Treatment Service.

§3.8026. Recommended Length of Stay for Outpatient Treatment Service.

§3.8027. Admission Criteria for Outpatient Detoxification Treatment Service.

§3.8028. Continued Stay Criteria for Outpatient Detoxification Treatment Services.

§3.8029. Discharge Criteria for Outpatient Treatment Service.

§3.8030. Recommended Length of Stay for Outpatient Detoxification Treatment Service.

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

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James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 676-6587

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28 TAC §3.8001

STATUTORY AUTHORITY. TDI proposes new 28 TAC §3.8001 under Insurance Code §36.001 and §1368.007.

Insurance Code §1368.007 requires that TDI adopt by rule chemical dependency treatment standards for use by insurers, other third-party reimbursement sources, and chemical dependency treatment centers. These standards must provide for (1) reasonable control of costs necessary for inpatient and outpatient treatment of chemical dependency, including guidelines for treatment periods; and (2) appropriate utilization review of treatment as well as necessary extensions of treatment.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Proposed new §3.8001 affects Insurance Code Chapter 1368.

§3.8001. Chemical Dependency Treatment Standards.

Insurers, other third-party reimbursement sources, and chemical dependency treatment providers must use the chemical dependency treatment standards in 25 TAC, Chapter 448, Subchapter I (relating to treatment program services).

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

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James Person
General Counsel
Texas Department of Insurance
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CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER A. AUTOMOBILE INSURANCE

DIVISION 3. MISCELLANEOUS INTERPRETATIONS

28 TAC §5.205

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.205, concerning the automobile theft prevention authority pass-through fee. The amendments to §5.205 implement Senate Bill 604 and House Bill 2048, 86th Legislature, Regular Session (2019).

EXPLANATION. Amending §5.205 is necessary to ensure that the rule and the notice it requires reflect the changes in law made by SB 604 and HB 2048. Before 2019, the Automobile Burglary and Theft Prevention Authority (ABTPA) was governed by Tex. Rev. Civ. Stat. Ann. art. 4413(37). SB 604 codified art. 4413(37) as Transportation Code Chapter 1006. SB 604 also renamed the ABTPA as the Motor Vehicle Crime Prevention Authority (MVCPA). Additionally, HB 2048, in Transportation Code §1006.153, increased the fee amount that insurers must pay from $2.00 to $4.00. Both bills were effective on September 1, 2019.

Section 5.205. Motor Vehicle Crime Prevention Authority Pass-Through Fee. Proposed amendments to §5.205 implement the statutory changes made by SB 604 and HB 2048. Throughout the section, the amendments change the name of the authority from the ABTPA to the MVCPA.

Proposed amendments to subsection (a) update the statutory references from the Revised Civil Statutes to the Transportation Code and change the fee from $2.00 to $4.00.

Proposed amendments to subsection (b) include revised notice language, written in plain language. TDI previously issued Commissioner's Bulletin B-0006-19, alerting insurers of the changes to the notice language made by SB 604. This bulletin included notice language similar to what is included in the proposed amendments. The new notice does not expressly include the $4.00 fee amount. Rather, it includes brackets to allow an insurer to insert the dollar amount the insurer charges the policyholder. This is because insurers are not required to recoup the entire $4.00 fee; they can charge the policyholder for all, part, or none of it.

For clarity, subsection (b) is reorganized to more distinctly enumerate the notice requirements for an insurer that recoups a fee from the policyholder. New paragraph (b)(1) maintains the current requirements that insurers include the notice on or with each motor vehicle insurance policy and provide the notice in at least 10-point type. New paragraph (b)(2) maintains the requirement of the current rule that insurers must include the notice on or with

each motor vehicle insurance policy that is delivered, issued for delivery, or renewed in Texas. New paragraph (b)(3) maintains the current requirement that an insurer who recoups the fee must list the fee on the declarations page.

Proposed new subsection (c) also maintains the current requirement that the notice must become part of the policy. Unlike the current rule, proposed §5.205 includes only one version of the notice language. The notice language is written so that an insurer can choose to print it on the declarations page or include it on or with the policy. That allows insurers to have the same placement options they have under the current rule.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. J'ne Byckovski, director and chief actuary of the Property and Casualty Actuarial Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the rule, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Byckovski does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Byckovski expects that enforcing and administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Transportation Code Chapter 1006, as enacted by SB 604 and amended by HB 2048. The amendments will have the additional public benefit of ensuring that the notice that the rule requires is written in plain language, so that policyholders will be able to understand what the fee is and why it is charged.

Ms. Byckovski expects that the proposed amendments will not increase the cost of compliance with Transportation Code Chapter 1006, as enacted by SB 604 and amended by HB 2048, because it does not impose requirements beyond those in the statute. New Transportation Code §1006.453(b) requires insurers to pay to the MVCPA a fee equal to $4 multiplied by the total number of years or portions of years during which a motor vehicle is covered by insurance. As a result, the costs associated with the increased fee, and any filings needed to update the fee or the required notice, do not result from the enforcement or administration of the proposed amendments. The notice language in the proposed amendments is the same as the notice language in Commissioner's Bulletin B-0006-19. Most insurers who recoup the fee will have already added the notice language from the bulletin and will not need to update and refile their forms.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. The increased fee is required by statute and is not a result of the rule. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a cost on regulated persons. Even if the proposal did impose such a cost, no additional rule amendments would be required under Government Code §2001.0045 because proposed §5.205 is necessary to implement legislation. The proposed rule implements Transportation Code Chapter 1006, as enacted by SB 604 and amended by HB 2048.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

--will not create or eliminate a government program;

--will not require the creation of new employee positions or the elimination of existing employee positions;

--will not require an increase or decrease in future legislative appropriations to the agency;

---will not require an increase or decrease in fees paid to the agency;

--will not create a new regulation;

--will not expand, limit, or repeal an existing regulation;

--will not increase or decrease the number of individuals subject to the rule's applicability; and

--will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that it receives by no later than 5:00 p.m., central time, on October 26, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on October 26, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes revised §5.205 under Transportation Code Chapter 1006 and Insurance Code §36.001.

Transportation Code Chapter 1006 provides that an insurer must pay to the MVCPA a fee equal to $4.00 multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery, or renewed by the insurer.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.205 implements Transportation Code Chapter 1006, as enacted by SB 604 and amended by HB 2048, 86th Legislature, Regular Session (2019).

§5.205. Motor Vehicle Crime [~~Automobile~~ Theft] Prevention Authority Pass-Through Fee.

(a) Each [~~Vernon's Annotated Revised Civil Statutes of the State of Texas, Article 4413(37), §10, requires each~~] insurer must [~~to~~] pay a fee of $4.00 [~~$2.00~~] per "motor vehicle year of insurance" [~~motor vehicle year~~] to the Motor Vehicle Crime [~~Automobile Burglary and Theft~~] Prevention Authority, as required by Transportation Code §1006.153. Each insurer is authorized to recoup this fee from the policyholder.

(b) If an [~~Any~~] insurer recoups [~~recouping~~] the fee from the policyholder under [~~as authorized by~~] subsection (a) of this section, the insurer must:

(1) provide the policyholder with the following notice in at least 10-point type: "Your payment includes a $[_____] fee per vehicle each year. This fee helps fund: (1) auto burglary, theft, and fraud prevention, (2) criminal justice efforts, and (3) trauma care and emergency medical services for victims of accidents due to traffic offenses. By law, this fee funds the Motor Vehicle Crime Prevention Authority (MVCPA).";

(2) include the notice on or with each motor vehicle insurance policy, as defined in 43 TAC §57.48 (relating to Motor Vehicle Years of Insurance Calculations), that is delivered, issued for delivery, or renewed in this state [~~on or after October 5, 1992~~], including those policies issued through the Texas Automobile Insurance Plan Association; and [~~, a notice conforming with either paragraph (1) or (2) of this subsection.~~]

[~~(1) This notice must be in no less than 10-point type, must be attached to or stamped or printed on the declarations page of the policy, and must become part of the policy. The notice must read as follows: "NOTICE: A fee of $_____ is payable in addition to the premium due under this policy. This fee partially or completely reimburses the insurer, as permitted by 28 TAC §5.205, for the $2.00 fee per motor vehicle year required to be paid to the Automobile Burglary and Theft Prevention Authority under Vernon's Annotated Revised Civil Statutes of the State of Texas, Article 4413(37), §10, which was effective on June 6, 1991, and revised effective September 1, 2011."~~]

[~~(2) This notice must be in no less than 10-point type and must be included as a part of the policy. The notice must read as follows: "NOTICE: The Automobile Burglary and Theft Prevention Authority fee is payable in addition to the premium due under this policy. This fee partially or completely reimburses the insurer, as permitted by 28 TAC §5.205, for the $2.00 fee per motor vehicle year required to be paid to the Automobile Burglary and Theft Prevention Authority under Vernon's Annotated Revised Civil Statutes of the State of Texas, Article 4413(37), §10, which was effective on June 6, 1991, and revised effective September 1, 2011." If insurers provide this notice,~~]

(3) include the following language [~~must be printed~~] on the declarations page of the policy, renewal certificate, or billing: "Motor Vehicle Crime [~~Automobile Burglary and Theft~~] Prevention Authority Fee $[_____] (See enclosed notice [~~explanation~~])."

(c) The notice must become part of the policy.

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

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James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 676-6584

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CHAPTER 11. HEALTH MAINTENANCE ORGANIZATIONS

The Texas Department of Insurance proposes to amend 28 TAC §§11.204, 11.303, 11.1600, 11.1607, 11.1610, and 11.1612, concerning health maintenance organizations (HMOs). These amendments implement Senate Bill (SB) 1742, 86th Legislature, Regular Session (2019). The amendments also eliminate certain health care provider network adequacy review requirements that are duplicative of reviews conducted by the Health and Human Services Commission (HHSC) for provider networks associated with the Texas Children's Health Insurance Program (CHIP), Medicaid, or the State Rural Health Care System.

EXPLANATION. The proposed amendments to §§11.204, 11.303, 11.1600, 11.1607, 11.1610, and 11.1612 implement SB 1742. Senate Bill 1742 amends Insurance Code Chapter 1451, Subchapter K to add more detailed requirements for health care provider directories, including a requirement for more information regarding facilities and facility-based physicians. Senate Bill 1742 also amends Insurance Code §843.3481 to require HMOs to provide certain information regarding any preauthorization requirements for health care services.

The proposed amendments to §11.1607 and §11.1610 also eliminate certain network adequacy review requirements for a health benefit plan written by an HMO for a contract with HHSC to provide services under CHIP, Medicaid, or with the State Rural Health Care System. HHSC conducts its own network adequacy reviews of HMOs with which it contracts that are duplicative of TDI's review. The changes will conserve agency resources and reduce the regulatory burden and costs imposed on these HHSC program participants.

The proposed amendments to the sections are described in the following paragraphs.

Section 11.204. Contents. An amendment to §11.204(15) capitalizes the word "paragraph" to conform the rule text to TDI's current style. Amendments to §11.204(19)(B)(iv) and §11.204(19)(C)(iii) replace "city" with "the municipality in which the facility is located or county in which the facility is located if the facility is in the unincorporated area of the county" to align to the requirements of Insurance Code §1451.504 as amended by SB 1742. Amendments replace existing §11.204(19)(D) to require the additional information regarding health care facilities and facility-based physicians required under Insurance Code §1451.504 as amended by SB 1742. The existing language of §11.204(19)(D) is no longer needed because the information required by the provision is duplicative of the new requirements replacing it.

Section 11.303. Examination. An amendment to §11.303(a) adds a reference to 28 TAC §7.83 to clarify that the section applies to an appeal of an HMO examination report.

Section 11.1600. Information to Prospective and Current Contract Holders and Enrollees. Amendment to §11.1600(b)(9) implements SB 1742 by requiring HMOs to provide the informa-

tion required by Insurance Code §843.3481 and also references additional requirements relating to preauthorization in 28 TAC Chapter 19, Subchapter R. The current information required in §11.1600(b)(9) is being deleted and replaced because Insurance Code §843.3481 requires that HMOs provide greater detail on their preauthorization requirements. Amendments to §11.1600(d) and §11.1600(j) capitalize the words "subsection" and "subsections" to conform the rule text to TDI's current style.

Section 11.1607. Accessibility and Availability Requirements. Amendment to §11.1607(l) expands the existing provisions to provide that §11.1607 does not apply to a health benefit plan written by an HMO for a contract with HHSC to provide services under CHIP, Medicaid, or with the State Rural Health Care System. TDI's review of the network adequacy requirements under this section is unnecessary, because it is duplicative of HHSC's review of its contractors' networks. Amendments to §11.1607(j) and §11.1600(k) capitalize the words "subsections" and "subsection" to conform the rule text to TDI's current style.

Section 11.1610. Annual Network Adequacy Report. The proposed amendment to §11.1610 adds new §11.1610(g). This subsection provides that §11.1610 does not apply to a health benefit plan written by an HMO for a contract with HHSC to provide services under CHIP, Medicaid, or with the State Rural Health Care System from the annual network adequacy report requirement of §11.1610. TDI's review of the annual network adequacy report under this section is unnecessary because it is duplicative of HHSC's review of its contractors' networks.

Section 11.1612. Mandatory Disclosure Requirements. An amendment to §11.1612(a)(1) revises the provision to include a requirement that the provider listing describe a provider's specialty, if any, to align with the requirements of Insurance Code §1451.504 and §1451.505, as amended by SB 1742. New §11.1612(h)(10) - (11) adds the new detailed facility and facility-based physician provider directory information requirements in Insurance Code §1451.504 as amended by SB 1742. Amendments to §11.1612(i) and §11.1612(j) capitalize the word "subsection" and "paragraph" to conform the rule text to TDI's current style.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Debra Diaz-Lara, director of the Managed Care Quality Assurance Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Diaz-Lara does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Diaz-Lara expects that administering the proposed amendments will have the public benefits of ensuring that TDI's rules conform to Insurance Code §§843.3481, 1451.504, and 1451.505; conserve agency resources; and reduce the regulatory burden and costs imposed on participants in HHSC's CHIP, Medicaid program, and the State Rural Health Care System.

Ms. Diaz-Lara expects that the proposed amendments will not increase the cost of compliance with Insurance Code §§843.3481, 1451.504, and 1451.505, because it does not impose requirements beyond those in the statute. Insurance Code §843.3481 requires HMOs to provide certain information regarding any preauthorization requirements for health care services. Insurance Code §1451.504 and §1451.505 require certain information be included in a provider directory. As a result, the cost associated with complying with these requirements does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. Because the proposed rule is designed to implement Insurance Code §§843.3481, 1451.504, and 1451.505, any economic impact results from the statute itself. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045. In addition, the proposed rule implements Insurance Code §§843.3481, 1451.504, and 1451.505, as enacted by SB 1742. The proposed rule also reduces the burden and responsibilities imposed on regulated persons and decreases the persons' cost for compliance with the rules by eliminating certain network adequacy review requirements for a health benefit plan written by an HMO for a contract with HHSC to provide services under CHIP, Medicaid, or with the State Rural Health Care System.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand and eliminate an existing regulation;

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

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on October 26, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the

Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be received by the department no later than 5:00 p.m., central time, on October 26, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

SUBCHAPTER C. APPLICATION FOR CERTIFICATE OF AUTHORITY

28 TAC §11.204

STATUTORY AUTHORITY. TDI proposes §11.204 under Insurance Code §§843.151, 843.2015, and 36.001.

Insurance Code §843.151 allows the Commissioner to adopt reasonable rules as necessary and proper to implement Chapter 843, including to ensure enrollees have adequate access to health care services.

Insurance Code §843.2015 allows the Commissioner to adopt rules as necessary to implement Insurance Code §843.2015, which requires an HMO to list network providers on its website. The rules may govern the form and content of the information required.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The amendments to §11.204 implement Insurance Code §1451.504.

§11.204. Contents.

The application for a certificate of authority must contain the following, in this order:

(1) a completed name application form along with any certificate of reservation of corporate name issued by the secretary of state;

(2) a completed certificate of authority application form;

(3) the basic organizational documents and all amendments, complete with the original incorporation certificate with charter number and seal indicating certification by the secretary of state, if applicable;

(4) the bylaws, rules, or any similar document regulating the conduct of the internal affairs of the applicant;

(5) information about officers, directors, and staff, including:

(A) a completed officers and directors page;

(B) NAIC UCAA biographical data forms for all persons who are to be responsible for the day-to-day conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee or other governing body or committee, the principal officers, and controlling shareholders of the applicant if the applicant is a corporation, or all partners or members if the applicant is a partnership or association; and

(C) a complete set of fingerprints for each person to whom the fingerprint requirements of Chapter 1 of this title (relating to General Administration) apply;

(6) organizational information, as follows:

(A) a chart or list clearly identifying the relationships between the applicant and any affiliates, and a list of any currently outstanding loans or contracts to provide services between the applicant and the affiliates;

(B) a chart showing the internal organizational structure of the applicant's management and administrative staff; and

(C) a chart showing contractual arrangements of the HMO's delivery network;

(7) a fidelity bond or deposit for officers and employees that must be:

(A) an original or copy of a bond complying with Insurance Code §843.402 (concerning Officers' and Employees' Bond), which must not contain a deductible; or

(B) a cash deposit held under Insurance Code §843.402 or as provided by Insurance Code §423.004 (concerning Statutory Deposits with Department) in the same amount and subject to the same conditions as the bond described in this paragraph;

(8) information relating to out-of-state licensure and service of legal process for all applicants must be submitted by using the attorney for service form; provided that:

(A) if the applicant is domiciled in another jurisdiction, an agent for service of legal process must be appointed in compliance with Insurance Code Chapter 804 (concerning Service of Process) using Form FIN 312 (rev. 04/00), and the applicant must furnish a copy of the certificate of authority from the domiciliary jurisdiction's licensing authority; and

(B) the applicant must furnish a statement acknowledging that all lawful process in any legal action or proceeding against the HMO on a cause of action arising in this state is valid if served as provided in Insurance Code Chapter 804;

(9) the evidence of coverage to be issued to enrollees and any group agreement that is to be issued to employers, unions, trustees, or other organizations as described in Chapter 11, Subchapter F, of this title (relating to Evidence of Coverage);

(10) financial information, consisting of the following:

(A) a financial statement that includes a balance sheet reflecting the required net worth, assets, and any liabilities.

(B) if the applicant is newly formed, a balance sheet reflecting the HMO's proposed initial funding;

(C) projected financial statements using the NAIC UCAA ProForma Financial Statements for Health Companies, commencing with the proposed beginning of operations and containing at least two full calendar year projections, and including the identity and credentials of the person preparing the projections; and

(D) the most recent audited financial statements of the HMO's immediate parent company, the ultimate holding company parent, and any sponsoring organization;

(11) the schedule of charges, excluding any charges for Medicaid products, with an actuarial certification and supporting documentation meeting the qualifications specified in §11.702 of this title (relating to Actuarial Certification);

(12) if the applicant proposes to write Medicaid products, an actuarial certification and supporting documentation meeting the qualifications specified in §11.702 of this title, and noting whether the proposed rates are the maximum rates allowed by the contracting state agency, if rates less than the maximum rates allowed are being proposed or if the contracting state agency rates are not available;

(13) a description and a map of the applicant's proposed service area, with key and scale, which must identify the county or counties, or portions of counties, to be served; provided that all copies of the map must be in color, if the HMO submits a map on paper and in color;

(14) the form of any contract or monitoring plan between the applicant and:

(A) any person listed on the officers and directors page;

(B) any physician, medical group, association of physicians, or any other provider, and the form of any subcontract between those entities and any physician, medical group, association of physicians, or any other provider to provide health care services, provided that contracts, including subcontracts between physician and provider groups with the individual members of the groups providing health care services to the HMO's enrollees, must include a hold-harmless provision and comply with all other provisions of §11.901 of this title (relating to Required and Prohibited Provisions);

(C) any affiliated exclusive agent or agency;

(D) any affiliated person who will perform marketing, administrative, data processing services, or claims processing services;

(E) any affiliated person who will perform management services, together with a deposit or the original or a copy of a bond with no deductible meeting the requirements of Insurance Code §843.105 (concerning Management and Exclusive Agency Contracts);

(F) an ANHC that agrees to arrange for or provide health care services, other than medical care or services ancillary to the practice of medicine, or a provider HMO that agrees to arrange for or provide health care services on a risk-sharing or capitated risk arrangement on behalf of a primary HMO as part of the primary HMO delivery network; together with a monitoring plan, as required by §11.1604 of this title (relating to Requirements for Certain Contracts Between Primary HMOs and ANHCs and Between Primary HMOs and Provider HMOs);

(G) any insurer or group hospital service corporation to offer indemnity benefits under a point-of-service contract; and

(H) any delegated entity or delegated network, as those terms are described in Insurance Code Chapter 1272 (concerning Delegation of Certain Functions by Health Maintenance Organization);

(15) a description of the quality improvement program and work plan that includes a process for medical peer review required by Insurance Code §843.082 (concerning Requirements for Approval of Application) and §843.102 (concerning Health Maintenance Organization Quality Assurance); provided that arrangements for sharing pertinent medical records between physicians, providers, or both, contracting or subcontracting under Paragraph [~~paragraph~~] (14)(B) of this section with the HMO and ensuring the confidentiality of the records must be explained;

(16) insurance, guarantees, and other protection against insolvency:

(A) any affiliated reinsurance agreement and any other affiliated agreement described in Insurance Code §843.082(4)(C), covering excess of loss, stop-loss, catastrophes, or any combination thereof, which must provide that the commissioner and HMO will be notified no less than 60 days before termination or reduction of coverage by the insurer;

(B) any conversion policy or policies that will be offered by an insurer to an HMO enrollee in the event of the applicant's insolvency;

(C) any other arrangements offering protection against insolvency, including guarantees, as specified in §11.808 of this title (relating to Liabilities) and §11.810 of this title (relating to Guarantee from a Sponsoring Organization);

(17) authorization for bank disclosure to the commissioner of the applicant's initial funding;

(18) the written description of health care plan terms and conditions made available by:

(A) an HMO other than an HMO offering a Children's Health Insurance Program (CHIP) plan to any current or prospective group contract holder and current or prospective enrollee of the applicant under Insurance Code §§843.201 (concerning Disclosure of Information About Health Care Plan Terms), 843.078 (concerning Contents of Application), and 843.079 (concerning Contents of Application; Limited Health Care Service Plan), and §11.1600 of this title (relating to Information to Prospective and Current Contract Holders and Enrollees);

(B) an HMO offering a CHIP plan in the form of the member handbook, for information only, together with a certification from the HMO that the handbook has been approved by the Texas Health and Human Services Commission and a copy of the document approving the handbook;

(19) network configuration information for each of the HMO's physician or provider networks, including limited provider networks, along with:

(A) maps for each product type demonstrating the location and distribution of the physician, dentist, and provider network within the proposed service area by county, with each specialty represented in one map that includes the radii mileage requirements described in §11.1607 of this title (relating to Accessibility and Availability Requirements);

(B) lists for each product type of credentialed and contracted physicians, dentists, and individual providers, in an Excel-compatible format, specifying:

(i) last name;

(ii) first name;

(iii) business address;

(iv) the municipality in which the facility is located or county in which the facility is located if the facility is in the unincorporated area of the county [~~city~~];

(v) state;

(vi) county;

(vii) Texas license number;

(viii) specialty;

(ix) name of the HMO contracted facility, including hospital(s), in which the physician or individual provider has privileges;

(x) date of last credentialing or recredentialing; and

(xi) an indication of whether they are accepting new patients;

(C) lists for each product type of credentialed and contracted facilities, including hospitals, in an Excel-compatible format, specifying:

(i) name of facility;

(ii) business address;

(iii) the municipality in which the facility is located or county in which the facility is located if the facility is in the unincorporated area of the county [~~city~~];

(iv) state;

(v) county;

(vi) type of facility;

(vii) name of national accrediting body, if applicable; and

(viii) date of last credentialing or recredentialing;

(D) for each facility listed under Subparagraph (C) of this paragraph:[~~lists for each product type of hospital-based physicians that are contracted with the HMO, in an Excel-compatible format, specifying:~~]

(i) create separate headings under the facility name for radiologists, anesthesiologists, pathologists, emergency department physicians, neonatologists, and assistant surgeons;

(ii) under each heading described by Clause (i) of this subparagraph, list each preferred facility-based physician practicing in the specialty corresponding with that heading;

(iii) for the facility and each facility-based physician described by Clause (ii) of this subparagraph, clearly indicate each health benefit plan issued by the HMO that may provide coverage for the services provided by that facility, physician, or facility-based physician group;

(iv) for each facility-based physician described by Clause (ii) of this subparagraph, include the name, street address, telephone number, and any physician group in which the facility-based physician practices;

(v) include the facility in a listing of all facilities and indicate each health benefit plan issued by the HMO that may provide coverage for the services provided by the facility; and

(vi) the list must list each facility-based physician individually and, if a physician belongs to a physician group, also as part of the physician group;

~~*[(i)* last name;]~~

~~*[(ii)* first name;]~~

~~*[(iii)* business address;]~~

~~*[(iv)* city;]~~

~~*[(v)* state;]~~

~~*[(vi)* county;]~~

~~*[(vii)* Texas license number;]~~

~~*[(viii)* hospital-based specialty; and]~~

~~*[(ix)* name of each HMO contracted hospital in which the hospital-based physician practices;]~~

(20) a written description of the types of compensation arrangements, such as compensation based on fee-for-service arrangements, risk-sharing arrangements, or capitated risk arrangements, made or to be made with physicians and providers in exchange for the provision of or the arrangement to provide health care services to enrollees, including any financial incentives for physicians and providers; provided that such compensation arrangements are confidential under Insurance Code §843.078(l) and not subject to Government Code Chapter 552 (concerning Public Information);

(21) documentation demonstrating that the applicant will pay for emergency care services performed by non-network physicians or providers as provided by Insurance Code §1271.155 (concerning Emergency Care);

(22) a description of the procedures by which:

(A) a member handbook and materials relating to the complaint and appeal process and the independent review process will be provided to enrollees in languages other than English, in compliance with Insurance Code §843.205 (concerning Member's Handbook; Information About Complaints and Appeals); and

(B) access to a member handbook and materials relating to the complaint and appeal process and the independent review process will be provided to an enrollee who has a disability affecting communication or reading, in compliance with Insurance Code §843.205;

(23) notification of the physical address in Texas of all books and records described in §11.205 of this title (relating to Additional Documents to be Available for Review);

(24) a description of the HMO's information systems, management structure, and personnel that demonstrates the applicant's capacity to meet the needs of enrollees and contracted physicians and providers, and to meet the requirements of regulatory and contracting entities;

(25) a written description of the utilization management and utilization review program;

(26) the URA name and certificate or registration number if the applicant performs utilization review under Insurance Code Chapter 4201 (concerning Utilization Review Agents) and Chapter 19, Subchapter R, of this title (relating to Utilization Reviews for Health Care Provided Under a Health Benefit Plan or Health Insurance Policy), or the URA name and certificate number of the certified URA that will perform utilization review on behalf of the applicant if the applicant delegates utilization review;

(27) complaint and appeal procedures, templates of letters, and logs, including the complaint log, which must categorize each complaint using the following categories and noting all that are applicable to the complaint:

(A) quality of care or services;

(B) accessibility and availability of services;

(C) utilization review or management;

(D) complaint procedures;

(E) physician and provider contracts;

(F) group subscriber contracts;

(G) individual subscriber contracts;

(H) marketing;

(I) claims processing; and

(J) miscellaneous; and

(28) documentation of claim systems and procedures that demonstrates the HMO's ability to pay claims timely and comply with applicable claim payment statutes and rules.

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 September 11, 2020.

TRD-202003723
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 676-6584

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SUBCHAPTER D. REGULATORY REQUIREMENTS FOR AN HMO AFTER ISSUANCE OF CERTIFICATE OF AUTHORITY

28 TAC §11.303

STATUTORY AUTHORITY. TDI proposes §11.303 under Insurance Code §843.151 and §36.001.

Insurance Code §843.151 allows the Commissioner to adopt reasonable rules as necessary and proper to implement Chapter 843, including to ensure enrollees have adequate access to health care services.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The amendments to §11.303 affect Insurance Code Chapter 843.

§11.303. Examination.

(a) The department has authority to conduct examinations of HMOs under Insurance Code Chapters 401 (concerning Audits and Examinations) and 751 (concerning Market Conduct Surveillance), and Insurance Code §843.156 (concerning Examinations) and §843.251 (concerning Complaint System Required; Commissioner Rules and Examination), and such examinations are subject to §7.83 of this title (relating to Appeal of Examination Reports). The department will conduct examinations to determine the financial condition (financial exams), quality of health care services (quality of care exams), or compliance with laws affecting the conduct of business (market conduct exams).

(b) The following documents must be available for review at the HMO's office located within Texas or at a location approved by the department under Insurance Code §803.003 (concerning Authority to Locate Out of State):

(1) administrative: policy and procedure manuals; physician and provider manuals; enrollee materials; organizational charts; key personnel information, for example, resumes and job descriptions; and other items as requested;

(2) quality improvement: program description, work plans, program evaluations, and committee and subcommittee meeting minutes;

(3) utilization management: program description, policies and procedures, criteria used to determine medical necessity, and templates of adverse determination letters; adverse determination logs, including all levels of appeal; and utilization management files;

(4) complaints and appeals: policies and procedures and templates of letters; complaint and appeal logs, including documentation and details of actions taken; and complaint and appeal files;

(5) satisfaction surveys: enrollee, physician, and provider satisfaction surveys, and enrollee disenrollment and termination logs;

(6) health information systems: policies and procedures for accessing enrollee health records and a plan to provide for confidentiality of those records;

(7) network configuration information: as required by §11.204(19) of this title (relating to Contents) demonstrating adequacy of the physician, dentist, and provider network;

(8) executed agreements, including:

(A) management services agreements;

(B) administrative services agreements; and

(C) delegation agreements;

(9) executed physician and provider contracts: copy of the first page, including form number, and signature page;

(10) executed subcontracts: copy of the first page, including the form number, and signature page of all contracts with subcontracting physicians and providers;

(11) credentialing: credentialing policies and procedures and credentialing files;

(12) reports: any reports submitted by the HMO to a governmental entity;

(13) claims systems: policies and procedures and systems or processes that demonstrate timely claims payments, and reports that substantiate compliance with all applicable statutes and rules regarding claims payment to physicians, providers, and enrollees;

(14) financial records: financial information, including statements, ledgers, checkbooks, inventory records, evidence of expenditures, investments and debts; and

(15) other: any other records requested by the department to demonstrate compliance with applicable statutes and rules.

(c) The department will conduct quality of care exams as follows:

(1) Entrance conference. The examination team or assigned examiner may hold an entrance conference with the HMO's key management staff or their designee before beginning the examination.

(2) Interviews. Examination team members or the examiner may conduct interviews with key management staff or their designated personnel.

(3) Exit conference. On completion of the examination, the examination team or examiner may hold an exit conference with the HMO's key management staff or their designee.

(4) Written report of examination. The examination team or examiner will prepare a written report of the examination. The department will provide the HMO with the written report, and if any significant deficiencies are cited, the department will issue a letter outlining the time frames for a corrective action plan and corrective actions.

(5) Corrective action plan. If the examination team or examiner cites significant deficiencies, the HMO must provide a signed corrective action plan to the department no later than 30 days from receipt of the written examination report. The HMO's plan must provide for correction of these deficiencies no later than 90 days from the receipt of the written examination report.

(6) Verification of correction. The department will verify the correction of deficiencies by submitted documentation or by on-site examination.

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 September 11, 2020.

TRD-202003724
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 676-6584

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SUBCHAPTER Q. OTHER REQUIREMENTS

28 TAC §§11.1600, 11.1607, 11.1610, 11.1612

STATUTORY AUTHORITY. TDI proposes §§11.1600, 11.1607, 11.1610, and 11.1612 under Insurance Code §§843.151, 843.2015 and 36.001.

Insurance Code §843.151 allows the Commissioner to adopt reasonable rules as necessary and proper to implement Chapter 843, including to ensure enrollees have adequate access to health care services.

Insurance Code §843.2015 allows the Commissioner to adopt rules as necessary to implement Insurance Code §843.2015, which requires an HMO to list network providers on its website. The rules may govern the form and content of the information required.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The amendments to §§11.1600, 11.1607, 11.1610, and 11.1612 implement Insurance Code §§843.3481, 1451.504, and 1451.505, as enacted by SB 1742. The amendments to §11.1607 and §11.1610 affect Insurance Code Chapter 843.

§11.1600. Information to Prospective and Current Contract Holders and Enrollees.

(a) An HMO must provide an accurate written description of health care plan terms and conditions to allow any prospective contract holder or enrollee or current contract holder or enrollee to make comparisons and informed decisions before selecting among health care plans. The HMO may deliver the written description of health care plan terms and conditions electronically but must provide a paper copy on request.

(b) The written or electronic plan description must be filed for approval in compliance with §11.301 of this title (relating to Filing Requirements); be in a readable and understandable format that meets the requirements of §3.602 of this title (relating to Plain Language Requirements), by category; and include these items in the following order:

(1) a statement that the entity providing the coverage is an HMO;

(2) a toll-free number, unless exempted by statute or rule, and address for obtaining additional information, including physician and provider information;

(3) a clear, complete, and accurate description of all covered services and benefits, including a description of the options, if any, for prescription drug coverage, both generic and brand name, and if applicable, an explanation of how to access formulary information consistent with §21.3031(b) of this title (relating to Formulary Information on Issuer's Website);

(4) a clear, complete, and accurate description of emergency care services and benefits, including coverage for out-of-area emergency care services and information on access to after-hours care;

(5) a clear, complete, and accurate description of out-of-area services and benefits (if any);

(6) as provided in Insurance Code §1456.003 (concerning Required Disclosure: Health Benefit Plan), statements that:

(A) a facility-based physician or other health care practitioner may not be included in the health benefit plan's physician and provider network;

(B) the facility-based physician or other health care practitioner may balance bill the enrollee for amounts not paid by the health benefit plan; and

(C) if the enrollee receives a balance bill, the enrollee should contact the HMO;

(7) a clear, complete, and accurate explanation of enrollee financial responsibility for payment of premiums, copayments, deductibles, and any other out-of-pocket expenses for noncovered or out-of-plan services, and an explanation that network physicians and providers have agreed to look only to the HMO and not to its enrollees for payment of covered services, except as set forth in this description of the plan;

(8) a clear, complete, and accurate description of any limitations or exclusions, including the existence of any drug formulary limitations;

(9) information regarding any preauthorization requirements, including information required by Insurance Code §843.3481 (concerning Posting of Preauthorization Requirements) and Chapter 19, Subchapter R, of this title (relating to Utilization Reviews for Health Care Provided Under a Health Benefit Plan or Health Insurance Policy) [~~a clear, complete, and accurate description of any prior authorization requirements, including limitations or restrictions, and a summary of procedures to obtain approval for referrals to physicians and providers other than primary care physicians or dentists, and other review requirements, including preauthorization review, concurrent review, post service review, and post payment review, and the consequences resulting from the failure to obtain any required authorizations~~];

(10) a provision for continuity of treatment in the event of the termination of a primary care physician or dentist;

(11) a clear, complete, and accurate summary of the HMO's complaint and appeal procedures, a statement of the availability of the independent review process, and a statement that the HMO is prohib-

ited from retaliating against a group contract holder or enrollee because the group contract holder or enrollee has filed a complaint against the HMO or appealed a decision of the HMO, and is prohibited from retaliating against a physician or provider because the physician or provider has, on behalf of an enrollee, reasonably filed a complaint against the HMO or appealed a decision of the HMO;

(12) a current list of physicians and providers, including behavioral health providers and substance abuse treatment providers, if applicable, with the information necessary to fully inform prospective or current enrollees about the network, including the information required by §11.1612 of this title (relating to Mandatory Disclosure Requirements), together with a link to the online directory required under §11.1612(a) of this title;

(13) a clear, complete, and accurate description of the service area;

(14) when the HMO product includes point-of-service coverage, including when such coverage is provided by an insurer, or when the product is explicitly marketed with the option of purchasing point-of-service coverage, a clear, complete, and accurate explanation of the point-of-service coverage, including:

(A) an explanation of how any deductible is calculated, clearly explaining if multiple deductibles may be applied under the plan as a whole;

(B) a method to obtain a real-time estimate of the amount of reimbursement that will be paid to a non-network provider for a particular service;

(C) a clear, complete, and accurate explanation of how reimbursements of non-network point-of-service services will be determined subject to §11.2503 of this title (relating to Coverage Relating to Point-of-Service Rider Plans) for point-of-service riders or §21.2902 of this title (relating to Arrangements between Indemnity Carriers and HMOs to Provide Coverage) for dual and blended point-of-service arrangements;

(D) if point-of-service coverage is provided under a dual or blended point-of-service arrangement, a clear, complete, and accurate explanation of how the coverage will be coordinated and who the enrollee should contact for common issues, including;

(i) the identity and contact information for each entity, the HMO, the indemnity carrier, or any third party administrator (TPA) that will administer the coverages offered under the point-of-service plan;

(ii) a clear, complete, and accurate description of all duties of the HMO and other carrier to each other relating to the point-of-service plan issued under this subchapter; and

(iii) as applicable, a clear, complete, and accurate explanation of out-of-plan coverage for point-of-service coverage offered in conjunction with plans subject to Insurance Code Chapter 1301 (concerning Preferred Provider Benefit Plans);

(E) a clear, complete, and accurate explanation that for an enrollee in a limited provider network, higher cost-sharing may be imposed only when the enrollee obtains benefits or services outside the HMO delivery network.

(c) An HMO may use its member handbook to satisfy the requirements of this section if the information contained in the handbook is substantially similar to and provides the same level of disclosure as the written or electronic description prescribed by the commissioner and contains all the information required under this section.

(d) An HMO offering a Children's Health Insurance Program plan that files its plan description in the form of its member handbook in compliance with §11.301 of this title (relating to Filing Requirements), for information only, together with a certification from the HMO that the handbook has been approved by the Texas Health and Human Services Commission and a copy of the document approving the handbook is exempt from the filing and approval requirements of Subsection [~~subsection~~] (b) of this section.

(e) If an HMO limits enrollees' access to health care to a limited provider network, then it must provide a notice in substantially the following form to prospective and current group contract holders: "Choosing Your Physician--Now that you have chosen (Name of HMO), your next choice will be deciding who will provide the majority of your health care services. Your Primary Care Physician or Primary Care Provider (PCP) will be the one you call when you need medical advice, when you are sick, and when you need preventive care such as immunizations. Your PCP is also part of a 'network' or association of health professionals who work together to provide a full range of health care services. That means when you choose your PCP, you are also choosing a network and in most instances you are not allowed to receive services from any physician or health care professional, including your obstetrician-gynecologist (OB-GYN), that is not also part of your PCP's network. You will not be able to select any physician or health care professional outside of your PCP's network, even though that physician or health care provider is listed with your health plan. The network to which your PCP belongs will provide or arrange for all of your care, so make sure that your PCP's network includes the specialists and hospitals that you prefer."

(f) If an HMO does not limit an enrollee's selection of an obstetrician or gynecologist to the limited provider network to which that enrollee's primary care physician or provider belongs, then it must provide a notice in compliance with Insurance Code Chapter 1451, Subchapter F, (concerning Access to Obstetrical or Gynecological Care) in substantially the following form to current or prospective enrollees: "ATTENTION FEMALE ENROLLEES: You have the right to select and visit an obstetrician-gynecologist (OB-GYN) without first obtaining a referral from your PCP. (Name of HMO) has opted not to limit your selection of an OB-GYN to your PCP's network. You are not required to select an OB-GYN. You may elect to receive your OB-GYN services from your PCP."

(g) An HMO must clearly identify limited provider networks within its service area by providing a separate listing of its limited provider networks and an alphabetical listing of all the physicians and providers, including specialists, available in each limited provider network. An HMO must include an index of the alphabetical listing of all contracted physicians and providers, including behavioral health providers and substance abuse treatment providers, if applicable, within the HMO's service area, and must indicate the limited provider network(s) to which the physician or provider belongs and the page number where the physician or provider's name can be found.

(h) An HMO must provide notice to enrollees informing them to contact the HMO on receipt of a bill for covered services from any physician or provider, including a facility-based physician or other health care practitioner. The notice must inform enrollees of the method(s) for contacting the HMO for this purpose.

(i) If an HMO or limited provider network provides for an enrollee's care by a physician other than the enrollee's primary care physician while the enrollee is in an inpatient facility (for example, a hospital or skilled nursing facility), the plan description must disclose that on admission to the inpatient facility, a physician other than the primary care physician may direct and oversee the enrollee's care.

(j) An HMO that maintains a website must list the information on its website as required by Subsections [~~subsections~~] (b) - (g) of this section and Insurance Code §843.2015 (concerning Information Available Through Internet Site) and §1456.003 (concerning Required Disclosure: Health Benefit Plan). The information must be easily accessible from the home page of the HMO's website.

§11.1607. Accessibility and Availability Requirements.

(a) Each health benefit plan delivered or issued for delivery by an HMO must include an HMO delivery network that is adequate and complies with Insurance Code §843.082 (concerning Requirements for Approval of Application).

(b) There must be a sufficient number of primary care physicians and specialists with hospital admitting privileges to participating facilities who are available and accessible 24 hours per day, seven days per week, within the HMO's service area to meet the health care needs of the HMO's enrollees.

(c) An HMO must make general, special, and psychiatric hospital care available and accessible 24 hours per day, seven days per week, within the HMO's service area.

(d) If an HMO limits enrollees' access to a limited provider network, it must ensure that the limited provider network complies with all requirements of this section.

(e) An HMO must make emergency care available and accessible 24 hours per day, seven days per week, without restrictions on where the services are rendered.

(f) All covered services that are offered by an HMO must be sufficient in number and location to be readily available and accessible within the service area to all enrollees.

(g) An HMO must arrange for covered health care services, including referrals to specialists, to be accessible to enrollees on a timely basis on request and consistent with these guidelines:

(1) urgent care must be available within 24 hours for medical, dental, and behavioral health conditions;

(2) routine care must be available within:

(A) three weeks for medical conditions;

(B) eight weeks for dental conditions; and

(C) two weeks for behavioral health conditions.

(3) Preventive health services must be available within:

(A) two months for a child;

(B) three months for an adult; and

(C) four months for dental services.

(h) An HMO is required to provide an adequate network for its entire service area. All covered services must be accessible and available so that travel distances from any point in its service area to a point of service are no greater than:

(1) 30 miles for primary care and general hospital care; and

(2) 75 miles for specialty care, special hospitals, and single health care service plan physicians or providers.

(i) Access to certain institutional providers. An HMO network providing access to more than one institutional provider in a region must make a good-faith effort to have a mix of for-profit, nonprofit, and tax-supported institutional participating providers, unless the mix is not feasible due to geographic, economic, or other operational factors. An HMO must give special consideration to contracting with teaching hospitals and hospitals that provide indigent care or care for uninsured individuals as a significant percentage of their overall patient load.

(j) An HMO that is unable to meet the requirements of Subsections [~~subsections~~] (b) - (h) of this section must file an access plan for approval with the department in compliance with §11.301 of this title (relating to Filing Requirements). The access plan must specify:

(1) the geographic area within the service area in which a sufficient number of contracted physicians and providers are not available, including a specification of the class of physician or provider;

(2) a map for each specialty, with key and scale, that identifies the geographic areas within the service area in which the health care services, physicians, and providers are not available;

(3) the reason or reasons that the network does not meet the adequacy requirements specified in this section;

(4) procedures that the HMO will use to assist enrollees in obtaining medically necessary services when no network physician or provider is available, including procedures to coordinate care to hold enrollees harmless and eliminate or limit the likelihood of balance billing;

(5) a list of the physicians and providers within the relevant service area that the HMO attempted to contract with, identified by name and specialty or facility type, with:

(A) a description of how and when the HMO last contacted each physician, provider, or facility; and

(B) a description of the reason each physician, provider, or facility gave for declining to contract with the HMO;

(6) procedures detailing how out-of-network benefit claims will be handled when no physicians or providers are available, including procedures for compliance with §11.1611 of this title (relating to Out-of-Network Claims; Non-Network Physicians and Providers);

(7) steps the HMO will take to attempt to bring its network into compliance with this section; and

(8) a process for negotiating with a non-network physician or provider before services being rendered, when feasible.

(k) An HMO must submit an access plan that complies with Subsection [~~subsection~~] (j) of this section along with the annual report on network adequacy under §11.1610 of this title (relating to Annual Network Adequacy Report).

(l) This section does not apply to a health benefit plan written by an HMO for a contract with the Health and Human Services Commission (HHSC) to provide services under the Texas Children's Health Insurance Program (CHIP), Medicaid, or with the State Rural Health Care System. [~~Notwithstanding subsection (h) of this section, an HMO that has a contract with the Health and Human Services Commission is not required to meet the access requirements prescribed in this section for covered services provided to participants in the Children's Health Insurance Program Perinatal Program.~~]

(m) An HMO may make arrangements with physicians or providers outside the service area for enrollees to receive a higher level of skill or specialty than the level available within the HMO service area, such as, but not limited to, transplants and treatment of cancer, burns, and cardiac diseases. An HMO may not require an enrollee to travel out of the service area to receive the services.

(n) An HMO is not required to expand services outside its service area to accommodate enrollees who live outside the service area but work within the service area.

(o) In compliance with Insurance Code Chapter 1455 (concerning Telemedicine and Telehealth), each evidence of coverage or certificate delivered or issued for delivery by an HMO may provide enrollees the option to access covered health care services through a telehealth service or telemedicine service.

§11.1610. Annual Network Adequacy Report.

(a) An HMO must file a network adequacy report with the department on or before August 15 of each year and before marketing any plan in a new service area after August 15, 2017. The network adequacy report must specify:

(1) the trade name of each HMO plan in which enrollees currently participate;

(2) the applicable service area of each plan; and

(3) whether the HMO service delivery network supporting each plan meets the requirements in §11.1607 of this title (relating to Accessibility and Availability Requirements).

(b) If applicable, the network adequacy report must include an access plan that complies with §11.1607 of this title.

(c) As part of the annual network adequacy report, the HMO must provide additional data specified in this subsection for the previous calendar year. The data must be reported on the basis of each of the geographic regions specified in §3.3711 of this title (relating to Geographic Regions). If none of the HMO's plans include a service area that is located within a particular geographic region, the insurer must specify in the report that there is no applicable data for that region. The HMO report must include the number of:

(1) claims paid for out-of-network benefits that were not based on an emergency or the unavailability of network physicians or providers under Insurance Code §1271.155 (concerning Emergency Care) or §1271.055 (concerning Out-of-Network Services);

(2) claims for out-of-network benefits that were based on an emergency or the unavailability of network physicians or providers under Insurance Code §1271.155 or §1271.055;

(3) complaints by non-network physicians and providers;

(4) complaints by network physicians and providers relating to inability to refer enrollees to network physicians or providers because network physicians or providers are not available;

(5) complaints by enrollees relating to the dollar amount of the HMO's payment for basic health care benefits;

(6) complaints by enrollees concerning balance billing;

(7) complaints by enrollees relating to the unavailability of network physicians or providers;

(8) complaints by enrollees relating to the accuracy of network physician and provider listings; and

(9) complaints by physicians and providers relating to the accuracy of network physician and provider listings.

(d) The annual network adequacy report required under this section must be submitted electronically in a format and by a method acceptable to the department. Unless and until a standardized form and method for submitting the above information is made available by the department, acceptable formats include Microsoft Word and Excel documents. Unless and until another electronic method of submission is required, the report must be submitted to the department's email address, mcqa@tdi.texas.gov, and must indicate in the subject field that the email relates to the filing of the annual network adequacy report.

(e) If the commissioner determines that the HMO's network and any access plan supporting the network are inadequate to ensure that benefits are available to all enrollees or are inadequate to ensure that all covered health care services are provided in a manner ensuring availability of and accessibility to adequate personnel, specialty care, and facilities, the commissioner may order one or more of the following sanctions under the commissioner's authority in Insurance Code Chapter 82 (concerning Sanctions) and Insurance Code Chapter 83 (concerning Emergency Ceases and Desist Orders) to issue cease and desist orders:

(1) reduction of a service area;

(2) cessation of marketing in parts of the state; and

(3) cessation of marketing entirely and withdrawal from the HMO market.

(f) This section does not affect the commissioner's authority to take or order any other appropriate action under the commissioner's authority in the Insurance Code.

(g) This section does not apply to a health benefit plan written by an HMO for a contract with the Health and Human Services Commission (HHSC) to provide services under the Texas Children's Health Insurance Program (CHIP), Medicaid, or with the State Rural Health Care System.

§11.1612. Mandatory Disclosure Requirements.

(a) Online directory. An HMO must develop and maintain a directory of contracting physicians and health care providers, display the directory on a public Internet website maintained by the HMO, and ensure that a direct electronic link to the directory is conspicuously displayed on the electronic summary of benefits and coverage of each plan issued by the HMO. The directory must:

(1) include the name, address, [~~and~~] telephone number, and specialty, if any, of each physician and provider;

(2) clearly indicate each health benefit plan issued by the HMO that may provide coverage for services provided by each physician or provider included in the directory;

(3) be electronically searchable by physician or health care provider name and location;

(4) be publicly accessible without the necessity of [~~or~~] providing a password, a username, or personally identifiable information; and

(5) be reviewed on an ongoing basis and corrected or updated, if necessary, not less than once each month.

(b) Identification of limited networks and index. An HMO must clearly identify limited provider networks within its service area by providing a separate listing of its limited provider networks and an alphabetical listing of all the physicians and providers, including specialists, available in the limited provider network. An HMO must include an index of the alphabetical listing of all physicians and providers, including behavioral health providers and substance abuse treatment providers, if applicable, within the HMO's service area, and must indicate the limited provider network(s) to which the physician or provider belongs and the page number where the physician or provider's name can be found.

(c) Notice of rights under an HMO plan required. An HMO must include the notice specified in Figure: 28 TAC §11.1612(c), in all evidences of coverage certificates, disclosures of plan terms, and member handbooks in at least a 12-point font:
Figure: 28 TAC §11.1612(c) (No change.)

(d) Disclosure concerning access to network physician and provider listing. An HMO must provide notice to all enrollees at least annually describing how the enrollee may access a current listing of all network physicians and providers on a cost-free basis. The notice must include, at a minimum, information concerning how to obtain a nonelectronic copy of the listing and a telephone number through which enrollees may obtain assistance during regular business hours to find available network physicians and providers.

(e) Disclosure concerning network information. An HMO must provide notice to all enrollees at least annually of:

(1) information that is updated at least annually regarding the following network information for each service area, or for the entire state if the plan is offered on a statewide service-area basis:

(A) the number of enrollees in the service area or region;

(B) for each physician and provider area of practice, including at a minimum internal medicine, family or general practice, pediatric practitioner practice, obstetrics and gynecology, anesthesiology, psychiatry, and general surgery, the number of contracted physicians and providers, an indication of whether an active access plan under §11.1607 of this title (relating to Accessibility and Availability Requirements) applies to the services furnished by that class of physician or provider in the service area or region, and how the access plan may be obtained or viewed, if applicable; and

(C) for hospitals, the number of contracted hospitals in the service area or region, an indication of whether an active access plan in compliance with §11.1607 of this title applies to hospital services in that service area or region, and how the access plan may be obtained or viewed, if applicable;

(2) information that is updated at least annually regarding whether any access plans approved under §11.1607 of this title apply to the plan and that complies with the following:

(A) if an access plan applies to facility services or to internal medicine, family or general practice, pediatric practitioner practice, obstetrics and gynecology, anesthesiology, psychiatry, or general surgery services, this must be specifically noted;

(B) the information may be categorized by service area or county if the HMO's plan is not offered on a statewide service area basis, or for the entire state if the plan is offered on a statewide service area basis; and

(C) the information must identify how to obtain or view the access plan.

(f) Website disclosures. An HMO must provide information on its website regarding the HMO or health benefit plans offered by the HMO for use by current or prospective enrollees must provide a:

(1) web-based physician and provider listing for use by current and prospective enrollees; and

(2) web-based listing of the state regions, counties, or three-digit ZIP code areas within the HMO's service area(s), indicating, as appropriate, for each region, county, or ZIP code area, as applicable, that the HMO has:

(A) determined that its network meets the network adequacy requirements of this subchapter; or

(B) determined that its network does not meet the network adequacy requirements of this subchapter.

(g) Reliance on physician and provider listing in certain cases. A claim for services rendered by a noncontracted physician or provider must be paid in the same manner as if no contracted physician or provider had been available under §11.1611 of this title (relating to Out-of-Network Claims; Non- Network Physicians and Providers), as applicable, if an enrollee demonstrates that:

(1) in obtaining services, the enrollee reasonably relied on a statement that a physician or provider was a contracted physician or provider as specified in:

(A) a physician and provider listing; or

(B) provider information on the HMO's website;

(2) the physician and provider listing or website information was obtained from the HMO, the HMO's website, or the website of a third party designated by the HMO to provide that information for use by its enrollees;

(3) the physician and provider listing or website information was obtained not more than 30 days before the date of services; and

(4) the physician and provider listing or website information obtained indicates that the provider is a contracted provider within the HMO's network.

(h) Additional listing-specific disclosure requirements. In all contracted physician and provider listings, including any web-based postings of information made available by the HMO to provide information to enrollees about contracted physicians and providers, the HMO must comply with the following requirements:

(1) the physician and provider information must include a method for enrollees to identify the hospitals that have contractually agreed with the HMO to facilitate the usage of contracted providers by exercising good-faith efforts to accommodate requests from enrollees to use contracted physicians and providers;

(2) the physician and provider information must indicate whether each contracted physician and provider is accepting enrollees as new patients or participates in closed provider networks serving only certain enrollees;

(3) the physician and provider information must provide an email address and a toll-free telephone number through which enrollees may notify the HMO of inaccurate information in the listing, with specific reference to:

(A) information about the physician's or provider's contract status; and

(B) whether the physician or provider is accepting new patients;

(4) the physician and provider information must provide a method by which enrollees may identify contracted facility-based physicians able to provide services at contracted facilities;

(5) the physician and provider information must include a statement of limitations of accessibility and referrals to specialists, including any limitations imposed by a limited provider network;

(6) as provided in Insurance Code §1456.003 (concerning Required Disclosure: Health Benefit Plan), the physician and provider information must give the identity of any health care facilities within the provider network in which facility-based physicians or other health care practitioners do not participate in the health benefit plan's provider network;

(7) the provider information must specifically identify those facilities at which the insurer has no contracts with a class of

facility-based physician or provider, specifying the applicable provider class;

(8) the physician and provider information must be dated; [and]

(9) the physician and provider information must be provided in at least 10-point font; [.]

(10) for each health care provider that is a facility included in a listing, the HMO must:

(A) create separate headings under the facility name for radiologists, anesthesiologists, pathologists, emergency department physicians, neonatologists, and assistant surgeons;

(B) under each heading described by Subparagraph (A) of this paragraph, list each preferred facility-based physician practicing in the specialty corresponding with that heading;

(C) for the facility and each facility-based physician described by Subparagraph (B), clearly indicate each health benefit plan issued by the HMO that may provide coverage for the services provided by that facility, physician, or facility-based physician group;

(D) for each facility-based physician described by Subparagraph (B) of this paragraph, include the name, street address, telephone number, and any physician group in which the facility-based physician practices; and

(E) include the facility in a listing of all facilities and indicate:

(i) the name of the facility;

(ii) the municipality in which the facility is located or county in which the facility is located if the facility is in the unincorporated area of the county; and

(iii) each health benefit plan issued by the HMO that may provide coverage for the services provided by the facility; and

(11) the listing must list each facility-based physician individually and, if a physician belongs to a physician group, also as part of the physician group.

(i) Annual enrollee notice concerning use of an access plan. An HMO operating a plan that relies on an access plan as specified in §11.1600 of this title (relating to Information to Prospective and Current Contract Holders and Enrollees) and §11.1607 of this title must provide notice of this fact to each enrollee participating in the plan at issuance and at least 30 days before renewal. The notice must include:

(1) a link to any webpage listing of regions, counties, or ZIP codes made available under Subsection [subsection] (e)(2) of this section; and

(2) information on how to obtain or view any access plan or plans the HMO uses.

(j) Disclosure of substantial decrease in the availability of certain contracted physicians. An HMO is required to provide notice as specified in this subsection of a substantial decrease in the availability of contracted facility-based physicians at a contracted facility.

(1) A decrease is substantial if:

(A) the contract between the HMO and any facility-based physician group that comprises 75 percent or more of the contracted physicians for that specialty at the facility terminates; or

(B) the contract between the facility and any facility-based physician group that comprises 75 percent or more of the contracted physicians for that specialty at the facility terminates, and the HMO receives notice as required under §11.901 of this title (relating to Required and Prohibited Provisions).

(2) Despite Paragraph [paragraph] (1) of this subsection, no notice of a substantial decrease is required if:

(A) alternative contracted physicians or providers of the same specialty as the physician group that terminates a contract as specified in Paragraph [paragraph] (1) of this subsection are made available to enrollees at the facility so the percentage level of contracted physicians of that specialty at the facility is returned to a level equal to or greater than the percentage level that was available before the substantial decrease; or

(B) the HMO certifies to the department, by email to mcqa@tdi.texas.gov, that the HMO's determination that the termination of the physician contract has not caused the contracted physician service delivery network for any plan supported by the network to be noncompliant with the adequacy standards specified in §11.1607 of this title, as those standards apply to the applicable physician specialty.

(3) An HMO must prominently post notice of any contract termination specified in Paragraph [paragraph] (1)(A) or (B) of this subsection and the resulting decrease in availability of contracted physicians on the portion of the HMO's website where its physician and provider listing is available to enrollees.

(4) Notice of any contract termination specified in Paragraph [paragraph] (1)(A) or (B) of this subsection and of the decrease in availability of physicians must be maintained on the HMO's website until the earlier of:

(A) the date on which adequate contracted physicians of the same specialty become available to enrollees at the facility at the percentage level specified in Paragraph [paragraph] (2)(A) of this subsection;

(B) six months from the date that the HMO initially posts the notice; or

(C) the date on which the HMO provides to the department, by email to mcqa@tdi.texas.gov, the certification specified in Paragraph [paragraph] (2)(B) of this subsection.

(5) An HMO must post notice as specified in Paragraph [paragraph] (3) of this subsection and update its web-based contracted physician and provider listing as soon as practicable and in no case later than two business days after:

(A) the effective date of the contract termination as specified in Paragraph [paragraph] (1)(A) of this subsection; or

(B) the later of:

(i) the date on which an HMO receives notice of a contract termination as specified in Paragraph [paragraph] (1)(B) of this subsection; or

(ii) the effective date of the contract termination as specified in Paragraph [paragraph] (1)(B) of this subsection.

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 September 11, 2020.

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Texas Department of Insurance
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For further information, please call: (512) 676-6584

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CHAPTER 26. EMPLOYER-RELATED HEALTH BENEFIT PLAN REGULATIONS SUBCHAPTER C. LARGE EMPLOYER HEALTH INSURANCE REGULATIONS

28 TAC §26.301

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §26.301, concerning the applicability, definitions, and scope of large employer health insurance regulations. The amendment to §26.301 implements Insurance Code Chapter 1501 by allowing an employer group or association that meets certain requirements to establish a large employer health benefit plan. That large employer plan will be subject to Insurance Code Chapter 1501 and 28 Texas Administrative Code Chapter 26, Subchapter C, rather than being regulated as an association plan under Insurance Code Chapter 1251, and both Subchapters A and C of 28 Texas Administrative Code Chapter 26.

EXPLANATION. New §26.301(g) is added to increase the employee health insurance options available to Texas employers by permitting an employer group or association to qualify as a bona fide employer association entitled to buy a large employer health benefit plan under Insurance Code Chapter 1501.

In March 2019 a federal court struck down parts of a rule issued by the U.S. Department of Labor (DOL). *New York, et al. v. U.S. Dept. of Labor, et al.,* 363 F.Supp.3d 109 (D.D.C. 2019). The rule, 29 C.F.R. §2510.3-5, defined "Employer" for purposes of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1001, et seq. The court did not, however, strike down §2510.3-5(a), which expressly "does not invalidate" a series of DOL advisory opinions addressing circumstances in which the DOL will view a person as able to act directly or indirectly in the interest of direct employers in sponsoring an employee welfare benefit plan that is a group health plan. The advisory opinions identify criteria that, if satisfied, establish that an employer group or association is a bona fide employer association eligible to create one group health plan to cover all of the member employers' employees. This is addressed in Department of Labor Advisory Opinions 2019-01A, 2017-02AC, 2005-25A, 2005-24A, and 2005-20A.

To qualify as a bona fide employer association, an employer group or association must demonstrate that it satisfies the criteria for a bona fide employer association set out in the new text in §26.301, which is based on the DOL's criteria. The DOL's criteria require that employers that participate in a benefit program, either directly or indirectly, exercise control over the program, both in form and in substance, and that an organization that maintains such a plan is tied to the employers and employees that participate in the plan by some common economic or representational interest and genuine organizational relationship unrelated to the provision of benefits.

An employer group or association can seek designation as a bona fide employer association through the issuer's form filing, as is done for other association plans under 28 TAC Chapter 3, Subchapter A. The issuer's form filing and documentation must include either a DOL advisory opinion specifically identifying it as a bona fide employer association or an attorney's attestation with supporting documentation that the employer group or association meets the criteria established in §26.301(g).

Specifically, the new rule is intended to confirm the group's or association's eligibility by showing the following factors:

(A) The employer group or association has a formal organizational structure with a governing body.

(B) The functions and activities of the employer group or association are controlled by its employer members.

(C) The employer group or association has at least one substantial business purpose unrelated to offering and providing health coverage or other employee benefits to its member employers and their employees.

(D) The member employers of the group or association are in the same trade, industry, line of business, or profession. For example, an association in which all member employers are dentists or dental practices would satisfy this provision, while a city's Chamber of Commerce would not.

(E) The member employers that participate in the group health plan control the plan itself in both form and in substance.

(F) Each member employer participating in the group health plan is a person acting directly as an employer of at least one employee who is a participant covered under the plan.

(G) Health coverage through the group health plan is only available to:

--an eligible employee of a current member employer of the employer group or association;

--a former employee of a current member employer of the employer group or association who became eligible for coverage under the group health plan when the former employee was an employee of the employer;

--a current employer; or

--a dependent of an employee, former employee, or current employer (for example, spouses and dependent children).

(H) The employer group or association is not owned or controlled by a health insurance issuer.

In addition, §26.301(b) is revised to update punctuation for consistency with TDI's current rule drafting style, and proposed amendments redesignate §26.301's current subsections (g), (h), and (i) as (h), (i), and (j), respectively.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Pat Brewer, team lead for the Regulatory Initiatives Team of the Life and Health Division, has determined that during each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections. Ms. Brewer made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Brewer does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Ms. Brewer ex-

pects that administering the proposed amendment will have the public benefit of ensuring that qualifying employer groups and associations will be able to establish large employer health benefit plans that allow member employers to share a single regulatory and rating structure, thereby reducing the members' premiums and increasing access to health insurance.

Ms. Brewer expects that the proposed amendment will impose an initial economic cost on employer groups or associations that choose to seek designation as a bona fide employer association, but this initial cost should be offset by the cost savings employers would experience from the availability of less expensive group coverage and sharing plan expenses with other employers. Under the proposed rule, applicants are required to obtain and submit to TDI either an advisory opinion from the DOL identifying the applicant as a bona fide employer association or an attorney's attestation and supporting documentation to show that the group or association satisfies the rule's requirement. These groups and associations may incur legal and administrative costs to obtain the required documentation.

The costs to obtain an advisory opinion from the DOL should be similar to the costs to obtain an attorney's attestation. TDI estimates individual employee compensation for a lawyer at $59.11 per hour for 15 to 20 hours of work to assess and document compliance. This wage is based on the national median hourly wage for an attorney as reported in the May 2018 National Industry Specific Occupational Employment and Wage Estimates, available from the DOL Bureau of Labor Statistics, Occupational Employment Statistics, at www.bls.gov/oes/current/oes436014.htm.

Because the supporting evidence and submission method will vary per filing, TDI cannot predict a specific administrative cost, but expects it to be minimal. TDI estimates individual employee compensation for an administrative assistant at $18.84 per hour for one to 10 hours of work to mail or scan and email documents. This wage is based on the national median hourly wage for administrative assistants as reported in the May 2018 National Industry Specific Occupational Employment and Wage Estimates.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses because TDI expects the initial costs to participating employer groups or associations identified in the Public Benefit and Cost Note section of this proposal will be offset through long-term cost savings. Further, employer groups or associations that do not seek to establish a bona fide employer association health plan will not be impacted. TDI has no way of estimating the number of employer groups or associations that exist in Texas that may be interested in establishing a bona fide employer association health plan, because employer groups or associations in any field may be interested in establishing such a plan.

As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

However, because there is an initial expense to those employer groups or associations that choose to establish a bona fide employer association health plan, TDI considered the following alternatives to minimize any impact on small and micro businesses while still accomplishing the proposal's objective of giving qualified employer groups or associations an opportunity to purchase large employee health benefit plans:

(1) not proposing the amendment;

(2) not requiring plans be established as trusts; and

(3) not requiring employer associations to submit an advisory opinion or attorney attestation.

Not proposing the amendment. If TDI does not propose the amendment to the rule, there will be no initial economic impact to small and micro businesses that seek designation as a bona fide employer association. However, employer associations are looking for ways to provide their employees health benefit plans at lower costs, and the amendment included in this proposal is intended to create another option to do this. If TDI does not amend the rule, this new approach will not become available. For this reason, TDI rejected this option.

Not requiring that plans be established as trusts. TDI considered requiring that bona fide association plans be established as trusts--a requirement generally imposed on multiple employer plans--in order to increase the security of plan assets and to provide a method of governance that easily allows member employers to engage in plan management. But such a requirement would increase the costs for an employer group or association that seeks designation as a bona fide employer association. Bona fide association plans will be large employer plans regulated under Insurance Code Chapter 1501 and 28 TAC Chapter 26, and thus will be fully insured. Because of this, the increased cost imposed by requiring the plans to be organized as trusts does not seem to be justified. For this reason, TDI chose to not include this requirement in the proposed amendment.

Not requiring associations to submit an advisory opinion or attorney attestation. If the proposed amendment did not require that an employer group or association submit an advisory opinion or attestation with its application to establish a bona fide association plan, small and micro businesses would not face the initial economic impact described in this proposal. But requiring an advisory opinion or attestation helps TDI ensure that a group or association has satisfied the rule's protective requirements. For this reason, TDI rejected this option.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal may impose an initial cost on regulated persons. But under Government Code §2001.0045(c)(2), TDI is not required to repeal or amend another rule, because new §26.301(g) is intended to reduce the burden or responsibilities imposed on regulated persons by the rule. An employer group or association that seeks designation as a bona fide employer association will incur costs associated with obtaining an advisory opinion or attestation, as explained in this proposal, but the new rule provides regulatory flexibility to employer groups or associations that meet its requirements by allowing them to establish a large employer plan regulated under Insurance Code Chapter 1501, rather than an association plan under Texas Insurance Code Chapter 1251. The long-term benefits of regulation as a single larger employer plan under this amendment include reduced plan regulation under Chapter 1501 and the elimination of plan regulation under Chapter 26, Subchapter A, of this Title.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

--will not create or eliminate a government program;

--will not require the creation of new employee positions or the elimination of existing employee positions;

--will not require an increase or decrease in future legislative appropriations to the agency;

--will not require an increase or decrease in fees paid to the agency;

--will not create a new regulation;

--will expand an existing regulation;

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

--will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on October 26, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on October 26, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes §26.301 under Insurance Code §1501.010 and §36.001.

Insurance Code §1501.010 states that the Commissioner may adopt rules necessary to implement Chapter 1501 and to meet minimum requirements of federal law, including regulations.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 26.301 implements Insurance Code Chapter 1501.

§26.301. Applicability, Definitions, and Scope.

(a) The applicable terms defined in §26.4 of this title (relating to Definitions) are incorporated into this subchapter.

(b) Insurance Code Chapter 1501, [{]concerning the Health Insurance Portability and Availability Act, [}] and this subchapter regulate all health benefit plans sold to large employers, whether the plans are sold directly or through associations or other groupings of large employers.

(c) Except as otherwise provided, this subchapter applies to any health benefit plan providing health care benefits covering 51 or more employees of a large employer, whether provided on a group or individual franchise insurance policy basis, regardless of whether the policy was issued in this state, if it provides coverage to any citizen or inhabitant of this state and if the plan meets one of the following conditions:

(1) a portion of the premium or benefits is paid by a large employer;

(2) the health benefit plan is treated by the employer or by a covered individual as part of a plan or program for the purposes of the United States Internal Revenue Code of 1986 (26 U.S.C. §106, concerning Contributions by Employer to Accident and Health Plans, or §162, concerning Trade or Business Expenses);

(3) the health benefit plan is a group policy issued to a large employer; or

(4) the health benefit plan is an employee welfare benefit plan under 29 C.F.R. 2510.3-1 (concerning Employee Welfare Benefit Plan).

(d) For an employer that was not in existence the previous calendar year, the determination is based on the average number of employees the employer reasonably expects to employ on business days in the calendar year in which the determination is made.

(e) If a large employer or the employees of a large employer are issued a health benefit plan under the provisions of Insurance Code Chapter 1501 and this subchapter, and the large employer subsequently employs fewer than 51 employees, the provisions of Insurance Code Chapter 1501 and this subchapter continue to apply to that particular health plan if the employer elects to renew the large employer health benefit plan subject to the provisions of §26.308 of this title (relating to Renewability of Coverage and Cancellation). A health carrier providing coverage to an employer must, within 60 days of becoming aware that the employer has fewer than 51 employees, but not later than the first renewal date occurring after the employer ceases to be a large employer, notify the employer of the following:

(1) The employer may renew the large employer policy.

(2) If the employer does not renew the large employer health benefit plan, the employer will be subject to the requirements of Insurance Code Chapter 1501 that apply to small employers, and Chapter 26, Subchapter A of this title (relating to Definitions, Severability, and Small Employer Health Regulations), including:

(A) guaranteed issue;

(B) rating protections; and

(C) minimum participation, contribution, and minimum group size requirements.

(3) The employer has the option to purchase a small employer health benefit plan from the employer's current health carrier, if the carrier is offering small employer coverage, or from any small employer carrier currently offering small employer coverage in this state.

(4) If the employer fails to comply with the qualifying minimum participation, contribution, or group size requirements of §26.303 of this title (relating to Coverage Requirements) and Insurance Code §1501.605 (concerning Minimum Contribution or Participation Requirements), the health carrier may terminate coverage under the plan, provided that the termination complies with the terms and conditions of the plan concerning termination for failure to meet the qualifying minimum participation, contribution, or minimum group size requirement and in accordance with Insurance Code §§1501.108 - 1501.111 (concerning Renewability of Coverage: Cancellation; Refusal to Renew; Discontinuation of Coverage; Notice to Covered Persons; and Written Statement of Denial, Cancellation, or Refusal to Renew Required, respectively) and §26.308 of this title.

(f) If a health benefit plan is issued to an employer that is not a large employer, but subsequently the employer becomes a large employer, the provisions of Insurance Code Chapter 1501 and this sub-

chapter apply to the health benefit plan on the first renewal date, unless the employer was a small employer and renews its current health benefit plan as provided under §26.5(e) of this title (relating to Applicability and Scope).

(g) An employer group or association that is a bona fide employer association under this subsection is a single large employer for purposes of this subchapter and Insurance Code Chapter 1501.

(1) An employer group or association is a bona fide employer association if:

(A) the employer group or association has a formal organizational structure with a governing body and has bylaws or other similar indications of formality;

(B) the functions and activities of the employer group or association are controlled by its member employers;

(C) the employer group or association has at least one substantial business purpose unrelated to offering and providing health coverage or other employee benefits to its member employers and their employees;

(D) the member employers of the group or association are in the same trade, industry, line of business, or profession;

(E) the member employers that participate in the group health plan control the plan in form and in substance;

(F) each member employer participating in the group health plan is a person acting directly as an employer of at least one eligible employee who is a participant covered under the plan;

(G) the employer group or association does not make health coverage through the group health plan available to individuals other than:

(i) an eligible employee of a current member employer;

(ii) a former employee of a current member employer who became eligible for coverage under the group health plan when the former employee was an employee of the employer;

(iii) a current member employer; or

(iv) a dependent of an individual described in clause (i), (ii), or (iii) of this subparagraph (for example, spouses and dependent children); and

(H) the employer group or association is not a health insurance issuer, or owned or controlled by a health insurance issuer or by a subsidiary or affiliate of a health insurance issuer, other than if and to the extent such entities participate in an employer group or association in their capacity as member employers of the employer group or association. For purposes of this subparagraph, control is the power to direct, or cause the direction of, the management and policies of a person, other than power that results from an official position with or corporate office held by the person. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or nonmanagement services.

(2) An issuer wanting to issue coverage to an employer group or association seeking designation as a bona fide employer association under this subsection must submit to TDI an association filing and any supporting documents establishing that the group or association meets the requirements of this subsection. The filing must be made as provided in Chapter 3, Subchapter A of this title (relating to Submission Requirements for Filings and Departmental Actions). The department will review the filing and all supporting documents and will determine whether to approve or disapprove the employer group's or association's eligibility as a bona fide employer association. The filing must include either:

(A) an advisory opinion from the U.S. Department of Labor recognizing the employer group or association as a bona fide employer association that is no more than three years old; or

(B) an opinion from an attorney attesting to the fact that the employer group or association qualifies as a bona fide employer association under paragraph (1) of this subsection. An attorney attestation must adequately explain how and why the employer group or association meets all of the criteria, based on the facts and circumstances of the employer group's or association's governance and operations during the 12 months immediately preceding submission of the application, with explicit references to relevant language drawn from the employer group's or association's bylaws, trust agreement, or other organizational documents, which must be submitted to the department with the attorney's attestation.

(3) For purposes of paragraph (1)(C) of this subsection, the employer group or association will be treated as having a substantial business interest unrelated to the provision of benefits under the plan if:

(A) the employer group or association would be a viable entity in the absence of sponsoring an employee benefit plan;

(B) the member employers have a shared or common purpose that is not generally applicable to the population at large; and

(C) the primary method of obtaining new members is not through, or in conjunction with, the solicitation of insurance.

(4) When determining whether an entity is a bona fide employer association, the department may consider whether the employer group or association ever existed without offering a health benefit plan.

(5) An employer group or association must not condition employer membership in the group or association on any health-status-related factor, as defined in §26.4 of this title (relating to Definitions), of any individual who is or may become eligible to participate in the group health plan sponsored by the bona fide group or association.

(h) [~~(g)~~] A large employer nonfederal governmental employee health benefit plan that is not self-funded is subject to the Insurance Code and this title, as applicable, including Chapter 1501 and this chapter.

(i) [~~(h)~~] If a large employer has employees in more than one state, the provisions of Insurance Code Chapter 1501 and this subchapter apply to a health benefit plan issued to the large employer if the:

(1) majority of employees are employed in this state on the issue date or renewal date; or

(2) primary business location is in this state on the issue date or renewal date and no state contains a majority of the employees.

(j) [~~(i)~~] A carrier licensed in this state that issues a certificate of insurance covering a Texas resident is responsible for ensuring that the certificate complies with applicable Texas insurance laws and rules, including mandated benefits, regardless of whether the group policy underlying the certificate was issued outside the state.

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

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

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James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 1, 2020
For further information, please call: (512) 676-6587

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE
SUBCHAPTER D. EDUCATION

31 TAC §51.80

The Texas Parks and Wildlife Department proposes an amendment to Title 31 Texas Administrative Code §51.80, concerning Hunter Education Course and Instructors. The proposed amendment would alter the title of the section to read "Mandatory Hunter Education." The proposed amendment would alter subsection (a) to reflect that a person may obtain a duplicate certificate of completion of hunter education requirements online and replace a list of classes of persons exempt from hunter education requirements by statute with a reference to the statutory exemptions; alter subsection (b) to allow a reproduction of a certificate of completion stored on a wireless communication device to be accepted as proof of completion of hunter education; and alter subsection (c) to change references to "deferred hunter education option" to refer instead to "hunter education deferral." All the changes are nonsubstantive. The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Steve Hall, Hunter Education Manager, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Hall also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be consistency with the Parks and Wildlife Code and agency publications.

There will be no adverse economic effect on persons required to comply with the rule.

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

The department has determined the proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

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

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

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

Comments on the proposal may be submitted to Steve Hall at (512) 389-8140, e-mail: steve.hall@tpwd.texas.gov. Comments also may be submitted via the department's website at *http://www.tpwd.texas.gov/business/feedback/public_comment/*.

The amendment is proposed under the authority of Parks and Wildlife Code, §62.014(h), which requires the commission to make rules governing the hunter education program.

The proposed amendment affects Parks and Wildlife Code, Chapter 62.

§51.80. Mandatory Hunter Education [~~Course and Instructors~~].

(a) Hunter Education Course.

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

(6) The department shall issue a certificate to persons who successfully complete the course. A duplicate certificate may be obtained online at the department's website at https://tpwd.texas.gov/education/hunter-education [~~issued upon request to the department's hunter education section or in person to a law enforcement field office or department-approved instruction provider~~].

(7) (No change.)

(b) Hunter Education Requirements.

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

(6) A person who is required to be certified must possess evidence of certification while hunting in Texas, which may include a photograph or electronic copy of valid certification stored on a wireless communication device.

(7) - (8) (No change.)

(9) A person who is exempt from the hunter education requirements under the provisions of Parks and Wildlife Code, §62.014(n) is exempt from the requirements of this section. [~~A person is exempt from live-firing requirements of the Hunter Education Course delivered via classroom instruction or a combination of online instruction and skills exercise if the person is:~~]

[~~(A) an honorably discharged veteran of the United States armed forces; or~~]

[~~(B) on active duty as a member of the United States armed forces, the Texas Army National Guard, the Texas Air National Guard, or the Texas State Guard.~~]

(c) Other Non-certified Persons.

(1) (No change.)

(2) A person 17 years of age or older who is required to complete hunter education may hunt without certification if that person is:

(A) in possession of a valid hunting license indicating that the person has selected the "Hunter Education Deferral" [~~"Deferred Hunter Education Option"~~] offered by the department; and

(B) (No change.)

(3) (No change.)

(4) A hunter education deferral [~~deferred hunter education option~~] expires at the end of the license year for which it was purchased.

(5) No person may select the hunter education deferral [~~deferred hunter education option~~] more than once.

(6) A person who has been convicted of or received deferred adjudication for not having completed a mandatory hunter education course is prohibited from obtaining a hunter education deferral [~~deferred hunter education option~~].

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 September 14, 2020.

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Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 389-4775

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SUBCHAPTER E. SICK LEAVE POOL

31 TAC §51.141

The Texas Parks and Wildlife Department proposes an amendment to §51.141, concerning Sick Leave Pool. The amendment would eliminate the requirement that donations to the sick leave pool be made in writing. The department now utilizes CAPPS, an automated system used by all state agencies, and employees can now donate to the sick leave pool online. The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Rebecca Gonzales, CAPPS Director in the Human Resources Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Ms. Gonzales also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be regulations that accurately reflect agency processes with respect to the administration of the sick leave pool.

There will be no adverse economic effect on persons required to comply with the rule.

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

The department has determined that proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

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

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

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

Comments on the proposal may be submitted to Robert Macdonald at (512) 389-4775, e-mail: robert.macdonald@tpwd.texas.gov. Comments also may be submitted via

the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Government Code, §661.002, which requires the governing body of each state agency to adopt rules to prescribe procedures relating to the operation of the agency's sick leave pool.

The proposed amendment affects Government Code, Chapter 661.

§51.141. Sick Leave Pool.

A sick leave pool is established to provide for the alleviation of hardship caused to an employee and the employee's family if a catastrophic illness or injury forces the employee to exhaust all leave time earned by that employee and to lose compensation from the state.

(1) The director of human resources is designated as the pool administrator.

(2) The pool administrator, with the advice and consent of the executive director, will establish operating procedures consistent with the requirements of this section and relevant law governing operation of the pool.

(3) Donations to the pool are [~~must be made by written request containing a certification that the donation is~~] strictly voluntary.

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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Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
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SUBCHAPTER O. ADVISORY COMMITTEES

31 TAC §51.642

The Texas Parks and Wildlife Department proposes the repeal of §51.642, concerning the San Jacinto Historical Advisory Board (SJHAB). House Bill 1422, enacted by the most recent session of the Texas Legislature, transferred the San Jacinto Battleground State Historic Site from the administrative jurisdiction of the department to the administrative jurisdiction of the Texas Historical Commission; therefore, the advisory board created by the department is no longer necessary in department rules. The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Kevin Good, Special Assistant to the Parks Division Director, has determined that for each of the first five years that the repeal as proposed is in effect, there will be no fiscal implications to state or local governments.

Mr. Good also has determined that for each of the first five years that the repeal as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed repeal will be the elimination of unnecessary regulations.

There will be no adverse economic effect on persons required to comply with the repeal.

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

The department has determined that the proposed repeal would result in no direct economic effect on any small businesses, micro-businesses, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

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

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed repeal.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed repeal.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The repeal as proposed, if adopted, will not create a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create or expand an existing regulation but will repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

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

The repeal is proposed under the authority of Government Code, §2110.005 and §2110.008.

The proposed repeal affects Parks and Wildlife Code, §11.0162.

§51.642. San Jacinto Historical Advisory Board (SJHAB).

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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Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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CHAPTER 53. FINANCE
SUBCHAPTER A. FEES
DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.15

The Texas Parks and Wildlife Department proposes an amendment to §53.15, concerning Miscellaneous Fisheries and Wildlife Licenses and Permits. The proposed amendment would reorganize the existing fee structure for controlled exotic species permits authorizing the possession of harmful or potentially harmful fish, shellfish, and aquatic plants and establish fees for proposed, multi-year renewals of commercial aquaculture permits. The proposed amendment is largely nonsubstantive (i.e., most current fee amounts would not be changed except for commercial aquaculture permits to account for the need for more frequent facility inspections).

The proposed amendment would establish the fee structure and amounts for the issuance of multi-year permits for controlled exotic permits issued for commercial aquaculture. Current rules provide for a one-year period of validity for exotic species permits with the possibility of annual renewal thereafter. Under the current rules, the initial fee for permit issuance is $263, which consists of a $27 administrative fee and a one-time facility inspection fee of $236. In another proposed rulemaking published elsewhere in this issue of the *Texas Register,* the department is proposing new rules governing permits to possess controlled exotic species. Among other things, the proposed new rules would require all commercial aquaculture facilities to be inspected at least once every five years but would also allow for the issuance of multi-year permit renewals (three years or five years) to commercial aquaculture permit holders who are in good standing and have no history of violations for the preceding period of the same duration as the renewal period. The proposed amendment to §53.15 would update the fee for a one-year renewal to $74, establish a fee for a three-year renewal of a commercial aquaculture permit of $168, and establish a fee for a five-year renewal of a commercial aquaculture permit of $263. These fees represent, in each case, $27 for the one-time administrative fee, plus a pro-rated inspection fee ($236 divided by the five-year interval period for inspections). Totals for the renewal fees for the multi-year permits were rounded to the nearest whole dollar amounts.

Ken Kurzawski, Manager, Information and Regulations, in the Inland Fisheries Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be fiscal implications to state government as a result of administering or enforcing the rule. Because it is impossible to predict which renewal option any given current permit holder will operate under (annual, three-year, or five year), the revenue in any given year cannot be quantified; however, because each permit holder will be required to undergo a facility inspection at least once every five years, the department estimates that the maximum annual revenue increase resulting from the proposed amendment will be $9,204, which represents the total revenue over five years, averaged across the five-year period being analyzed. This figure was derived by taking the total number of current exotic species permits issued (195), multiplying that number by the fee for a facility inspection ($236), and dividing that product by five. The department notes that because it is impossible to quantify the number of new permits that could be issued, or the number of permits that might expire, the department has assumed that the number of permits remains constant.

There will be no adverse economic impacts on units of local government as a result of the proposed amendment.

Mr. Kurzawski also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the protection of public resources from the negative impacts associated with the release or escape of harmful or potentially harmful exotic fish, shellfish, and aquatic plants and a reduction in the burden of annual renewals for commercial aquaculturists electing to obtain multi-year renewal permits.

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

Department records indicate that other than 934 persons who hold an exotic species permit authorizing possession of triploid grass carp for noncommercial purposes, there are 195 persons currently holding an exotic species permit of some kind. To ensure that this analysis captures all small businesses, microbusiness, and rural communities that might be affected by the proposed rules, the department assumes that all permit holders are small or microbusinesses. Therefore, the department has prepared the economic impact statement and regulatory flexibility analysis described in Government Code, Chapter 2006.

There will be adverse economic effect on small and microbusinesses required to comply with the rule in the form of a cost of compliance of $236 per permit per five-year period, which is the cost of a facility inspection every five years. The department considered several alternatives to the new requirement for a facility inspection at least once every five years. The department considered the status quo, which was rejected because the intent of the rule is to strengthen the department's confidence in biosecurity measures taken by permittees, many of which are located in areas that are low-lying or subject to extreme weather events that could result in escape or release of controlled exotic species and are currently not inspected except for initial permit issuance or following permit amendment or permit reinstatement

following permit lapse. The department also considered requiring a facility inspection no less frequently than once every 10 years. This alternative was rejected because the 10-year interval provides inadequate risk assurance generally, but especially with facilities that have a history of noncompliance and facilities that by the nature of their extent, infrastructure, location, or inventory warrant more frequent inspection.

The proposed amendment will have an adverse economic impact on persons required to comply with the rule as proposed. Those impacts will be identical to the small and microbusiness impacts discussed previously in this preamble.

There will be no adverse economic effect on rural communities as a result of the proposed amendment.

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

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

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

Comments on the proposal may be submitted to Ken Kurzawski at (512) 389-4591, e-mail: ken.kurzawski@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, §66.007, which authorizes the department to make rules necessary to authorize the import, possession, sale, or introduction of harmful or potentially harmful exotic fish.

The proposed amendment affects Parks and Wildlife Code, Chapter 66.

§53.15. Miscellaneous Fisheries and Wildlife Licenses and Permits.

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

(g) Controlled Exotic Species (fish, shellfish and aquatic plants):

(1) water spinach culture permit [~~exotic species permit fee for new, renewed or amended application requiring facility inspection~~]--$263;

(2) exotic fish or shellfish commercial aquaculture permit:[~~exotic species permit fee for renewed or amended application not requiring facility inspection--$27;~~]

(A) Initial issuance--$263;

(B) One-year renewal--$74;

(C) Three-year renewal--$168; and

(D) Five-year renewal--$263.

[~~(3) exotic species permit fee for renewal application received more than one year after renewal date--$263.~~]

(3) [~~(4)~~] triploid grass carp permit [~~application~~] fee--$16, plus $2 per triploid grass carp requested (the $2 per fish fee is refundable if the permit application is denied);

(4) [~~(5)~~] exotic species interstate transit [~~transport~~] permit [~~application fee--individual--$27;~~]:

(A) single-use--$27;

(B) one-year authorization--$105.

(5) [~~(6)~~]) research, biological control production, zoological display, and limited special purpose permits (other than for triploid grass carp); initial, renewal, or amendment requiring facility inspection--$263 [~~exotic species interstate transport permit application fee--annual--$105.~~]; and

(6) research, biological control production, zoological display, and limited special purpose permits (other than for triploid grass carp); initial, renewal or amendment not requiring facility inspection--$27.

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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Colette Barron-Bradsby
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DIVISION 3. TRAINING AND CERTIFICATION FEES

31 TAC §53.50

The Texas Parks and Wildlife Department proposes an amendment to §53.50, concerning Training and Certification Fees. The proposed amendment would establish a fee of $10 for online marine safety enforcement officer instruction by a department-approved third-party provider and allow for the provider to charge and retain a service fee in addition to the $10 fee forwarded to the department. In a proposed rulemaking published elsewhere in this issue, the department proposes to create an online option for marine safety enforcement officer instruction.

The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Cody Jones, Assistant Commander and Boating Law Administrator, has determined that for each of the first five years that the

rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of administering or enforcing the rule.

Assistant Commander Jones also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be a fee schedule that reflects an online option for the provision of marine safety enforcement officer training.

There will be no adverse economic effect on persons required to comply with the rule.

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

The department has determined that the proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

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

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

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

Comments on the proposal may be submitted to Assistant Commander Cody Jones, (512) 389-4624, e-mail: cody.jones@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, §31.121, which requires the commission to promulgate rules to establish and collect a fee to recover the administrative costs associated with the certification of marine safety enforcement officers.

The proposed amendment affects Parks and Wildlife Code, §31.121.

§53.50. Training and Certification Fees.

(a) Marine safety enforcement training and certification fees.

(1) Except as provided in paragraph (2) of this subsection, the[~~The~~] fee for [~~certification as~~] a marine safety enforcement officer course is $25.

(2) The fee for a marine safety enforcement officer course delivered by a department-approved online provider shall be $10 per student. The provider shall forward the fee to the department within 30 days following course delivery.

(3) In addition to the examination or course fee described in paragraph (2) of this subsection, a course provider may charge and keep a service fee.

[~~(2) The fee for certification as a marine safety enforcement officer instructor is $25.~~]

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

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

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CHAPTER 55. LAW ENFORCEMENT
SUBCHAPTER G. BOAT SPEED LIMIT AND BUOY STANDARDS

31 TAC §55.302, §55.303

The Texas Parks and Wildlife Department proposes amendments to §55.302 and §55.303, concerning Boat Speed Limit and Buoy Standards. The proposed amendments would modify language regarding certain areas of public water regulated by political subdivisions. Parks and Wildlife Code, §31.092, provides authority to various types of local governments to designate areas of public water within their jurisdictions as bathing, fishing, swimming, or otherwise restricted areas and to make rules and regulations relating to the operation and equipment of boats deemed necessary for the public safety. Current rules make specific reference to "Slow, No Wake" zones, which the department has learned has caused some local entities to interpret the regulatory authority at their disposal too narrowly. By removing references to "Slow, No Wake" designations, the department hopes to make clear that a governing board has

greater latitude than the authority to establish "Slow, No Wake" zones.

The proposed amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Fiscal Note.

Cody Jones, Assistant Commander and Boating Law Administrator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of administering or enforcing the rules.

Public Benefit/Cost Note.

Assistant Commander Jones also has determined that for each of the first five years that the rules as proposed are in effect:

(A) The public benefit anticipated as a result of enforcing or administering the proposed rule will be rules that are easier to interpret by certain local authorities.

There will be no adverse economic effect on persons required to comply with the rule.

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

(C) The department has determined that proposed rules would result in no direct economic effect on any small businesses, micro-businesses, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

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

(E) The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

(F) The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

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

Request for Public Comment.

Comments on the proposal may be submitted to Assistant Commander Cody Jones, (512) 389-4624, e-mail: cody.jones@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

Statutory Authority.

The amendment is proposed under the authority of Parks and Wildlife Code §31.142, which authorizes the department to provide for a standard buoy-marking program for the inland water of the state. The amendments are proposed in conformity with §31.002, which establishes the duty of the state to promote recreational water safety and the uniformity of laws relating to water safety; and §31.091, which reserves the basic authority to regulate boating to the state.

The proposed amendment affects Parks and Wildlife Code, Chapter 31.

§55.302. Definitions.

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

(1) Department--Texas Parks and Wildlife Department.

(2) Governing board--The governing board of an incorporated city or town, a commissioners court of a county, or the governing board of a political subdivision of the state created pursuant to the Texas Constitution, Article XVI, §59, as identified in the Parks and Wildlife Code, §31.092(c).

(3) Headway speed--Slow, idle speed, or speed only fast enough to maintain steerage on course.

(4) Regulated area--Any area on public water designated and posted as a regulated [~~"Slow, No Wake"~~] area by a [~~the~~] governing board as provided in Parks and Wildlife Code, §31.092.

[~~(5) Slow, no wake--Headway speed without creating a swell or wake.~~]

§55.303. General Rules.

The following rules shall govern the speed limits of moving vessels on all public waters of this state.

(1) Governing boards may establish regulated areas under procedures and rules set out in Parks and Wildlife Code, §31.092, when these rules are determined to be necessary for public safety.

[~~(A) Regulated areas shall be designated and posted as "Slow, No Wake" areas.~~]

(A) [~~(B)~~] Numerical speed limits, such as miles per hour, shall not be used on public waters.

(B) [~~(C)~~] Boat speeds outside of regulated areas shall be governed by the Parks and Wildlife Code, §31.095(a).

(C) [~~(D)~~] The governing board shall post and maintain regulated areas with buoys or pilings consistent with the system of markers authorized by this subchapter.

(2) Regulations governing water events and regattas administered by the United States Coast Guard are exempt from these rules to the extent of conflict.

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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Colette Barron-Bradsby
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SUBCHAPTER H. PARTY BOATS

31 TAC §55.401, §55.402

The Texas Parks and Wildlife Department proposes amendments to §55.401 and §55.402, concerning Party Boats. Under Parks and Wildlife Code, Chapter 31, Subchapter G, the department is required to license and regulate party boats, which are defined by statute as boats operated by the owner of the vessel or an employee of the owner and rented or leased by the owner for a group recreational event for more than six passengers. The department has encountered instances in which persons who own and operate party boats have erroneously interpreted the provisions in the rules that exempt livery vessels (a rented vessel for which operation and provisioning are the responsibility of the renter rather than the owner of the vessel) from the applicability of the rules to also exempt party boats from the statutory requirements of Parks and Wildlife Code, §31.040, which prescribes the licensing and titling requirements for livery vessels. To remedy the misunderstanding, the proposed amendment would remove the definition of "livery vessel" from §55.401, concerning Definitions, and amend §55.402, concerning Applicability and Exceptions, by adding a generic description in of the types of rental craft that are exempt from the provisions of the subchapter.

The proposed amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Cody Jones, Assistant Commander and Boating Law Administrator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of administering or enforcing the rules.

Assistant Commander Jones also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be clearer and more user friendly regulations regarding the licensing and titling of party boats.

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

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

The department has determined that proposed rules would result in no direct economic effect on any small businesses, micro-businesses, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

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

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

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

Comments on the proposal may be submitted to Assistant Commander Cody Jones, (512) 389-4624, e-mail: cody.jones@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendments are proposed under the authority of Parks and Wildlife Code, §31.176, which requires the commission to promulgate rules regarding the requirements and procedures for the issuance and renewal of a party boat operator license to protect the public health and safety and §31.180, which requires the commission to adopt and enforce rules necessary to implement Parks and Wildlife Code, Chapter 31, Subchapter G.

The proposed amendments affect Parks and Wildlife Code, Chapter 31.

§55.401. Definitions.

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

[~~(1) Livery vessel--a vessel rented out for profit under a written contract by a vessel livery, as defined by Parks and Wildlife Code, §31.003(8), where all responsibility and liability for operating and provisioning the vessel is assumed by the party renting the vessel.~~]

(1) [~~(2)~~] Inland waters--all public waters of this state on the landward side of the coastal waters boundary as defined in §65.3(15) of this title (relating to Definitions).

(2) [~~(3)~~] Party boat--a vessel meeting the definition of "party boat" established in Parks and Wildlife Code, §31.171(2).

(3) [~~(4)~~] Passenger--a person carried on board a party boat, but does not include:

(A) - (C) (No change.)

§55.402. Applicability and Exceptions.

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

(d) This subchapter does not apply to:

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

(3) a vessel rented out for profit under a written contract by a vessel livery, as defined by Parks and Wildlife Code, §31.003(8), where all responsibility and liability for operating and provisioning the vessel is assumed by the party renting the vessel [~~a livery vessel~~]; or

(4) (No change.)

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

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SUBCHAPTER L. MARINE SAFETY ENFORCEMENT--TRAINING AND CERTIFICATION STANDARDS

The Texas Parks and Wildlife Department proposes the repeal of §55.805 and amendments to §§55.802 - 55.804 and 55.807, concerning Marine Safety Enforcement - Training and Certification Standards. The proposed amendments would eliminate requirements for the training of instructors from outside agencies, provide for online instruction for certification as a marine safety enforcement officer (MSEO), and modernize terminology. The department has steadily increased the availability, where possible, of online options for learning applications (for instance, boater education and hunter education requirements can now be satisfied online). Law Enforcement Division staff have determined that the Marine Safety Enforcement Officer Course can be offered online to better serve the department's sister agencies as well as allow for more efficient resource allocation by the department. It is not uncommon for agency marine units to host MSEO course complements of only one or two officers, which consumes department resources and diverts personnel availability for other duties. Offering an online option could mitigate these situations. In another proposed rulemaking published elsewhere in this issue, the department proposes to establish a fee of $10 for online marine safety enforcement officer instruction.

Additionally, demand for the department's MSEO instructor course is non-existent, primarily because MSEO training is conducted almost exclusively by department law enforcement personnel. Additionally, the Texas Commission on Law Enforcement (TCOLE) has implemented administrative processes that make recordkeeping and reporting functions problematic with respect to outside instructors. Therefore, the department proposes to cease offering the MSEO instructor training course, which necessitates the proposed repeal of §55.805, concerning Marine Safety Enforcement Officer Instructor Course Standards.

The proposed amendments would also update references to the Texas Commission on Law Enforcement Officer Standards, which is the former name of TCOLE.

The proposed repeal and amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Cody Jones, Assistant Commander and Boating Law Administrator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of administering or enforcing the rules.

Assistant Commander Jones also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be more efficient and less burdensome delivery of MSEO training and certification.

There will be no adverse economic effect on persons required to comply with the rule.

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

The department has determined that proposed rules would result in no direct economic effect on any small businesses, micro-businesses, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

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

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

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

Comments on the proposal may be submitted to Assistant Commander Cody Jones, (512) 389-4624, e-mail: cody.jones@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

31 TAC §§55.802 - 55.804, 55.807

The amendments are proposed under the authority of Parks and Wildlife Code, §31.121, which requires the commission by rule to establish standards for training and certifying marine safety enforcement officers and instructors.

The proposed amendments affect Parks and Wildlife Code, Chapter 31.

§55.802. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, except where the context clearly indicates otherwise.

(1) Active duty peace officer--A peace officer holding a valid peace officer license from the Texas Commission on Law Enforcement (TCOLE) [~~Officer Standards and Education (TCLEOSE)~~] and a valid peace officer commission issued by an authorized governmental entity of the State of Texas.

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

§55.803. General Rules.

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

(c) To instruct the marine safety enforcement officer training course, a person must:

(1) (No change.)

(2) hold a TCOLE [~~TCLEOSE~~] Instructor license; and

(3) (No change.)

(d) A person who is a graduate of the TPWD Game Warden Academy and who is also an active commissioned game warden is eligible for certification as a marine safety enforcement officer. A person who is a graduate of the TPWD Game Warden Academy, who is also an active commissioned game warden, and who holds a TCOLE [~~TCLEOSE~~] Instructors License is eligible for certification as a marine safety enforcement officer course instructor.

§55.804. Marine Safety Enforcement Officer Course Standards.

(a) (No change.)

(b) The marine safety enforcement officer course is successfully completed when a peace officer has:

(1) attended the[~~a minimum of eight hours of~~] prescribed instruction by a department-certified marine safety enforcement officer instructor or department-approved online instruction provider [~~department certified marine safety enforcement officer instructor~~]; and

(2) (No change.)

(c) Upon completion of a course, the instructor or online provider shall submit appropriate course completion documentation to the department and TCOLE. [~~a signed affidavit specifying for each student:~~]

[~~(1) the date(s) of instruction;~~]

[~~(2) the topics of instruction;~~]

[~~(3) the hours of instruction in each topic; and~~]

[~~(4) test score.~~]

§55.807. Fees.

All applications shall be accompanied by the fees specified in Chapter 53 of this title (relating to Finance). For all courses other than online courses, [~~All~~] payments shall be in the form of a check, money order, or warrant made payable to the department. For courses provided by an online provider payment shall be in a form prescribed by the provider. All fees remitted to the department are nonrefundable; however, an entity may substitute a qualified peace officer in place of a person named on an application.

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 September 14, 2020.

TRD-202003752
Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 389-4775

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31 TAC §55.805

The repeal is proposed under the authority of Parks and Wildlife Code, §31.121, which requires the commission by rule to establish standards for training and certifying marine safety enforcement officers and instructors.

The proposed repeal affects Parks and Wildlife Code, Chapter 31.

§55.805. Marine Safety Enforcement Officer Instructor Course Standards.

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 September 14, 2020.

TRD-202003751

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CHAPTER 57. FISHERIES
SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

The Texas Parks and Wildlife Department (the department) proposes the repeal of §§57.112 - 57.137, an amendment to §57.111, and new §§57.112 - 57.128, concerning Harmful or Potentially Harmful Fish, Shellfish and Aquatic Plants. The repeals, amendment and new sections are intended to reorganize to enhance readability by making location of the applicable rules more straightforward, updating current rules, and providing additional flexibility where possible to the regulated community while providing for the protection of native organisms and ecosystem from the potential threats posed by harmful and potentially harmful exotic species.

The proposed amendment of §57.111, concerning Definitions, consists of several actions.

The proposed amendment would eliminate the definition of "aquaculturist or fish farmer" and "cultured species." The terms are not used in the proposed new rules.

The proposed amendment also would eliminate the definitions of "harmful or potentially harmful exotic fish," "harmful or potentially harmful exotic shellfish," and "harmful or potentially harmful exotic plants." The current definitions are not actual definitions, but lists of organisms to which the provisions of the subchapter apply and more properly belong in the body of the rules rather than the section devoted to definitions.

The proposed amendment also would eliminate the definition of "immediately" because the department has determined that the common and ordinary meaning of the word is sufficient for the purposes of the proposed new rules.

The proposed amendment also would eliminate the definition of "operator" because the word appears only once in the proposed new rules and the department has determined that the common and ordinary meaning of the word is sufficient.

The proposed amendment also would eliminate the definition of "place of business" because the definition isn't useful in the context of the proposed new rules.

The proposed amendment also would eliminate the definition of "private facility." The term is not used in the proposed new rules.

Similarly, the proposed amendment also would eliminate the definition of "private facility effluent" because it is not used in the proposed new rules.

The proposed amendment also would eliminate the definition of "public aquarium." The proposed new rules would not require facilities applying for controlled exotic species permits for zoological display to have Association of Zoos and Aquariums (AZA) accreditation to be eligible for a permit.

The proposed amendment would add new paragraph (1) to define "active partner" as "a governmental, quasi-governmental, or non-governmental organization or other entity that is currently engaged in department-coordinated efforts to monitor and/or manage controlled exotic species in Texas authorized by a letter of approval from the Director of the Inland Fisheries Division or Coastal Fisheries Division (or their designee) of the Texas Parks and Wildlife Department, as appropriate." This definition is needed to clearly specify eligibility for such approval with regards to provisions in proposed new §57.113(c) and (m) that are intended to facilitate partnerships that support the mission of the department.

The proposed amendment would add new paragraph (2) to define "agent" as "A person designated to conduct activities on behalf of any person or permit holder who is authorized by a controlled exotic species permit or other provision of this subchapter to conduct those activities. For the purposes of this subchapter, the term "permit holder" includes their agent." The definition is necessary to clarify the meaning of this term and specify that authorizations under the proposed new rules are also applicable to an agent.

The proposed amendment would redefine "aquaculture" to reference, rather than repeat, the meaning of this term as defined in the Agriculture Code (§134.001(4)).

The proposed amendment would add new paragraph (5) to define "biological control agent" as "a natural enemy or predator of a plant or animal that can be used to control the growth, spread, or deleterious impact of that plant or animal." This definition is needed to clarify the intent of proposed new §57.113(d), which authorizes the production and sale of biological control agents under a controlled exotic species permit to support efforts to manage controlled exotic species on public and private waters.

The proposed amendment would amend the current definition of "Clinical Analysis Checklist" to clarify that the referenced document applies to shrimp.

The proposed amendment would add new paragraph (8) to define "common carrier" as "a person or entity that is in the business of shipping goods or products and not a party to a transaction under a permit issued under this subchapter." Current rules (§57.115(3)) stipulate that such transport is limited to a "commercial shipper." This definition and concomitant change in regulatory terminology from "commercial shipper" to the widely recognized, broader term "common carrier" is needed to ensure that department rules do not interfere with shipping business that transport controlled exotic species.

The proposed amendment would add new paragraph (9) to define "controlled exotic species" as "any species listed in §57.112 of this title (relating to Exotic Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants)," for reasons discussed earlier in this preamble.

The proposed amendment would add new paragraph (10) to define "Controlled Exotic Species Permit" as "any permit issued under this subchapter that authorizes the import, propagation, possession, purchase, sale, and/or transport of a controlled exotic species," which is necessary to clarify the ambit of the meaning of that term.

The proposed amendment would add new paragraph (11) to define "conveyance" as "any means of transporting persons, goods, or equipment on the water," which is necessary to

provide an unambiguous meaning for the term as it is used in the subchapter.

The proposed amendment would eliminate the definition of "gutted" because the common and ordinary meaning of the word is sufficient for the purposes of the subchapter.

The proposed amendment would add new paragraph (16) to define "disease inspector" as "an employee of the Texas Parks and Wildlife Department who is trained to perform clinical analysis of shrimp disease." The current definition of "certified inspector" refers to "a department employee who has completed a department-approved course in clinical analysis of shellfish." The department has determined that a more generic definition is necessary to enable the department to task additional human resources to inspection duties in order to expedite permit issuance and monitoring activities while ensuring that such personnel are properly trained.

The proposed amendment would add new paragraph (17) to define "disease specialist" as "a third-party person approved by the department that possesses the education and experience to identify shellfish disease, such as a degree in veterinary medicine or a Ph.D. specializing in shellfish disease." The proposed new definition is needed to expand the limited pool of qualified shrimp disease specialists available to conduct analyses of exotic shrimp aquaculture required by the proposed new rules.

The proposed amendment would add new paragraph (18) to define "dock or pier" as "a structure built over and/or floating on water that is used to provide access to water and/or for the mooring of boats." This definition is necessary to provide a precise explanation of the meaning of the term as it is employed in proposed new §57.113.

The amendment would add new paragraph (19) to define "emergency" as "a situation or event beyond the control of any person, including but not limited to a natural disaster, power outage, or fire." The proposed new definition is needed to create a specialized meaning of the term for purposes of identifying specific situations that would trigger actions required by the proposed new rules to be performed by a permit holder.

The proposed amendment would add new paragraph (20) to rename "harmful or potentially harmful exotic species exclusion zone" as "exotic shrimp exclusion zone," which is necessary to reflect the fact that, as used in the proposed new rules, the term would only apply to exotic shrimp.

The proposed amendment would alter the current definition of "exotic species" to be more technically accurate. The current definition refers to organisms "not normally found in the waters of the state," which is scientifically inaccurate. Therefore, the proposed amendment would be altered to refer to "any aquatic plant, fish, or shellfish nonindigenous to this state."

The proposed amendment would add new paragraph (22) to replace the term "aquaculture facility" with the term "facility" and define that term as "infrastructure, including drainage structures, at a location where controlled exotic species are possessed, propagated, cultured, or sold under a controlled exotic species permit, excluding private waters permitted for triploid grass carp stocking in accordance with §57.116 of this title (relating to Special Provisions--Triploid Grass Carp)." The amendment would clarify that ditches not used for drainage of aquaculture ponds or tanks are not considered part of a permitted facility, that transport is not an activity that takes place at the facility, and that private ponds permitted for triploid grass carp stocking are not subject to the facility requirements of the proposed new rules.

The proposed amendment would add new paragraph (23) to replace the term "aquaculture complex" with the term "facility complex" and define that term as "a group of two or more facilities located at a common site and sharing water diversion or drainage structures." The intent of the new definition is to remove an ambiguity that could be interpreted to mean that each facility within a complex must be separately owned.

The proposed amendment would add new paragraph (24) to define "gill-cutting" as "cutting through the base of the gills on the underside of the fish." The proposed new definition is necessary to provide an explicit meaning for an additional method of killing controlled exotic fish that would be allowable under the proposed new rules.

The proposed amendment would alter the definitions of "nauplius" and "post-larva" to include the plurals of those terms as well as a reference to the phylum to which the definition applies, which is necessary for purposes of precision.

The proposed amendment would redefine "private pond" as "a pond or lake capable of holding controlled exotic species of tilapia and/or triploid grass carp in confinement wholly within private land for non-commercial purposes." The proposed amendment is necessary to clarify the species to which the term applies and that ponds used for the purpose of commercial aquaculture are not private ponds for the purposes of the proposed new rules.

The proposed amendment also would change the definition of "public water" to "public waters" and add a citation to the statutory definition for that term.

The proposed amendment also would alter the definition for "quarantine condition" to more precisely communicate that the term means the physical separation of affected stock from other stock, fish or shellfish, or water of the state, which is necessary to prevent misunderstandings that could lead to adverse ecological impacts.

The proposed amendment would add new paragraph (30) to define "recirculating aquaculture system" as "a system for culturing fish that treats or reuses all, or a major portion of the water and is designed for no direct offsite discharge of water." The new definition is needed because the proposed new rules would allow persons to hold controlled exotic species of tilapia without a permit and the department believes that such operations should be reasonably biosecure.

The proposed amendment would add new paragraph (32) to define "tilapia and triploid Grass Carp regulatory zones" as "geographic conservation priority zones identified by the department where special provisions apply" and lists "conservation zone" and "stocking zone" designations for each county in Texas. This definition is needed for the purposes of ease of understanding, compliance with, and enforcement of the proposed new rules.

The proposed amendment would revise current §57.111(32) to refer only to "Triploid Grass Carp;" definition of triploid black carp is no longer necessary under the proposed new rules.

The proposed amendment also would revise the current definitions of "waste" and "water in the state" to make legal citations consistent with prevailing conventions.

Finally, the proposed amendment would alter the definition of "wastewater treatment facility" to clarify that the term includes

"associated infrastructure, including drainage structures," in order to eliminate any ambiguity as to infrastructure subject to regulation under the subchapter.

Proposed new §57.112, concerning Exotic Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants, would identify the species of fish, shellfish, and aquatic plants to which the proposed new rules apply and provide for the applicability of the proposed new rules to organisms in instances where taxonomical nomenclature for a species has changed as a result of scientific consensus.

Proposed new §57.112(a) would provide that, with respect to any given species, the proposed new rules would apply to any hybrid, subspecies, eggs, juveniles, seeds, or reproductive or regenerative parts of that species, which is necessary to specifically delineate the applicability of the proposed new rules to organisms in their various life stages and hybrids. Similarly, proposed new subsection (b) would provide that scientific reclassification or change in nomenclature of taxa at any level in taxonomic hierarchy would not, in and of itself, result in removal from the list of exotic harmful or potentially harmful species in this section. From time to time, scientific consensus regarding biological classification of organisms results in reclassification based on new information. Because the process of amending the list of species in the rules requires commission rule action under the Administrative Procedure Act, it is time consuming. The department believes it should be clear that rules apply to specific organisms, regardless of changes to the taxonomic identity of that organism. Finally, proposed new subsection (c) would consist of the fish, shellfish, and aquatic plants currently designated by the department as harmful or potentially harmful, which are being relocated from §57.111, concerning Definitions, for reasons discussed previously in this preamble, with the addition of new species as follows.

The department proposes to designate the Stone Moroko *(Pseudorasbora parva)* as a harmful or potentially harmful exotic fish. The Stone Moroko is currently listed as an injurious wildlife species under the federal Lacey Act. This species is known to prey upon native fishes and has been known to contribute to rapid declines and even localized extinctions of some minnows as well as serving as a fish disease and parasite vector. Although this species has not yet been documented in the U.S., it is considered to have potential to be introduced into the U.S. as an aquaculture or ornamental fish shipment contaminant--an introduction pathway documented elsewhere--and then spread to new areas. If introduced in Texas, climate match analysis suggests this species has a high potential for survival in much of the state (i.e., climate match ~7 out of 10).

The department also proposed to designate the Amur sleeper *(Perccottus glenii)* as a harmful or potentially harmful exotic fish. The Amur sleeper is currently listed as an injurious wildlife species under the Lacey Act. This species is a fast-growing, voracious predator with high reproductive potential. It is known to prey upon many aquatic species and contribute to declines and displacement of amphibians and fishes--particularly in small water bodies where it may replace them altogether. Although this species has not yet been documented in the U.S., it is considered highly likely to be accidentally transported internationally. If introduced in Texas, climate match analysis suggests this species has an intermediate potential for survival in areas of the state (i.e., climate match ~5 out of 10), primarily in lakes, and it is highly adaptable to new environments.

The department also proposes to designate the European perch (also called Redfin; *Perca fluviatilis)* as a "harmful or potentially harmful exotic fish." The European perch is currently listed as an injurious wildlife species under the Lacey Act. This species is a habitat generalist, thriving in habitats from streams to lakes and brackish waters and can survive a wide range of physicochemical conditions (e.g., oxygen, salinity, temperature). It poses a significant threat as a known host for three fish diseases reportable to the World Organisation for Animal Health, including epizootic haematopoietic necrosis virus, which can decimate native fish populations. This species has not yet been documented in the U.S., and its potential to be introduced into the U.S. is not well-known. It has been intentionally introduced in numerous other countries--legally or illegally--as a sport fish with widespread documentation of detrimental impacts on native fisheries. If introduced in Texas, climate match analysis suggests this species has a high potential for survival in much of the state (i.e., climate match 6-7 out of 10).

The department proposes to designate the Wels catfish *(Silurus glanis)* as a "harmful or potentially harmful exotic fish." This species is currently listed as an injurious wildlife species under the Lacey Act. This species is a voracious predator that can grow to over 16 feet in length and poses a significant risk to native species, particularly bottom-dwelling species including other catfishes and mussels. It poses a significant threat as a known host for a fish disease reportable to the World Organisation for Animal Health, spring viraemia of carp--which would affect not only carp but also numerous other fish species including native catfish. Although this species has not yet been documented in the U.S., the Wels catfish has become somewhat notorious as a "monster fish" and is considered to have potential to be introduced into the U.S. illegally via the underground pet trade. Elsewhere outside the U.S., this species has been intentionally introduced and spread as a sport fish--legally and illegally. If introduced in Texas, climate match analysis suggests this species has a moderate potential for survival in much of the state (i.e., climate match 5-6 out of 10).

The department proposes to designate mud snails of the family Hydrobiidae as "harmful or potentially harmful exotic shellfish." This family includes highly invasive species such as the New Zealand mudsnail, *Potamopyrgus antipodarum.* This species is known to attain extremely high-density populations in excess of 300,000 snails per square meter and has potential to foul and impact facilities drawing water from infested lakes. This species is currently found in most western states--including nearby northern New Mexico and Colorado--as well as the Great Lakes region and several northeastern states. Potential for spread into Texas from adjacent states is high, particularly on boats, waders, and other equipment used in infested waters. If introduced in Texas, climate match analysis suggests this species has a moderately high potential for survival in much of the state (i.e., climate match 6-7 out of 10) and could become established and spread within the state.

The department proposes to designate the golden mussel, *Limnoperna fortunei,* as a "harmful or potentially harmful exotic shellfish." The negative impacts of this species are highly similar to those of the invasive dreissenid mussels--the zebra mussel and quagga mussel. These invasive mussels infest and damage water supply, hydroelectric, and other infrastructure, alter ecosystem food webs, and cover lake beaches and other colonized hard surfaces with razor-sharp shells. Although this species has not yet been documented in the U.S., it is considered highly likely to be introduced into the U.S. via ballast water

of large, oceangoing ships--the same introduction pathway that is believed to be responsible for dreissenids invasions. If introduced in Texas, climate match analysis suggests this species has a high potential for survival in much of the state (i.e., climate match 6 - 7 out of 10) although, like dreissenids, calcium availability would reduce the likelihood of invasion of East Texas lakes. Populations have been documented elsewhere in waters with temperatures of 95 degrees Fahrenheit, suggesting that this species has greater potential than dreissenids to survive in power plant cooling lakes and impact these facilities.

The department proposes to designate Crested Floating Heart, *Nymphoides cristata,* and Yellow Floating Heart, *N. peltata,* as "harmful or potentially harmful exotic plants." Crested Floating Heart was first found in Texas in 2008 and has since formed infestations in Caddo Lake, Lake Conroe, Lake Athens, and the Lower Neches Valley Authority canals. Yellow Floating Heart was first detected in Texas in Moss Lake in 2010 and is also found on the Louisiana side of Toledo Bend Reservoir where there is high potential for eventual spread into Texas waters. These exotic floating hearts are rooted in the lake substrate with floating leaves and can form large, dense infestations that impede access for boating and other aquatic recreation. Management of these species is especially difficult due to their growth habit and, as with any invasive aquatic plant, can be costly. Regulation of these species as "harmful or potentially harmful" is needed to prevent transport and introduction into new water bodies, creating new infestations.

Proposed new §57.113, concerning General Provisions and Exceptions, would set forth numerous provisions generally applicable to the proposed new rules and enumerate specific exceptions to the proposed new rules.

Proposed new §57.113(a) would establish that nothing in the subchapter is to be construed to relieve any person of the obligation to comply with any applicable provision of local, state, or federal law. Other governmental entities have various legal authorities that impinge on the department's authority to regulate the possession and movement of certain fish, shellfish, and aquatic plants. The department wishes to be abundantly clear that a rehabilitation permit does not obviate any person's legal obligation to comply with such laws, when applicable.

Proposed new §57.113(b) would recapitulate the statutory provisions of Parks and Wildlife Code, §66.007, which prohibits the importation, possession, sale, or placement into the public water of this state of exotic harmful or potentially harmful fish or shellfish except as authorized by rule or permit issued by the department, and §66.0071, which prohibits the importation, possession, sale, or placement into the public water of this state of aquatic plants designated by the department as harmful or potential harmful except as authorized by rule or permit issued by the department. The proposed new subsection would further prohibit the export, purchase, propagation, and culture of species of fish, shellfish, and aquatic plants designated by the department as harmful or potentially harmful species, which is necessary to clearly describe the types of activities for which a permit is required. The proposed new subsection also would prohibit the take or possession of a live grass carp from public water where grass carp have been introduced under a permit issued by the department, unless the department has specifically authorized removal or the permit is no longer in effect, which is a provision of current rule §57.112(b)(2).

Proposed new §57.113(c) would establish the eligibility requirements and procedures for seeking "active partner" status. Under the proposed new rules, active partner status would exempt an entity engaged in department-coordinated efforts to monitor and/or manage controlled exotic species from the requirement to obtain a controlled exotic species permit to conduct the activity. The entity requesting active partner status would be required to submit a letter of request to the department that describes the proposed engagement in department-coordinated efforts to monitor and/or manage controlled exotic species in Texas and measures to be taken to prevent introduction of controlled exotic species into public water. Active partner status would be granted by means of a letter of approval from the department. The provision is necessary because the department seeks to engage with other governmental, quasi-governmental, or non-governmental organization or entity to assist in department efforts to curb controlled exotic species.

Proposed new §57.113(d) would establish that an employee of the department in the performance of official duties is exempt from the permit requirements of this subchapter. Requiring a department employee to obtain a permit while engaged in the duties of the department would be counterproductive and inefficient.

Proposed new §57.113(e) and (f) would establish the conditions under which persons would be permitted to possess prohibited exotic species without a permit, retaining the provisions of current §57.113(b) - (d) and providing additional stipulations for fish or shellfish other than mussels or oysters to be possessed without a permit if they have been gill-cut, killed using another means, frozen, or packaged on ice, in addition to the current exception for beheaded or gutted individuals.

Proposed new §57.113(g) would stipulate that no person may possess or transport live or dead controlled exotic species of mussels that are attached to any vessel, conveyance, or dock or pier and provide an exception for vessels that are travelling directly to a service provider for mussel removal or maintenance or repair following notification of the department. Zebra mussels and quagga mussels *(Dreissena bugensis),* both of which are currently listed as harmful or potentially harmful exotic species, are considered to be among the most problematic invasive species in the world, and zebra mussels have already been proven to be highly damaging in Texas. Preventing the transport of invasive mussels attached to boats is paramount for preventing the spread of zebra mussels within the state and to other states, and for preventing the introduction of quagga mussels into this state. To minimize this risk, invasive mussels attached to boats must be killed; however, the viability of those mussels cannot be assessed rapidly with any certainty by laypersons. The proposed new subsection would create an exception for the possession and transport of mussels attached to or contained within a vessel in situations where the vessel must be transported to a service provider for removal of mussels, repair, or maintenance, provided the department is notified. To ensure the risks of transport can be addressed and coordinated by the department if necessary, the proposed new subsection would stipulate that the notification include date of transport, contact information for the person or entity transporting the vessel, vessel registration number, water body of origin to determine if it is infested with mussels, service provider location and contact information, and the water body where the vessel will return after service to assess risk of new introductions resulting from transport.

Proposed new §57.113(h) would provide a qualified exception to permit requirements for licensed retail or wholesale fish deal-

ers. Under current §57.113(k), a licensed retail or wholesale fish dealer is not required to possess a permit issued under the subchapter for certain species unless the retail or wholesale dealer is engaged in propagation of the species, provided the fish or shellfish have been gutted or beheaded. The proposed new subsection would clarify that the fish dealer must obtain these species from a permit holder and provide additional methods that fish may be rendered inert. With respect to live Pacific blue shrimp *(Litopenaeus stylirostris)* or Pacific white shrimp *(L. vannamei),* the proposed new subsection would impose the same clarification that the fish dealer must obtain these species from a permit holder.

Proposed new §57.113(i) would recapitulate that the holder of a controlled exotic species permit may not place into public water, possess, import, export, sell, purchase, transport, propagate, or culture controlled exotic species unless authorized by the specific conditions of the permit. The proposed new provision repeats for purposes of emphasis the prohibited acts articulated by Parks and Wildlife Code, §66.007 that are restated and elaborated upon in the proposed new rules.

Proposed new §57.113(j) would create an exception to permit requirements for landowners (and their agents) who remove exotic plant species, zebra mussels, and applesnails of the genus Pomacea, provided the landowner or agent complies with the specific conditions set forth for removal and transport. Invasive exotic plants frequently impede water access for lakefront landowners--particularly floating species such as giant salvinia and water hyacinth *(Eichhornia crassipes),* which can continually reinvade cleared areas around shorelines and docks. Under current rules, a permit is required to possess these and other controlled exotic plants even for the purposes of disposal in addition to obtaining department approval of a nuisance aquatic vegetation treatment proposal. Invasive zebra mussels are also problematic, clogging and damaging water infrastructure and attaching their razor-sharp shells to shorelines and docks, posing a human health hazard. Under current rules, there are no provisions allowing unpermitted persons to possess and/or transport controlled exotic species of mussels removed from personal property, live or dead, for the purpose of disposal. Invasive applesnails are a common invader of both public water bodies and small private lakes and can decimate aquatic vegetation that provides important habitat for fish. Under current rules, there are no provisions allowing possession of the prohibited species of applesnails, live or dead, for the purposes of removal/disposal for population management. The proposed new subsection would allow the owner or manager of a property or their agent, except as provided by proposed new §57.113(k), to without a permit possess and transport prohibited mussels of the genus Dreissena and prohibited applesnails of the genus Pomacea for the purpose of disposal provided that they are securely contained in black plastic bags (which accumulate heat that kills the organisms) prior to disposal. Inclusion of all species of Dreissena proactively provides for the potential need for removal and transport for disposal of invasive quagga mussels should they be introduced in Texas. Inclusion of all prohibited species of applesnails of the genus Pomacea is necessary due to difficulty distinguishing between some species without genetic analysis; however, it is believed that only *P. maculata* is currently found in Texas. For controlled exotic plants, the exception created by the proposed new subsection would also allow the option of drying fully prior to disposal in lieu of containment in bags.

Proposed new §57.113(k) would require a person, who in exchange for money or anything of value operates a mechanical plant harvester or otherwise physically removes controlled exotic species of plants from public water, to include persons who possess and transport controlled exotic plants following such removal operations, to possess a controlled exotic species permit. Under current rule, an exotic species permit is required to perform these activities; however, the proposed new subsection would explicitly require a permit to be obtained by persons who do so for remuneration. The use of mechanical harvesters and other large-scale removal methods at a commercial scale could result in possession and transport of quantities of exotic plants in volumes exceeding those contemplated by the exception for permit requirement contained in proposed new §57.113(j). Such volumes pose a greater biosecurity risk. By continuing to require a controlled exotic species permit for commercial activities, the department seeks to ensure that they are conducted in a verifiably biosecure manner.

Proposed new §57.113(l) would create an exception for the possession and transport of controlled exotic species for governmental or quasi-governmental agencies; operators of power generation, water control, or water supply facilities; private water intakes; entities removing garbage from public water bodies; or contractors working on their behalf performing standard operations, maintenance, or testing, provided the activities are in compliance with best management practices published by the department. The department recognizes that the enumerated entities may encounter the need to transport controlled exotic species for disposal under certain circumstances. Invasive exotic zebra mussels and some plants foul and clog intakes for facilities using or controlling raw surface water. Current rules do not address the periodic need for removal and disposal of these species. Zebra mussels attach to virtually any hard surface, including floating and submerged debris, and possession of such mussels is not explicitly addressed under current rule, which is problematic when mussels are attached to objects removed from public water bodies during river and lake clean-up events. The proposed new subsection would establish an exception to address such situations. The best management practices will be developed and continually adapted as needed to provide practical guidelines that seek to minimize transport of viable organisms and thereby reduce biological risk.

Proposed new §57.113(m) would provide an exception to permit requirements for persons who purchase, possess, or transport controlled exotic species of plants as hosts for biological control agents for the purpose of introduction for management of nuisance aquatic vegetation, provided that the identity of the plant species to be managed is confirmed by the department and the host plants and biological control organisms are obtained from the department, a biological control facility permitted under this subchapter, or an active partner, and the activities are in compliance with rules governing transport documentation and introduction of aquatic plants into public water, if applicable. The proposed new subsection is intended to facilitate expansion of the use of biological control organisms to aid in management of controlled exotic plants such as Giant Salvinia and Alligatorweed *(Alternanthera philoxeroides).* Introduction of biological control organisms often requires possession and transport of a small quantity of the prohibited host plant.

Proposed new §57.113(n) would create an exception to permit requirements for possession of specimens of controlled exotic mussels or plants provided they have been preserved using methods specified by rule for rendering the organisms nonviable. The current rules do not specifically provide for the possession of specimens for educational purposes at nature

centers, school classrooms, or museum collections. The proposed new subsection would provide enhanced educational opportunities that could contribute to increased awareness of invasive species issues in Texas.

Proposed new §57.113(o) would require any person in possession of controlled exotic species to provide or allow the department take samples of any controlled exotic species for purposes of taxonomic or genetic identification and analysis by the department; furnish any documentation necessary to confirm controlled exotic species identity, the source of controlled exotic species, and eligibility to possess controlled species; make available for inspection during normal business hours any records required by the subchapter as well as any retention location, facility, private pond, recirculating aquaculture system, or transportation vehicle or trailer used to conduct activities authorized under this subchapter; and demonstrate that activities are conducted in compliance with the requirements of the subchapter and in such a way as to prevent escape, release, or discharge of controlled exotic species. Under current rules (current §§57.119(a), (b), and (d), 57.131(c), and 57.132(b)), provisions governing inspections, reporting, and recordkeeping apply only to permit holders. For purposes of enforcement of the various proposed new provisions of this section that create exceptions to permit requirements, the proposed new subsection would extend the responsibilities enumerated in those sections to all persons in possession of controlled exotic species.

Proposed new §57.113(p) would establish protocols for the disposition of controlled exotic species held by a person who is no longer legally permitted to be in possession of the controlled exotic species because of violations, permit renewal refusal, or cessation/discontinuation of permitted or otherwise authorized activities for any other reason. In the case of elective discontinuation of permitted operations, current rules (§57.119(c)) stipulate that all remaining inventory of the permitted species be lawfully sold, transferred, or destroyed. However, the current rules make no provisions for dealing with failure to comply with the rules or with unlawful possession, leaving the potential for persons to be in possession of large quantities of controlled exotic species (e.g., for aquaculture purposes). Proposed new §57.113(p) would establish a course of action for dealing with unlawful possession, failure to comply with rules pertaining to elective discontinuation of operation, and circumstances under which a permit holder is ordered to cease operation. Under the proposed new rules, the department could prescribe, on a case by case basis, a disposition protocol for destruction, disposal, or transfer of controlled exotic species. The proposed new subsection would provide that if the disposition protocol is not implemented within 14 days of notification by the department, the department could implement a prescribed disposition protocol. Furthermore, in the event that a disposition protocol is implemented by the department, the proposed new subsection would mandate financial responsibility for all costs associated with the destruction, disposal, or transfer of controlled exotic species held in the facility be borne by the affected person. The proposed new provisions are necessary to ensure that persons who are in unlawful possession of controlled exotic species and demonstrate an inability to dispose of such species in lawful compliance with department orders bear the costs of disposal rather than having the people of the state bear such costs.

Proposed new §57.114, concerning Controlled Exotic Species Permits, would enumerate the various types of controlled exotic species permits governed under the subchapter. Proposed new §57.114(a) would provide for the issuance of a controlled exotic species permit for the culture, transport, and sale of water spinach *(Ipomoea aquatica)*--an exotic aquatic plant that is sold for human consumption.

Proposed new §57.114(b) would provide for the issuance of controlled exotic species permits for the commercial aquaculture of triploid grass carp; blue tilapia *(Oreochromis aureus),* Mozambique tilapia *(O. mossambicus),* Nile tilapia *(O. niloticus),* Wami tilapia *(O. hornorum),* and hybrids; and Pacific white shrimp *(Litopenaeus vannamei)* or Pacific blue shrimp *(L. stylirostris),* and would stipulate that regulated activities must be performed by the permittee, an authorized person named on the permit, or a person supervised by an authorized person, which is necessary to ensure that all activities under a permit are conducted by someone lawfully liable for compliance with the provisions of the permit and the subchapter.

Proposed new §57.114(c) would provide for the issuance of controlled exotic species permits for research that benefits indigenous species or ecosystems and/or provides insight on ecology, risks, impacts, or management approaches for controlled exotic species. Current rules provide that permits may be issued for department approved research programs (§57.113(a)(1)). The proposed new rule also would stipulate that sale of controlled exotic species held under a research permit is prohibited unless authorized in writing by the Director of the Coastal Fisheries Division or Inland Fisheries Division (or their designee), which is a refinement of the provisions of current §57.113(a).

Proposed new §57.114(d) would provide for the issuance of a controlled exotic species permit for the propagation of controlled exotic species of plants for the purposes of production of biological control agents for management of controlled exotic species of plants. Biological control agents such as salvinia weevils *(Cyrtobagous salviniae)* play an important role in the integrated pest management strategy for achieving control of invasive exotic species such as giant salvinia in Texas lakes.

Proposed new §57.114(e) would provide for issuance of controlled exotic species permits for zoological display, which is a provision of current §57.113.

Proposed new §57.114(f) would provide for the issuance of a controlled exotic species for specific limited purposes.

Proposed new §57.114(f)(1) would provide for the issuance of a controlled exotic species permit to persons other than commercial aquaculturists who sell triploid grass carp or tilapia. The proposed new provision would allow permit holders to sell live triploid grass carp or tilapia purchased from a commercial aquaculture facility permit holder or lawful out-of-state source as well as for lawful out-of-state suppliers to obtain a Texas permit and prohibit persons holding a permit issued under the proposed new paragraph from using the controlled exotic species for aquaculture or holding the controlled exotic species in a facility in Texas for more than 72 hours. The proposed new provision is necessary to provide a mechanism for persons engaged in the business of buying tilapia and triploid grass cap for resale who do not have a facility.

Proposed new §57.114(f)(2) would provide for the issuance of controlled exotic species permits for introduction into public water or private water of live triploid grass carp, which is a provision of current §57.125, concerning Triploid Grass Carp Permit; Application, Fee.

Proposed new §57.114(f)(3) would provide for the issuance of controlled exotic species permits for interstate transit of

controlled exotic species, which is addressed in proposed new §57.121, concerning Transport of Live Controlled Exotic Species.

Proposed new §57.114(f)(4) would provide for the issuance of controlled exotic species permits for the possession and disposal of controlled exotic plant species removed from public or private waters, the particulars of which are set forth in proposed new §57.113, concerning General Provisions and Exceptions.

Proposed new §57.114(f)(5) would provide for the issuance of controlled exotic species permits for possession of controlled exotic species of plants for wastewater treatment by a wastewater treatment facility, the particulars of which are set forth in proposed new §57.113, the particulars of which are set forth in proposed new §57.113,concerning General Provisions and Exceptions.

Proposed new §57.114(f)(6) would provide for the issuance of permits for the possession, transport, and disposal of controlled exotic species related to activities not otherwise authorized by the provisions of proposed new §57.113, concerning General Provisions and Exceptions, or proposed new §57.114, concerning Controlled Exotic Species Permits.

Proposed new §57.115, concerning Special Provisions--Tilapia, would prescribe the provisions of the subchapter that would specifically apply to the possession of tilapia.

Proposed new §57.115(a) would provide that no person may possess, import, export, sell, purchase, transport, propagate, or culture, or offer to import, export, sell, purchase, or transport tilapia unless the person is the holder of a valid controlled exotic species permit and is in compliance with the terms of the permit. The proposed new subsection is specific to tilapia, but recapitulates the provisions of Parks and Wildlife Code, §66.007 and the proposed new rules that the holder of a controlled exotic species permit may not place into public water, possess, import, export, sell, purchase, transport, propagate, or culture controlled exotic species unless authorized by the specific conditions of the permit, to include an offer to do any of those things.

Proposed new §57.115(b) would require private ponds stocked with tilapia to be designed and maintained such that escape, release, or discharge of tilapia into public water is not likely to occur. The current rules do not address design or maintenance requirements for private ponds. The department believes that it is important to require private ponds to be designed and maintained in such a fashion as to minimize the danger of escapement of controlled exotic species held under a permit.

Proposed new §57.115(c) would establish an exception to the provisions of the section for non-commercial aquaculture of four controlled exotic species of tilapia without a controlled exotic species permit. Under current rule §57.115(i), only one species of tilapia (Mozambique tilapia, *Oreochromis mossambicus),* may be possessed for non-commercial aquaculture without a permit. Home aquaponics has increased in popularity in recent years, and other species have become desirable, particularly for consumption. Under the proposed new subsection, no permit would be required to purchase, possess, transport, or propagate blue tilapia *(O. aureus),* Mozambique tilapia, Nile tilapia *(O. niloticus),* Wami tilapia *(O. hornorum),* and hybrids between these species for non-commercial aquaculture purposes. The proposed new provision would require tilapia to be purchased and transported in accordance with the provisions of the subchapter governing transport of live exotic species and the tilapia so held could not be sold, offered for sale, or exchanged for money or anything of value. Current rules (§57.115(i)) allow the purchase and transport of Mozambique tilapia without a permit, but the sale of such fish is prohibited without an exotic species or wholesale dealer permit. Under the proposed new subsection, tilapia would be required to be kept in a recirculating aquaculture system constructed such that escape, release, or discharge of tilapia into public water is not likely to occur. Additionally, the proposed new subsection would require all recirculating aquaculture systems to be constructed such that no discharge of wastewater or waste into or adjacent to water in the state is likely to occur, and that they be equipped with adequate security measures in place to prevent unauthorized removal of tilapia. Finally, the proposed new subsection would require all tilapia transferred to another person or disposed be killed in accordance with the provisions of proposed new §57.113(f). The department has determined that recirculating aquaculture systems operated in compliance with the proposed new provisions would pose minimal risk of accidentally introducing tilapia into public waters of the state.

Proposed new §57.115(d) would prescribe the requirements for the stocking of controlled exotic species of tilapia in private ponds. The proposed new subsection is intended to minimize detrimental impacts of escapes on Texas' Fish Species of Greatest Conservation Need, as identified in the Texas Conservation Action Plan. Under current §57.113(i), Mozambique tilapia may be stocked in private ponds without a site evaluation by the department; however, many ponds in Texas are creek impoundments capable of overflow during rains, which could result in the escape of controlled exotic species of tilapia into public waters. As part of a strategic conservation planning framework used to develop the proposed new rules, staff conducted a spatial conservation assessment informed by comprehensive review of the scientific literature and models of species distribution probability. The assessment identified key areas where escape of tilapia is likely to have detrimental impacts on fish designated as Species of Greatest Conservation Need. The assessment also identified areas of economic activity (comparatively high tilapia stocking) to balance potential conservation actions against potential economic impacts. Based upon this assessment, the department proposes the creation of two zones--a "conservation zone" and a "stocking zone."

Proposed new §57.115(d)(1) would reiterate that no person holding regulated species of tilapia in a private pond without a controlled exotic species permit may sell, offer for sale, or exchange tilapia for money or anything of value, which is necessary to ensure that it is abundantly clear that commercial activity involving regulated species of tilapia without a controlled exotic species permit authorizing such activities is prohibited.

Proposed new §57.115(d)(2) would stipulate that if a county designated as being within the stocking zone is subsequently designated as being within the conservation zone, the provisions of the proposed new rules that govern conservation zones would then apply to the county, which is necessary to make clear that rules governing conservation zones apply to counties in conservation zones.

Proposed new §57.115(d)(3) would prescribe the provisions for stocking tilapia in private ponds within the conservation zone. Proposed new subparagraph (A) would require a landowner seeking to stock a pond located within a conservation zone to obtain approval from the department by submitting a completed application to the department at least 30 days prior to the prospective stocking (no associated fee). Proposed new subparagraph (B) would provide for department approval of the

stocking authorization upon finding that the pond is designed and will be maintained such that escape, release, or discharge of tilapia from the pond into public water is not likely to occur and that the stocking does not pose a significant risk to any species designated as endangered, threatened, or a Species of Greatest Conservation Need. Proposed new subparagraph (C) would provide that a stocking authorization applies only to the specific pond for which it is issued, is transferable, and will neither expire nor require renewal provided the pond is not modified in any way could result in increased risk of escape, release, or discharge of controlled exotic species into public water. A conservation zone is an area where the escape of tilapia into public water represents a significant potential negative impact to imperiled fishes. The department believes it is prudent to evaluate and approve prospective stocking activities within the conservation zone on a pond-by-pond basis. To ensure that there is sufficient time for the department to conduct an ecological assessment, the proposed new paragraph would require an application to be submitted no less than 30 days before the intended date of stocking. Because the conservation zone reflects the area the department has determined is most ecologically vulnerable to accidental releases of exotic species of tilapia, the proposed paragraph would also predicate stocking authorization on a department determination that the prospective stocking site is physically sufficient to make escapement unlikely and that the stocking does not pose a significant threat to species of concern on the landscape. Finally, the department considered that the ownership of private ponds can change as a result of a variety of factors (sale, gift, or inheritance, etc.) and has determined that so long as the pond in question is not modified in such a way as to enhance risk of escapement, there is no need to reauthorize or renew the stocking approval which is intended to preclude complications as a result of real estate transactions. Current rules provide a regulatory exception only for the stocking of Mozambique tilapia in private ponds. The proposed new rules would allow stocking of other species such as blue tilapia, Nile tilapia, Wami tilapia, and hybrids between these species within the conservation zone upon approval by the department.

Proposed new §57.115(d)(4) would prescribe the provisions for stocking tilapia in private ponds within the stocking zone, requiring only that private ponds stocked with tilapia be compliant with proposed new §57.115(b), which requires ponds to be designed and maintained such that escape, release, or discharge of tilapia from the pond into public water is not likely to occur, which is necessary for reasons discussed earlier in this preamble. A stocking zone is an area where stocking is common and there is a low potential negative ecological impact from accidental escapement.

Proposed new §57.115(d)(5) would retain the requirement of current §57.113(i) that tilapia stocked in a private pond must be killed by one of the approved methods set forth in proposed new §57.113(e) prior to transfer to another person.

Proposed new §57.115(d)(6) would retain the recordkeeping requirements of current §57.116(d).

Proposed new §57.115(e) would reiterate the specific requirements of proposed new subsection (d) that prohibit the stocking of tilapia in private ponds within the conservation zone without the landowner or their agent first obtaining written approval from the department.

Proposed new §57.116, concerning Special Provisions--Triploid Grass Carp, would set forth the provisions governing the issuance of permits for stocking of triploid grass carp into public or private water.

Proposed new §57.116(a) would provide for the issuance of a controlled exotic species permit for stocking triploid grass carp in public water upon a finding by the department that the stocking is not likely to affect threatened or endangered species or interfere with management objectives for other species or habitats, which are provisions of current rule (§57.126(a)(5) - (7)).

Proposed new §57.116(b) would provide for the issuance of a controlled exotic species permit for stocking triploid grass carp in a private pond upon a finding by the department that the stocking is not likely to result in an introduction unlawful under Parks and Wildlife Code, §66.015. Under Parks and Wildlife Code, §66.015, a person commits a violation if fish, shellfish, or aquatic plants the person possesses or has placed in nonpublic water escape into the public water of the state and the person does not hold a permit issued by the department authorizing such release or escapement; therefore, the proposed new subsection would reiterate the statutory provision to clarify that permit issuance is conditioned on a determination by the department that escape is not likely to occur. The proposed new subsection would also reiterate current rules (§57.126(a)(5) - (7)) by requiring permit issuance to be conditioned on a department finding that the prospective stocking would not affect threatened or endangered species, or interfere with management objectives for other species or habitats.

Proposed new subsection (c) would require an applicant for a triploid grass carp permit for private pond stocking to allow, upon request by the department, the inspection of the affected ponds or lakes by an employee of the department during normal business hours for the purposes of evaluating whether the private pond meets the criteria for permit issuance, which is a requirement of current §57.125(d).

Proposed new subsection (d) would stipulate that the stocking rate authorized by the department in the terms of a controlled exotic species permit be determined by considering the surface area of the water body to be stocked and the extent of the vegetation to be managed.

Current §57.126(c) stipulates that the department will consider the surface area of the pond or lake named in the permit application, and, as appropriate, the percentage of the surface area infested by aquatic vegetation. The proposed new subsection would replace "the percentage of the surface area infested by aquatic vegetation" with "the extent of the vegetation to be managed." Because the degree of infestation for submerged aquatic vegetation species is a function of both the surface area and water depth of the infestation, the proposed new provision would liberalize the factors considered by the department, such as the species of nuisance aquatic vegetation present and their vulnerability to triploid grass carp, in determining the appropriate number of fish to be stocked.

Proposed new subsection (e) would enumerate the sources from which triploid grass carp may be lawfully obtained by stipulating that triploid grass carp may be purchased or obtained only from the holder of a permit that authorizes the sale or from a lawful out-of-state source. Under current §57.124(c), only exotic species permit holders are permitted to purchase triploid grass carp from a lawful out-of-state source. The proposed new subsection would allow purchase of triploid grass carp by anyone, provided the source is either a controlled exotic species permit holder authorized to possess and sell triploid grass carp or an out-of-state entity allowed to sell triploid grass carp. The change is intended to broaden the opportunities available for permitted persons to obtain triploid grass carp.

Proposed new subsection (f) would authorize the department to introduce triploid grass carp into public water in situations where the department has determined that there is a management need and when stocking will not affect threatened or endangered species or other important species or habitats. Current rules do not specifically authorize the department to stock triploid grass carp in public water, but Parks and Wildlife Code, §12.013, authorizes the department to regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state; thus, the proposed new subsection would recapitulate existing statutory authority.

Proposed new subsection (g) would prescribe the requirements for the issuance of controlled exotic species permits to stock triploid grass carp in private ponds.

Proposed new subsection (g)(1) would require private ponds stocked with triploid grass carp to be designed and maintained such that escape, release, or discharge of triploid grass carp into public water is not likely to occur. Although current §57.117, concerning Exotic Species Permit: Application Requirement, requires an applicant for an exotic species permit to demonstrate to the department that an existing aquaculture facility, private facility, or wastewater treatment facility meet the requirements of current §57.129, concerning Exotic Species Permit: Private Facility Criteria, it is not clear that the provision is applicable to a private pond (although the current definition for "private facility" includes private ponds). The proposed new subsection would eliminate possible ambiguity by, in tandem with the proposed amendment to §57.111, specifically excluding private ponds from the definition of "facility" but specifically referencing triploid grass carp in the definition of "private pond." The intent of the proposed new subsection is to clarify the department's authority to require private ponds to be designed and maintained in such a fashion as to minimize the danger of escapement of triploid grass carp.

Proposed new subsection (g)(2) would require a landowner seeking to stock triploid grass carp to obtain a permit for that purpose from the department. Under Parks and Wildlife Code, §66.007, no person may import, possess, sell, or place into the public water of this state exotic harmful or potentially harmful fish or shellfish except as authorized by rule or permit issued by the department. Similarly, proposed new §57.113, concerning General Provisions and Exceptions, would prohibit the introduction into public water, possession, importation, exportation, sale, purchase, transport, propagation, or culture of any species, hybrid of a species, subspecies, eggs, seeds, or any part of any species defined as a controlled exotic species. The department believes it is necessary to reproduce the same provisions with respect to triploid grass carp in the interests of emphasis.

Proposed new subsection (g)(3) would stipulate that a permit authorizing the stocking of triploid grass carp is specific to the ponds on the property for which it is issued, is transferrable, and will neither expire nor require renewal provided the pond is not modified in any way that could result in increased risk of escape, release, or discharge of controlled exotic species into public water. It is axiomatic that the release of triploid grass carp exotic species is a cause of concern. Therefore, the proposed new paragraph would restrict stocking authorization to specific ponds. Additionally, the department considers the fact that ownership of private ponds can change as a result of a variety of factors (sale, gift, or inheritance, etc.) and has determined that so long as the ponds in question are not modified in such a way as to enhance risk of escapement, there is no need to reauthorize or renew the stocking approval, which is intended to preclude complications as a result of real estate transactions.

Proposed new subsection (g)(4) would prohibit the sale, offering for sale, or exchange in return for money or anything of value of triploid grass carp held in a private pond, which is necessary because under current §57.124(a), triploid grass carp may be sold only to another person holding a permit authorizing possession of triploid grass carp. The proposed new subsection is intended to ensure that it is abundantly clear that commercial activity involving triploid grass carp without a controlled exotic species permit authorizing such activities is prohibited.

Proposed new subsection (g)(5) would stipulate that if a county designated as being within the conservation zone is subsequently designated as being within the stocking zone, the provisions of the proposed new rules that govern the stocking zone would then apply to the county, which is necessary to make clear that rules governing activities in the stocking zone apply to counties in the stocking zone.

Proposed new subsection (g)(6) would stipulate that within a stocking zone, permit applications requesting ten or fewer triploid grass carp would require administrative review only. The application shall be submitted at least 14 days prior to the intended stocking. The department believes that small-scale introductions of triploid grass carp within the stocking zone represent a relatively innocuous potential for ecological concern; thus, it is not necessary for such introductions to be the subject of exhaustive review. However, the department also believes that there should be sufficient time for the administrative review to take place; therefore, the proposed new paragraph would require an application requesting ten or fewer triploid grass carp to be submitted no less than 14 days before the intended date of stocking.

Proposed new subsection (g)(7) would prescribe recordkeeping requirements for persons in possession of live triploid grass carp stocked in a private pond. The proposed new paragraph would require a person in possession of live triploid grass carp stocked in a private pond to possess and retain for a period of one year from the date the grass carp were obtained or as long as the grass carp are in the water, whichever is longer, either an exotic species transport invoice or an aquatic product transport invoice from a lawful out-of-state source and documentation that the grass carp have been certified as triploid by the Grass Carp Inspection and Certification Inspection Program operated by the U.S. Fish and Wildlife Service.

Proposed new subsection (g)(8) would retain the requirement of current §57.113(i) that tilapia stocked in a private pond must be killed by one of the approved methods set forth in proposed new §57.113(e) prior to transfer to another person.

Proposed new §57.117, concerning Special Provisions--Shrimp Aquaculture and Health Certification, would set forth the special provisions governing shrimp aquaculture and the health certification of cultured shrimp, which differ from the current provisions of §57.114, concerning Health Certification of Harmful or Potentially Harmful Exotic Shellfish as noted, with numerous nonsubstantive changes to terminology to be consistent with other provisions of the proposed new rules.

Proposed new §57.117(a) would require any facility containing controlled exotic species of shrimp to be capable of placing stocks into quarantine condition. Under current §57.129(d), an aquaculture facility containing harmful or potentially harmful exotic shellfish is required to be capable of segregating stocks of shellfish that have not been certified as free of disease from

other stocks of shellfish on the aquaculture facility, which is essentially the same thing.

Proposed new §57.117(b) would provide that a facility containing live Pacific blue shrimp *(Litopenaeus stylirostris)* be located outside the exotic shrimp exclusion zone. Current §57.113(k)(2) contains this requirement, but also stipulates that Pacific blue shrimp be cultured under quarantine conditions. Staff has determined that, under the requirements of proposed new §57.117, pertaining to disease inspections and quarantine upon manifestations of disease, and location of facilities outside the exotic shrimp exclusion zone, this activity poses a minimal risk to the existing biological ecosystem and native shrimps, and quarantine conditions are not necessary.

Proposed new §57.117(c) would require disease certification to be conducted by a disease specialist, which is a provision of current rules under §57.114(a).

Proposed new §57.117(d) would require any person importing live controlled species of exotic shrimp to, prior to importation, provide documentation to the department that the controlled exotic species of shrimp to be imported have been certified as disease-free and receive written acknowledgment from the department that the requirements of for demonstrating disease-free status have been met. The proposed new provision is a requirement of current §57.114(b).

Proposed new §57.117(e) would require any person in possession of controlled exotic species of shrimp for the purpose of production of post-larvae to provide to the department monthly documentation that nauplii and post-larvae have been examined and certified to be disease-free. The proposed new subsection would further provide that if monthly certification cannot be provided, the shrimp must be maintained in quarantine condition until the department acknowledges in writing that the requirements for demonstrating stock is disease-free or conditions specified in writing by the department under which the quarantine condition can be removed have been met. The proposed new provision is a requirement of current §57.114(c).

Proposed new §57.117(f) would require any person who possesses controlled exotic species of shrimp in a facility regulated under the subchapter who observes one or more of the manifestations of diseases of concern listed on the clinical analysis checklist provided by the department to place the entire facility under quarantine condition immediately, notify the department, and either request an inspection from a disease inspector or submit samples of the affected shrimp to a disease specialist for analysis and forward the results of such analyses to the department upon receipt. The proposed new provision is a requirement of current §57.114(d).

Proposed new §57.117(g) would provide that no more than 14 days prior to harvesting ponds or discharging any waste into or adjacent to water in the state, the permit holder must request an inspection from a disease inspector or submit samples of the shrimp from each pond or other structure containing such shrimp to a disease specialist for analysis and submit the results of such analyses to the department upon receipt, using the clinical analysis checklist. The proposed new provision is a requirement of current §57.114(e).

Proposed new §57.117(h) would provide that upon receiving a request for an inspection from a permit holder, a disease inspector may visit the facility, examine samples of shrimp from each pond or other structure from which waste will be discharged or harvest will occur, complete the clinical analysis checklist provided by the department, sample shrimp from or inspect any pond or structure the disease inspector determines requires further investigation, and provide a copy of the clinical analysis checklist and any other inspection reports to the permit holder. The proposed new provision is a requirement of current §57.114(f).

Proposed new §57.117(i) would provide that if the results of an inspection performed by a disease inspector indicate the presence of one or more manifestations of disease, the permit holder would be required to immediately place or continue to maintain the entire facility under quarantine condition and submit samples of the controlled exotic species of shrimp from the affected portion(s) of the facility to a disease specialist for analysis. Results of such analyses would be required to be forwarded to the department upon receipt. The proposed new provision is a requirement of current §57.114(f).

Proposed new §57.117(j) would stipulate that if the results of a required analyses performed by a disease specialist indicate the presence of disease, the permit holder would be required to immediately place the entire facility under quarantine condition. The proposed new provision is a requirement of current §57.114(h).

Proposed new §57.117(k) would stipulate that if the results of inspections or analyses of controlled exotic species of shrimp from a facility placed under quarantine condition indicate the presence of disease, the facility shall remain under quarantine condition until the department removes the quarantine condition in writing or authorizes in writing other actions deemed appropriate by the department based on the required analyses. The proposed new provision is a requirement of current §57.114(i).

Proposed new §57.117(l) would provide that if the results of required inspections or analyses indicate the absence of any manifestations of disease, the permit holder may begin discharging from the facility. The proposed new provision is a provision of current §57.114(j).

Proposed new §57.118, concerning Special Provisions--Water Spinach, would set forth the provisions regarding possession, cultivation, transport, and sale of water spinach, as well as providing for recordkeeping and reporting requirements. The proposed new section represents a reorganization of current §57.136, concerning Special Provisions--Water Spinach with substantive differences as noted. Numerous nonsubstantive changes have been made to enhance clarity and change terminology to be consistent with other provisions of the proposed new rules.

Proposed new §57.118(a) would provide that except as authorized by a permit issued under the proposed new section or otherwise provided by the subchapter, no person may culture water spinach or possess or transport water spinach in exchange for or with the intent to exchange for money or anything of value. Under current §57.136(a)(2), no person may grow water spinach or possess or transport water spinach for a commercial purpose unless that person possesses a valid exotic species permit issue by the department for that purpose. The proposed new provision is nonsubstantive reformulation of those requirements.

Proposed new §57.118(b) would provide that no permit is required to purchase or possess water spinach for personal consumption provided the water spinach was lawfully purchased or obtained and is not propagated or cultured. The proposed new subsection is a mixture of provisions in current §57.136(a)(2) and (4).

Proposed new §57.118(c) would set forth the conditions under which water spinach could be purchased or obtained for sale or re-sale and consists of the provisions of current §57.136(a)(3), with one substantive change. Paragraph (2) of the proposed new subsection would reduce the record retention time period stipulated in the current rule from two years to one. The department has determined that a one-year retention period is sufficient to allow the department to investigate the commercial pathways of water spinach commerce with respect to a single recipient.

Proposed new §57.118(d) would prescribe facility standards for culture of water spinach. The proposed new subsection would consist of the provisions of current §57.136(c)(1) - (7) and one provision from current §57.119(a)(2), with nonsubstantive changes. The provision being relocated from §57.119(a)(2) would specify that a copy of the permit be prominently displayed at the facility for which it was issued. Several provisions of the proposed new subsection are new. The requirements of current §57.136(d)(5) do not apply to greenhouses built before 2009. Proposed new §57.118(d)(7) would remove that limitation to provide the department discretion to grant a modification of the 10-foot buffer width requirement based on the location of greenhouses built at any time. The department considers that in some instances, greenhouses built prior to permit application could be located within less than 10 feet of the property boundary and requiring an applicant to move or rebuild a greenhouse could be problematic. The proposed new rule would allow the department to evaluate such sites on a case-by-case basis to assess risk of escape and potentially grant a modification of the buffer width requirement to avoid imposing such a burden upon the applicant, where possible and consistent with the department's statutory obligation to protect native organisms and ecosystems.

Proposed new §57.118(d)(8) would stipulate that greenhouses where water spinach is cultured be maintained at all times in such a way as to prevent escape or release of water spinach and require notification of the department in the event that facility repairs are necessary to prevent escape. In general, the current rules are obviously intended to protect native systems and organisms from potential deleterious effects of the escape of water spinach, and the proposed new paragraph would expressly state that intent in the form of a requirement governing maintenance obligations.

Proposed new §57.118(d)(9) would require a permit holder to demonstrate to the department, during annual facility inspections, that the activities authorized under the subchapter are conducted in compliance with the requirements of the subchapter and the facility is maintained in such a way as to prevent escape or release of water spinach. Current §57.119(b) provides for department inspection of permitted facilities at any time that permitted activities are ongoing. Additionally, under current §57.120(b)(2), all facilities for which a permit renewal is sought must be in compliance with all applicable facility requirements of the subchapter. The proposed new paragraph would implement the requirement for an annual inspection, which the department will conduct during the growing season when risk of escape is greatest, with the additional benefit of lessening administrative burdens by reducing both the number of renewal inspections that must be conducted at the end of each permit year and the permit renewal processing times.

Proposed new §57.118(e) would require all water spinach transported from a facility (including water spinach transported under an interstate transport authorization) to be packaged in a closed or sealed container having a volume no greater than three cubic feet, not mixed or commingled with any other material or substance, and identified such that each container of water spinach shall have a label placed on the outside of the container, clearly visible and bearing the legend "Water Spinach" in English. The proposed new subsection is a requirement of current §57.136(d)(1) and (2).

Proposed new §57.118(f) is a revision of current §57.136(c)(6) and regarding the processing of water spinach. The rule would clarify that all handling and packaging of water spinach must be done at the permitted facility within the vegetation-free buffer area and that all water spinach fragments must be collected and disposed as described in subsection (k) of the proposed new section. Current rules simply require that handling must be done at the permitted facility and in such a manner as to prevent dispersal. However, based upon activities observed during facility inspections, the department has determined that additional emphasis on appropriate biosecurity measures is needed to provide assurance that the potential dispersal of water spinach is minimized.

Proposed new §57.118(g) would require a transport invoice to accompany each sale or transfer of water spinach and prescribe the content of a transport invoice, all of which are contained in the provisions of current §57.118(3).

Proposed new §57.118(h) would create and provide for the content and use of a transport log for permit holders transporting water spinach to or from a permitted facility. The department, after investigating the nature of commercial water spinach production and distribution, determined that in the typical business model the point of sale is the buyer's location and not the facility where the water spinach was cultured. Current §57.136(d)(3) requires an individual transport invoice to be generated for each sale before the shipment leaves a culture facility, which the department has determined is somewhat problematic for the regulated community. Therefore, the proposed new subsection would create a process to be used in lieu of the current process, one where documentation is based on the point of delivery rather than production. The proposed new subsection would require a permit holder to execute a water spinach transport invoice for each receiver at the time the water spinach is delivered and maintain and possess a current and accurate daily transport log at all times during transport. The content of the daily transport log would consist of the date and time of shipment; the permit holder's name, address, phone number, and exotic species permit number; the amount of water spinach in possession; the water spinach transport invoice number for each delivery, the receiver/supplier's name, address, and phone number; the type of transfer--delivery or receipt; the amount of water spinach transferred; and the amount of water spinach in possession upon return to the facility. The proposed new subsection is intended to provide a more flexible method of documentation for the regulated community while preserving the department's ability to monitor the production and movement of a controlled exotic species through a chain of custody.

Proposed new §57.118(i) would set forth the record retention requirements for the proposed new rule, requiring copies of each daily transport log, transport invoice, and receipt or documentation for water spinach obtained from an out-of-state source to be retained for one year. Current §57.136(e)(2) specifies a record retention period of two years, which applies to all records; thus, the proposed new subsection would reduce administrative burden on the regulated community by reducing the volume of doc-

umentation required to be maintained and the time period it must be retained. The proposed new subsection also would require records and documents require by the subchapter to be provided to the department during normal business hours upon request of a department employee acting in the scope of official duties, which is a requirement of current §57.136(e)(3).

Proposed new §57.118(j) would prescribe the reporting requirements for persons subject to the provisions of the proposed new section, stipulating the dates of quarterly reports and clarifying that required reports must be submitted even for time periods during which no sales took place. The proposed new subsection is a requirement under current §57.136(e)(1).

Proposed new §57.118(k) would set forth various provisions regarding requirements for the prevention of escape of water spinach from a facility.

Proposed new paragraph (1) would specify that water spinach may not be allowed to escape from a facility nor be released or spread outside the facility during cultivation, handling, packaging, processing, storage, shipping, or disposal. This provision reiterates the essential components of numerous current rules and statutes, such as Parks and Wildlife Code, §66.007, which prohibits the importation, possession, sale, or placement into the public water of this state of exotic harmful or potentially harmful fish or shellfish except as authorized by rule or permit issued by the department, and §66.0071, which prohibits the importation, possession, sale, or placement into the public water of this state of aquatic plants designated by the department as harmful or potential harmful except as authorized by rule or permit issued by the department.

Proposed new paragraph (2) would reiterate the provisions of current §57.136(a)(6) by prohibiting the use of water spinach to feed animals.

Proposed new paragraph (3) would specify that water spinach not sold, transferred, or consumed, and all fragments of water spinach not growing in soil or packaged must be placed into a secure container until packaged or transported to a secure waste or compost bin and composted, dried fully, or placed into black plastic bags prior to disposal. The department believes that reproductively viable water spinach should be handled and stored in such a manner as to reasonably prevent escape to native systems. Therefore, the proposed new paragraph would prescribe that all stock not growing in soil or package be containerized or otherwise rendered non-threatening.

Proposed new paragraph (4) would require the holder of a permit issued under this subchapter to notify the department within 72 hours of discovering the escape or release of water spinach from a facility or during transport. Current rules do not impose notification requirements on persons growing or transporting water spinach. The department believes it is prudent to do so, first to be consistent with similar provisions elsewhere in the subchapter, and second because it is intuitive that the release of water spinach, a harmful or potentially harmful species, should be reported quickly in order to provide the highest assurance of remediation.

Proposed new paragraph (5) would require a permit holder, in the event that a facility appears to be in imminent danger of flooding or other circumstance that could result in the escape or release of water spinach, to immediately begin implementation of emergency measures to prevent the escape or release of water spinach and notify the department of implementation of emergency measures in accordance with provisions specified in the permit. Current rules do not impose notification requirements on persons growing water spinach. The department believes it is prudent to do so, first to be consistent with similar provisions elsewhere in the subchapter, and second because it is intuitive that the potential unintended release of water spinach, a harmful or potentially harmful species, should be responded to immediately by the permit holder and reported quickly in order to provide the highest assurance of remediation.

Proposed new §57.118(k)(6) (current §57.136(f)) provides that, in the event that water spinach escapes or is released from a greenhouse or a facility, the facility permit holder is responsible for all costs associated with the detection, control, and eradication of free-growing water spinach resulting from such escape or release and subsequent dispersal. Additionally, the proposed new paragraph would clarify that water spinach growing outside a greenhouse is considered to have escaped.

Proposed new §57.118(k)(7) would stipulate that water spinach being cultured without a permit for whatever reason would be subject to a department-prescribed disposition protocol, in accordance with proposed new §57.113, concerning General Provisions and Exceptions. Although current rules specify disposition protocols for controlled exotic species other than water spinach, the department believes it is prudent to do so, first to be consistent with similar provisions elsewhere in the subchapter, and second because it is intuitive that water spinach being grown without a permit should be disposed of in a matter that precludes spread.

Proposed new §57.118(l) would provide for the department to prescribe a disposition protocol for water spinach following a department decision to deny permit issuance or renewal, which is necessary to ensure that water spinach that can no longer be legally possessed is not disposed of in a way that constitutes a threat to native ecosystems.

Proposed new §57.119, concerning Minimum Facility Requirements, would prescribe requirements for infrastructure and processes at facilities where controlled exotic species are possessed, propagated, cultured, or sold under a controlled exotic species permit, excluding private waters permitted for triploid grass carp.

Proposed new §57.119(a)(1) would provide for general requirements for facilities other than those permitted for culture of water spinach (i.e., fish/shellfish aquaculture/holding facilities).

Proposed new §57.119(a)(1)(A) would require prominent display of a copy of the permit at the facility for which it was issued, which is required under current §57.119(a)(2).

Proposed new §57.119(a)(1)(B) would stipulate that a facility must be maintained in compliance with the standards set forth in the section at all times unless the department has been notified that facility repairs are necessary. Under current §57.119(j), all devices required in the exotic species permit for prevention of discharge of exotic species from a facility are required to be in place and properly maintained. The proposed new subparagraph would retain those requirements but remove the potentially confusing reference to "all devices" to clarify that the intent of the current provision is to impose a general duty upon the permit holder to prevent discharge of controlled exotic species from a facility. Because the nexus of all aspects of facility infrastructure and process is the biosecurity of the facility, "devices" in the sense it used in the current rule is intended to refer to the entirety of the facility and the processes conducted within it.

Proposed new §57.119(a)(1)(C) would require permit holders to satisfactorily demonstrate to the department at intervals of no more than five years, unless longer intervals are approved by the department based on systematic risk analysis, that activities authorized at the permit holder's facility under a controlled exotic species permit are conducted in compliance with the requirements of the subchapter. The intent of the proposed new provision is to protect native systems and organisms from the threat of escaped harmful or potentially harmful exotic species by enhancing biosecurity through periodic inspections of facilities to verify that permitted activities are being conducted in compliance with applicable rules. The proposed new provision also would provide for department discretion to assign longer inspection intervals for facilities with low risk of escape. For those facilities that either by virtue of their design or the relatively low escapement risk of the species being possessed, the department believes it is sensible to allow for longer inspection intervals.

Proposed new §57.119(a)(1)(D) would prescribe training requirements for persons such as the employees and staff of facilities operated by permit holders. The proposed provision would require permit holders to ensure that employees and staff are trained to understand and comply with permit conditions and requirements and to implement the facility's department-approved emergency plan, if necessary, to prevent escape, release, or discharge of controlled exotic species into public water during a natural disaster such as a hurricane or flood. The provision is necessary to ensure that all persons involved with the operation of a facility are aware of and have been trained to perform permitted activities, including emergency response activities.

Proposed new §57.119(a)(2) would create an exemption from facility requirements for limited special purpose permit holders who purchase, transport, and sell controlled exotic species for stocking in private ponds, but who do not hold the species in a facility. The proposed new provision also would provide that all required records and documentation be made available to department staff during normal business hours within 72 hours following a request by the department. The proposed new provision is intended to address the special circumstances of those permit holders who act as intermediaries between sources and destinations and do not operate facilities where controlled exotic species are held. The record retention component of the proposed new paragraph is necessary to enable the department to monitor and verify permit compliance and is consistent with similar provisions of the proposed new rules that have been discussed previously in this preamble.

Proposed new §57.119(a)(3) would require facilities to be equipped with security measures to discourage unauthorized removal of controlled exotic species, which is a requirement of current §57.129(e). The current rule specifies that required security measures must prevent unrestricted or uncontrolled access and unauthorized removal of controlled exotic species. The department has determined that the rules should provide for greater flexibility with respect to security measures because absolute security is not realistic. Therefore, the proposed provision would modify the current requirements to require any facility containing controlled exotic species to have security measures in place to reasonably minimize the risk of unauthorized removal of controlled exotic species, which allows the department to review security measures on a case-by-case basis.

Proposed new §57.119(a)(4) would provide that the department may prescribe additional security measures on a case-by-case basis as a permit condition upon a determination that a particular facility cannot feasibly comply with the security requirements of the subchapter or the security measures contemplated or in place are not sufficient to minimize risk of escape, release, or discharge or impacts to native species and ecosystems. The proposed new provision is necessary to address special situations in which customized security provisions are the only means of ensuring biosecurity and thus authorizing permitted activities to take place.

Proposed new §57.119(b) would provide additional emphasis to the effect that facilities where water spinach is cultured are subject to the provisions of proposed new §57.118, concerning Special Provisions--Water Spinach.

Proposed new §57.119(c) would stipulate facility requirements for persons who operate or engage in operations at a commercial aquaculture facility under a controlled exotic species permit.

Proposed new §57.119(c)(1) would require permitted facilities to be designed to prevent escape, release, or discharge of controlled exotic species or unauthorized discharge of wastewater by means of appropriately designed and constructed screens, barriers, filters, recirculating aquaculture systems, or other methods that are approved by the department and that must be properly maintained at all times. The current rules (§57.129(b)) governing commercial facility infrastructure have been in place many years. The current rules specifically require the use of triple-screening at all facilities, which reflects an outmoded, one-size-fits-all approach to biosecurity. The current rules are based on a traditional facility layout of earthen ponds that drain through harvest structures into canals and then into public waters. However, not all facilities employ this model and appropriate biosecurity measures may vary. There are measures other than screening that are capable of providing efficacious biosecurity. For instance, triple-screening is not useful at facilities that do not discharge wastewater or that make use of sand filtration systems. The proposed new subsection would restrict the applicability of the current requirement regarding screens to only those facilities that actually employ screens for purposes of biosecurity and would create an additional regulatory structure to afford flexibility to evaluate each facility on a case-by-case basis to develop and implement appropriate measures to prevent escape, release, or discharge of controlled exotic species, which would be specified in the conditions of the permit. The proposed new paragraph also would specify that all screens, barriers, or other approved devices intended to prevent escape, release, or discharge be properly maintained at all times, which is a provision of current §57.119(j).

Proposed new §57.119(c)(2) would prescribe facility requirements to prevent escape, release, or discharge of controlled exotic species at commercial facilities subject to the proposed new rules.

Proposed new §57.119(c)(2)(A)) would specify that if a facility employs screening for purposes of biosecurity, the mesh size of screening must be capable of preventing the passage of controlled exotic species at the smallest life stage present in the facility at the time of discharge. Current §57.129(b)(1) requires that mesh be "of an appropriate size for each stage of exotic species growth and development." The proposed new subparagraph would make clear that mesh size at any given time is predicated on the life stage of the controlled exotic species in the facility at the time of discharge, which is necessary to prevent misunderstandings that could result in the use of inappropriate mesh sizes and possible escapement.

Proposed new §57.119(c)(2)(B) would require that screens be redundant or otherwise designed and constructed such that the level of protection, as determined by the department, against escape, release, or discharge of controlled exotic species is not reduced if a screen is damaged or must be removed to accomplish cleaning, repair, or other maintenance. Current §57.129(b) specifies that a minimum of three screens be in place between any point in the aquaculture facility and the point of discharge from the facility. Additionally, current rules (§57.129(b)(2) and (3)) require the permanent affixation of a screen and backing material in front of the final discharge pipe in the harvest structure to remain in place while the pond is in use, that screens at facilities discharging into public waters be secured over the terminal end of the discharge pipe at all times, that a second screen be secured over the terminal end of the discharge pipe during harvest, and double screening of the point of discharge of all mechanical harvesting devices. As mentioned previously in this preamble, the current rules do not afford the flexibility to accommodate different modalities of effective biosecurity infrastructure. The department has determined that the installation of three screens may not be necessary or feasible at facilities where screens are only one component of an effective biosecurity strategy and that permanent affixation of screens poses difficulties for periodic cleaning necessary to ensure proper function. Similarly, the department has determined that the terminal end of a pipe is often difficult to access and that installation of screens at different points in the drainage system can be just as if not more effective because those locations are easier to access for maintenance. Therefore, the proposed new paragraph would eliminate specific infrastructure specifications in favor of a generalized requirement that screens be redundant or otherwise designed and constructed such that the level of protection against escape, release, or discharge of controlled exotic species is not reduced if a screen is damaged or must be removed to accomplish cleaning, repair, or other maintenance. The intent of the proposed new paragraph is to allow greater flexibility to the regulated community for the selection and deployment of effective biosecurity measures by establishing a general standard and approving such measures on a case-by-case basis. Additionally, the proposed new paragraph would require wastewater discharged from a facility to be routed through all screens in accordance with department approval prior to the point where wastewater leaves the facility, which restates a provision of current §57.119(k) to clarify that water cannot be diverted during discharge events in any way so as to bypass screens or locations where screens should be in place.

Proposed new §57.119(c)(3) prescribes biosecurity measures for facilities located in the 100-year floodplain and is a nonsubstantive revision of current §57.129(c).

Proposed new §57.119(c)(4) would prescribe specific additional facility requirements for commercial aquaculture facilities that are part of a facility complex. A facility complex is a group of two or more facilities located at a common site and sharing water diversion or drainage structures. There are several facilities in Texas that are independent commercial entities with shared infrastructure.

Proposed new §57.119(c)(4)(A) would require each permit holder at a facility complex to maintain at least one screen or barrier capable of preventing the escape, release, or discharge of controlled exotic species into a common drainage and have authority to stop the discharge of wastewater from the entire complex in the event of escape, release, or discharge of controlled exotic species from the permit holder's facility. The provisions of the proposed new subparagraph are provisions of current rule §57.129(f)(1) and (2).

Proposed new §57.119(c)(4)(B) would stipulate the placement and content of signage to be installed at each of the permit holder's ponds or components within a facility complex. The signage required by the proposed new provision must be legible, bear the name and permit number of the permit holder, be within 10 feet of the authorized pond or other facility component, and correspond to the location of the component as indicated on the map provided to the department as part of the permit application and facility approval/reapproval process. The proposed new subparagraph is necessary to allow the department to quickly and easily distinguish the ponds and components belonging to a given permit holder from other ponds and components within a facility complex for purposes of administration, enforcement, and emergency response.

Proposed new §57.120, concerning Facility Wastewater Discharge Requirements, consists of the contents of current §57.134 (relating to Wastewater Discharge Authority) with nonsubstantive revisions to enhance clarity and readability. Subsection (a) of the current rule requires applicants for an initial permit to provide documentation of either authorization for or exemption from appropriate wastewater discharge requirements of the Texas Commission on Environmental Quality (TCEQ) or documentation adequate to demonstrate that the facility is designed and will be operated in a manner such that no discharge of waste into or adjacent to water in the state will, or is likely to occur. Subsection (b) of the current rule establishes provisions for applications for permit amendments and renewals, requiring either written documentation demonstrating that the applicant possesses or has timely applied for and is diligently pursuing the appropriate authorization or exemption from TCEQ in accordance with the Texas Pollutant Discharge Elimination System (TPDES) General Permit for concentrated aquatic animal production facilities TXG 130000, if the facility is designed such that a discharge of waste into or adjacent to water in the state will, or is likely to occur; or adequate documentation to demonstrate that the facility is designed and will be operated in a manner such that no discharge of waste into or adjacent to water in the state will, or is likely to occur. The proposed new rule would eliminate duplication and clarify that documentation related to wastewater discharge and associated permits is only required for permit renewal or amendment for a facility or facility complex designed such that a discharge of waste into or adjacent to water in the state will, or is likely to occur.

Proposed new §57.121. Transport of Live Controlled Exotic Species, would set forth rules regarding the transport of controlled exotic species.

Proposed new §57.121(a) would prohibit any person other than the holder of a controlled exotic species permit holder, an employee of the permit holder, a common carrier acting on their behalf, or a private pond owner transporting tilapia or triploid grass carp to a private pond for stocking purposes from transporting live controlled exotic species and prescribe the documentation requirements for such transport. Permit holders and employees of permit holders would be required to possess a copy of the permit and a properly executed transport invoice. A private pond owner transporting tilapia or triploid grass carp would be required to possess a properly executed transport invoice (if the fish were obtained from the holder of a controlled exotic species permit holder) or an aquatic product transport invoice as required

by Parks and Wildlife Code, §47.0181 (if obtained from a lawful out-of-state source), and, for triploid grass carp, a copy of the department permit authorizing the stocking of triploid grass carp and documentation that the grass carp have been certified as triploid by the Grass Carp Inspection and Certification Inspection Program operated by the U.S. Fish and Wildlife Service. With respect to controlled exotic species being transported by common carrier, the proposed new subsection would require possession of documentation of compliance with all applicable local source and destination, federal, and international regulations and statutes for shipments transported by aircraft from inside Texas to a point outside Texas and not moved overland within the state; otherwise, each shipment would be required to be accompanied by a properly executed transport invoice obtained from the controlled exotic species holder from whom the shipment originated, and, for triploid grass carp obtained from a lawful out-of-state source transported to a private pond for stocking purposes, a copy of the department permit authorizing possession of the carp, the aquatic product transport invoice required by Parks and Wildlife Code, §47.0181, and documentation that the grass carp have been certified as triploid by the Grass Carp Inspection and Certification Inspection Program operated by the U.S. Fish and Wildlife Service. Various provisions of current rules (§57.115, §57.116) make the transport of exotic species without either a permit or a transport invoice unlawful, with specific exceptions for persons transporting Mozambique tilapia or triploid grass carp for use in private ponds, and prescribe the content of the transport invoice. The proposed new subsection preserves the effect of those provisions while noting the applicability of Parks and Wildlife Code, §47.0181, which requires persons other than commercial fishing license holders transporting aquatic products for a commercial purpose without an invoice as prescribed in that statute.

Proposed new §57.121(b) would reference the transport requirements for water spinach prescribed elsewhere in the proposed new rules and discussed earlier in this preamble.

Proposed new §57.121(c)(1) would stipulate that a separate controlled exotic species transport invoice be generated by the permit holder for each delivery location in advance of transport (except as provided otherwise in the proposed new rules and discussed earlier in this preamble) and accompany the controlled exotic species during transport. The department has determined that the current rule (§57.116(a)) does not adequately convey that intent.

Proposed new subsection (c)(2) would prescribe the contents of a controlled exotic species transport invoice, which would consist of information identifying the date of the shipment, the size and biological identity of the contents being shipped, the contact information and permit numbers, if applicable, of the source and destination of the shipment, and the type of transport. Current §57.116 prescribes the content of the transport invoice. The proposed new subsection preserves the effect of those provisions while noting the applicability of Parks and Wildlife Code, §47.0181, which requires persons other than commercial fishing license holders transporting aquatic products for a commercial purpose without an invoice as prescribed in that statute.

Proposed new §57.121(d) would set forth the transport invoice requirements for the shipment of controlled exotic species from outside of Texas via a route through Texas to a point outside Texas. Under current rule (§§57.130 - 57.133), the transport of live exotic species originating outside the state of Texas through Texas to a destination outside of the state of Texas is prohibited except by the holder of an exotic species permit or an exotic species interstate transport permit. The current rules also require anyone transporting live harmful or potentially harmful exotic species to possess documentation accounting, collectively, for all such species being transported and provide for application, fee, and issuance processes. The proposed new subsection would preserve the requirements of current rule while adding provisions allowing for such a permit to be valid for either a single use or for one year. The proposed new subsection also would establish the deadline for application before the initial instance of transport and set forth specific obligations for a person transporting controlled exotic species under an interstate transit permit, all of which are provisions of the current rules at §§57.130-57.133. The proposed new provision would specifically stipulate a notification requirement of at least 24 hours prior to each intended transit and prescribe the contents of the notification. Current §57.132(c) requires notification by fax at least 72 hours prior to transit. The proposed new subsection would require notice to accompany an application for a single-use permit and at least 24 hours prior to each intended transit under an annual transit permit. The required notice would consist of the dates and times that the permit holder expects to enter and depart the state, the common and scientific names of each controlled exotic species to be transported, the quantity of each controlled exotic species to be transported, the specific points of origin and destination of each controlled exotic species being transported, the specific route the transport will follow, including the locations where the transporter will enter and depart the state of Texas, a description of the make, model, and color of the vehicle, trailer, or other conveyance to be employed in transport and license plate numbers; and the name, driver's license number, and contact numbers of the driver or contact information for the commercial shipper transporting the controlled exotic species through the state of Texas, all of which the department has determined are necessary to enable the department to provide proper biosecurity for threats to natural systems and organisms by being able to monitor the transport of controlled exotic species across the state.

The proposed new section would eliminate several provisions of current rules in the interests of reducing regulatory complexity. The requirement of current rule that each transport invoice be submitted to the department, which the department has determined to be administratively problematic, would be eliminated. The department has determined that current rules regarding possession and retention of transport invoices are sufficient for purposes of enforcement and compliance, given the department's inspection authority under current statute and rule. Similarly, the requirements of current §§57.116(a) that require the permit holder to include an invoice number that is unique, sequentially numbered, and not used more than once during any permit period would be eliminated, because the department has determined that invoice numbers are not necessary to ensure compliance with transport invoice requirements.

Current §57.116(a) requires the transport invoice to include name, address, phone number, aquaculture license number, and controlled exotic species permit number, if applicable, for the "shipper." However, the intent of the rule is that contact information for the seller be provided; proposed new §57.121(c)(2)(B) would specify that information must be provided for the "controlled exotic species permit holder from whom the controlled exotic species was obtained." Furthermore, the proposed new section would no longer require the aquaculture license number of the permit holder because possession of

a valid aquaculture license is a prerequisite for the controlled exotic species permit, the number of which must be provided.

Current §57.116(a) stipulates that information required for the receiver includes address as well as the address of the destination of the exotic species, if different. Proposed new §57.121(c)(2)(C) would specifically require only the physical address where the controlled exotic species will be possessed if different from the mailing address; post office box addresses are specifically prohibited because the department must be informed as to the physical location where fish might be stocked. The proposed new provision also would require that the destination county be included on the transport invoice to facilitate compliance with, and enforcement of, proposed new §57.115(d)(3) and (e), concerning sales of tilapia for stocking in private ponds in counties within the conservation zone.

Current §57.116(a) stipulates that information required for the species being transported include number and total weight for each species. Proposed new §57.121(c)(2)(D) would clarify that both the common and scientific name of the species are required. Common names are highly variable and thus pose difficulties with interpretation for enforcement personnel, whereas scientific names are unequivocal; however, including both is needed to aid in interpretation if scientific names are erroneous. The proposed new rule also would require additional information concerning the number and total weight for each species by requiring number or weight, by size class. Fry and fingerlings are often sold by number, with weight unknown, whereas adult fish are often sold by the pound. Redundant count and weight information is not necessary for evaluating compliance; thus, requiring both weight and number on the invoice is unnecessary.

Proposed new §57.122, concerning Permit Application, Issuance, and Period of Validity, would set forth procedures to be followed by an applicant for a permit under the subchapter. The proposed new section would be a consolidation of provisions from various sections of current rules §57.117, concerning Exotic Species Permit: Application Requirements; §57.118, concerning Exotic Species Permit Issuance; §57.120, concerning Exotic Species Permit: Expiration and Renewal; and §57.125, concerning Triploid Grass Carp Permit: Application, Fee.

Proposed new §57.122(a) would provide a cross-reference to the application, issuance, and permit period of validity standards for interstate transport permits contained in proposed new §57.121, concerning Transport of Live Controlled Exotic Species.

Proposed new §57.122(b) would prescribe the conditions for applications for controlled exotic species permits other than for interstate transit, which are located in current §57.117(b) and (c).

Proposed new §57.122(b)(1) would establish a permit application submission deadline of 30 days prior to any prospective activity involving controlled exotic species, which is necessary to ensure adequate time for permit application review, facility inspections, and permit issuance.

Proposed new §57.122(b)(2) would describe the specific information required by and contained in the application form, which is necessary for the department to assess the prospective activities and determine suitability for permit issuance.

Proposed new §57.122(b)(2)(D) would provide for the specific instances for which the department waives fees for applications, all of which are provided for in current rule.

Proposed new §57.122(b)(3) would prescribe additional required documentation. Proposed new subparagraph (A) would clarify that a copy of aquaculture or fish farm vehicle licenses required by the Texas Department of Agriculture (TDA) must be submitted with the permit application. Current §57.117(a)(1)(A) requires possession of an aquaculture license to be considered for an exotic species permit for aquaculture.

Proposed new subparagraph (B) would require applicants for commercial aquaculture facility permits to submit the documentation required by proposed new §57.120, concerning Facility Wastewater Discharge Requirements, which is a requirement of current §57.134, concerning Wastewater Discharge Authority.

Proposed new §57.122(b)(3)(C) would require applicants for a permit to possess, transport, and dispose controlled exotic species of plants to submit the treatment proposal required by §57.932, concerning State Aquatic Vegetation Plan, which is necessary for the department to ensure that the applicant is compliance with the statutory requirements of Parks and Wildlife Code, §11.082, which mandates a state aquatic vegetation management plan.

Proposed new §57.122(b)(3)(D) would require submission of a facility map along with the permit application for commercial aquaculture facility permits, biological control production permits, zoological display or research permits with outdoor holding facilities, or limited special purpose permits for wastewater treatment. Current rules require an accurate-to-scale plat map; for smaller facilities, particularly those using recirculating aquaculture systems that consist of only small tanks, this requirement is cost-prohibitive. To provide greater flexibility to the regulated community, the proposed new provisions would allow for labeled, accurate maps or aerial photographs of the facility and only require professionally surveyed maps for facilities within the 100-year floodplain that are constructed in such a way that escape might occur during flooding (e.g., outdoor, earthen ponds). The proposed new rules also provide that maps are required for zoological display or research permits only when the application is for outdoor holding facilities, which is necessary for the department to evaluate the potential for escape of controlled exotic species.

Proposed new §57.122(b)(3)(E) would consist of the revised content of current §57.117(d), concerning emergency plans. Current rules require emergency plans only for facilities located in the exotic shrimp exclusion zone. The proposed new provision would require an emergency plan for all facilities, which the department has determined is necessary to ensure that appropriate measures are in place to prevent escape, release, or discharge of controlled exotic species into public water during a natural event such as a hurricane or flood. The proposed rule would also require that the approved emergency plan be posted and maintained on file at the facility to ensure all staff members are familiar with and prepared to implement the plan, which is necessary to ensure the biosecurity of all facilities during such natural events and prevent inadvertent introductions of controlled exotic species into public waters.

Proposed new §57.122(b)(3)(F) would require submission of a research proposal by applicants for permits to conduct scientific research involving controlled exotic species and documentation of the qualifications of the applicant to conduct controlled exotic species research. Current rule requires only that an applicant have a department-approved research proposal to be considered for permit issuance. The department has determined that it is necessary to ensure that research permits are issued

only to persons qualified to conduct scientifically valid research that will legitimately contribute to the knowledge, prevention, impact assessment/mitigation, and management of controlled exotic species.

Proposed new §57.122(b)(3)(G) would establish additional requirements for permits to culture controlled exotic species of plants as hosts for the purposes of production of biological control agents. The proposed new provision would require submission of a biological control plan addressing the number of biological control agents to be collected from private waters, expected production of controlled exotic species of plants, and the intended use of and stocking locations for the biological control agents. The proposed new provision is necessary to accommodate emerging technologies and methods to control exotic species.

Proposed new §57.122(c) would set forth the conditions under which the department would issue a permit. Under current rule, the department may issue a permit when all application requirements of the rules have been met; the aquaculture facility operated by the applicant meets or will meet the design criteria stipulated in the rules, and the applicant has complied with all provisions of the Parks and Wildlife Code, §§66.007, 66.0072, and 66.015, and the subchapter during the one-year period preceding the date of application. The proposed new subsection would consolidate these provisions with other provisions regarding facility requirements (current §57.119 and §57.129) and inspection (current §57.119 and §57.125).

Proposed new §57.122(d) would consist of the provisions of current §57.120(a) regarding the period of permit validity, altered to include an exception for activities authorized under §57.932, concerning State Aquatic Vegetation Plan, discussed earlier in this preamble.

Proposed new §57.123, concerning Permit Amendment and Renewal, would prescribe the processes and requirements for amending and renewing permits issued under the subchapter. The proposed new section would be a consolidation of provisions from various sections of current §57.120, concerning Exotic Species Permit: Expiration and Renewal.

Proposed new §57.123(a) would clarify the requirements of current §57.119(m), which states that permits are not transferable from site to site. The revised provision would stipulate that a permit is valid only for the facility for which it issued and will not be amended to authorize activities at any other location or facility.

Proposed new §57.123 (b) would enumerate specific activities that are prohibited without receiving an amended permit from the department. Current §57.121(b) requires an exotic species permit to be amended before a permittee may add or delete species of harmful or potentially harmful exotic fish, shellfish, or aquatic plants held pursuant to the permit; redistribute harmful or potentially harmful fish, shellfish, and aquatic plants into private facilities not authorized in the permit; change methods of preventing discharge of harmful or potentially harmful exotic fish, shellfish, and aquatic plants; change discharge of private facility effluent from aquaculture facilities or wastewater treatment facilities; or change an existing approved facility design. The proposed new subsection would simplify and restate the current list of activities, add a provision prohibiting the transfer of managerial or supervisory responsibilities to anyone other than the current permit holder, and specifically state that the activities are prohibited unless an amended permit has been received from the department. The new provision regarding transfer of supervisory or managerial responsibility is necessary to ensure that persons operating under a permit meet the requirements of the proposed new rules for permitted activities.

Proposed new §57.123(c) would provide for amendment or renewal of a permit provided the applicant has submitted an application for amendment or renewal at least seven days prior to transfer of managerial or supervisory responsibilities to a new person (if applicable); submitted the appropriate fee (if required) by the department; has complied with all permit provisions; and demonstrates that the facility is operated and maintained in a manner such that no escape, release, or discharge of controlled exotic species into public water or into facility ponds or drainage structures not meeting minimum facility requirements will or is likely to occur. Current §57.120(b) provides for the renewal of an exotic species permit upon finding that the applicant has met specified application requirements, the facility will meet all applicable facility design criteria, the applicant has complied with all provisions of the Parks and Wildlife Code, §§66.007, 66.0072, 66.015, and the subchapter during the one-year period preceding application for renewal; and the applicant has submitted a renewal application and all required annual reports. Current §57.121(a) provides that an exotic species permit may be amended provided the applicant has complied with all provisions of the Parks and Wildlife Code, §§66.007, 66.0072, 66.01, all provisions of the permit and the subchapter during the one-year period preceding the date of application; the applicant has met all applicable application requirements; and the facilities as altered will meet the required facility criteria. The proposed new subsection would allow for permit amendment or renewal upon finding that the applicant has submitted a written request for permit amendment or application for renewal prior to permit expiration or seven days prior to transfer of managerial or supervisory responsibilities; submitted the required fee; complied with all permit provisions; met minimum facility requirements (if applicable); and operated and maintained the facility in a manner such that no escape, release, or discharge of controlled exotic species into public water or into facility ponds or drainage structures not meeting minimum facility requirements will or is likely to occur.

Proposed new §57.123(d) would introduce a new provision allowing for commercial aquaculture permits to be renewed for a period of greater than one year. Current §57.120(a) stipulates that all permits expire on December 31 of the year of issuance. The proposed new section would allow renewal of commercial aquaculture permits for a period of one, three, or five years provided the permit holder had complied with all provisions of this subchapter for a period equivalent to the renewal period. The proposed new provision would reduce the burden of permit administration on the department and the regulated community.

Proposed new §57.124, concerning Refusal to Issue; Review of Agency Decision to Refuse Issuance, would consist of revised selected content from current §57.118, concerning Exotic Species Permit Issuance); §57.122, concerning Permit Denial Review; and §57.127, concerning Triploid Grass Carp Permit; Denial.

Proposed new §57.124(a)(1) would provide for the department to refuse issuance or renewal, as applicable, of a permit to any person or for any facility if the department determines that a prospective activity constitutes a threat to native species, habitats, or ecosystems or is inconsistent with department management goals and objectives. Although numerous provisions of the proposed new rules would function individually and collectively

to define the contexts or situations in which the department could refuse to issue or renew a controlled exotic species permit, the proposed new section would function to provide a single statement of that authority.

Proposed new §57.124(a)(2) would provide for refusal to issue, amend, or renew a controlled exotic species permit for any person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication, or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, §§66.007, 66.0072, or 66.015; a provision of the Parks and Wildlife Code that is a Class A or B misdemeanor or felony; Penal Code, §37.10; the Lacey Act (16 U.S.C. §§3371-3378): or a violation of federal law applicable to grass carp. In addition, the proposed new section would allow the department to refuse permit issuance, amendment, or renewal to another person employed, authorized, or otherwise utilized to perform permitted activities by the applicant has been convicted of, pleaded guilty or nolo contendere to, or received deferred adjudication or pre-trial diversion for one of the listed offenses listed in the section and allow the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit.

The department has determined that the decision to issue a permit to hold controlled exotic species should take into account an applicant's history of violations involving harmful or potentially harmful fish, shellfish, and aquatic plants, major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), violations of Penal Code, §37.10 (which creates the offenses relating to falsification and tampering governmental records), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of possessing controlled exotic species for any purposes to persons who exhibit a demonstrable disregard for agency regulations. Similarly, it is appropriate to deny the privilege of holding wildlife to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of conservation law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported, or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government needs only to prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit or allow a person so convicted to engage in permitted activities as an employee or assistant of a permittee. Because the elements of the underlying state criminal offense must be proven to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

A department action taken as a result of an adjudicative status listed in the proposed new section would not be automatic but would be within the discretion of the department. Factors that may be considered by the department include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the current time; whether the final conviction, administrative violation, or other offenses or violations were the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent or employee of the applicant, or both; the accuracy of information provided by the applicant or employee of the applicant; whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

The proposed new subsection also would allow the department to deny permit renewal to any person not in compliance with applicable reporting or recordkeeping requirements, which is authorized under the provisions of current §57.120.

Additionally, the proposed new provision also would provide for department determination of the duration of denial or refusal under the proposed new, not to exceed five years. The department does not intend for a refusal to issue or renew permit or disqualification for participation in permitted activities to be permanent; therefore, the proposed new subsection would allow the flexibility to impose a specific duration of denial, not to exceed five years.

Proposed new subsection (b) would recapitulate the provisions of current §57.122, concerning Permit Denial Review, with several substantive changes. The current rule requires the department to conduct a review within 10 days of receiving a request for review. The proposed new subsection would require the department to establish a date and time for the review within 10 working days of receiving a request for review and require the department to conduct the review within 30 days of the date of request, unless another date is selected by mutual agreement. The proposed new subsection also eliminates references to the specific titles of review panelists and instead would simply require panelists to be agency managers with relevant experience or knowledge.

Proposed new §57.125, concerning Reporting, Recordkeeping, and Notification Requirements, would establish the requirements for permit holder with respect to required records, reports, and notifications.

Proposed new §57.125(a) would provide a cross-reference to proposed new §57.118, concerning Special Provisions--Water Spinach, which prescribes the reporting, recordkeeping, and notification requirements for holders of water spinach culture facility permits.

Proposed new §57.125(b) would prescribe reporting requirements for various classes of controlled exotic permit holders. Current §57.123(a) requires permit holders to account for importation, possession, transport, sale, transfer, or other disposition of any harmful or potentially harmful exotic species handled by the permittee, which in general provide useful information to the department but do not address the nuances of the various types of controlled exotic species permits currently issued or contemplated by the proposed new rules. The proposed new section would, among other things, tailor reporting requirements for the

various classes of permits in order to provide the department with pertinent information and relieve permit holders, where possible, from having to track and report data that is irrelevant to the interests of the department.

Proposed new §57.125(b)(1) would require all reports to be submitted on department forms or in a format prescribed by the department, as applicable, which is an express or implied requirement of current rules regarding reports throughout the subchapter.

Proposed new §57.125(b)(2) would require annual reports to be submitted by January 30 of the year following the calendar year for which the permit was issued. The current deadline is January 10; however, the department believes that moving the deadline to a later date will facilitate compliance and administration by reducing time management conflicts resulting from the holiday season.

Proposed new §57.125(b)(3)(A) consists of the contents of current §57.123(a), with a clarification of the requirements for commercial aquaculture facility permit holders to the effect that reports must account for the quantity or weight of the controlled exotic species for each reportable activity, which is necessary for consistency with the requirements of proposed new §57.121 discussed earlier in this preamble.

Proposed new §57.125(b)(3)(B) would exempt holders of an commercial aquaculture facility permit authorizing aquaculture and sale of tilapia from the annual reporting requirement, which is necessary because tilapia are able to reproduce in captivity, which makes population calculations problematic if not impossible.

Proposed new §57.125(b)(4) would establish the annual reporting requirements for holders of controlled exotic species permits for biological control production. The annual report for this class of permit holder would consist of values for host plant production, biological control agent production, number and locations of introduced organisms, collections and introductions, and number of sales if applicable, which is necessary for the department to effectively monitor activities with the potential to result in negative consequences for native organisms and ecosystems in the event or escape or release.

Proposed new §57.125(b)(5) would prescribe the annual reporting requirements for the holders of a research permit. Researchers would be required to provide a description of research activities conducted for each species listed on the permit rather than the information required under current §57.123(a). The department has determined that the most useful information with respect to research activities is the extent to which the research benefits indigenous species or ecosystems and/or provides insight on ecology, risks, impacts, or management approaches for controlled exotic species.

Proposed new §57.125(b)(6) would establish the annual reporting requirements for the holders of a controlled exotic species permit authorizing zoological display. The proposed new rule would require a permit holder to account for all controlled species in possession, obtained, transferred, or dispatched during the permit year, which would be less burdensome than the current standard and more consistent with the parameters of zoological display activities.

Proposed new §57.125(b)(7) would establish the annual reporting requirements for various types of limited special purpose controlled exotic species permits.

Proposed new subparagraph (A) would provide that the annual reporting requirements for persons holding a permit authorizing triploid grass carp sale for private pond stocking would be the same as the reporting requirements for commercial aquaculturists under proposed new §57.125(b)(3)(A), consisting of the total quantity or weight of triploid grass carp for all instances of purchase, transfer, sale, importation, exportation, or other disposition during the permit period. Proposed new subparagraph (B) would waive annual reporting requirements for all other types of limited special purpose permits except as otherwise provided by permit conditions for permits issued for possession, transport, and disposal activities not otherwise authorized by the provisions of proposed new §57.113, concerning General Provisions and Exceptions as provided in §57.114(f)(6), concerning Controlled Exotic Species Permits.

Proposed new §57.125(c) would prescribe the recordkeeping requirements for various classes of controlled exotic permit holders other than controlled exotic species permits for water spinach. Proposed new paragraph (1) would require the holder of a permit issued under the subchapter to maintain at the facility or record-keeping location and, upon the request of any department employee acting within the scope of official duties during normal business hours, promptly make available for inspection copies of transport invoices for the previous one year (i.e., the current/proposed retention period), permits or other records required by the subchapter, and documentation of current permits or authorizations required by the TDA and TCEQ. Current §57.119(a) requires a copy of the permit to be made available for inspection. The department has determined that the rules should also address required records and reports, which is also addressed in the requirements of proposed new §57.113(o)(3).

Proposed new §57.125(d) would prescribe the notification requirements for various classes of controlled exotic permit holders other than controlled exotic species permits for water spinach.

Proposed new §57.125(d)(1) would provide a cross-reference to other provisions of the proposed new rules that prescribe notification requirements for limited special purpose permits for interstate transport transit.

Proposed new §57.125(d)(2) would require permit holders to notify the department within 24 hours of discovering the escape, release, or discharge of controlled exotic species. Under current rule (§57.119(i)), a permit holder is required to notify the department within two hours of discovering the escape, release, or discharge of exotic species. The department has determined that in a notification is not meaningful unless it represents the results of a thorough assessment of an event and that two hours is insufficient for the execution of such an assessment; therefore, the proposed new rule would require notifications to be made 24 hours following discovery of escape, release, or discharge from a facility or during transport.

Proposed new §57.125(d)(3) would require a permit holder to notify the department in the event that a facility or facility complex appears to be in imminent danger of overflow, flooding, or other circumstance that could result in the escape, release, or discharge of controlled exotic species into public water and begin implementation of an emergency plan, which is a provision of current rule under §57.119(e).

Proposed new §57.125(d)(4) would require the holder of a permit for controlled exotic species of shrimp to notify the department at least 72 hours prior to, but not more than 14 days prior to

harvesting shrimp held under a permit, which is a provision of current rule under §57.119(f).

Proposed new §57.125(d)(5) would require the holder of a commercial aquaculture facility permit to notify the department not less than 72 hours prior to any instance of the import or export of triploid grass carp. The notification would include the number of grass carp being purchased, the source of grass carp, the ploidy level of grass carp, the final destination of grass carp, the name of the certifying authority who conducted triploid grass carp certification, and the name, address, and exotic species permit number and aquaculture license number (as applicable) of both the transporter and the receiver. With the exception of the reporting of ploidy level, the proposed new section consists of the provisions of current §57.124, concerning Triploid Grass Carp; Sale, Purchase. The department has determined that ploidy data is necessary to appropriately assess activities that have the potential to negatively impact native organisms and ecosystems.

Proposed new §57.125(d)(6) would specify the notification requirements of the proposed new rules that apply to prospective modifications of commercial aquaculture facilities, zoological display or research facilities (when live controlled exotic species are possessed), and biological control production facilities. The affected permit holders would be required to notify the department at least 14 days prior to any modifications that would affect methods of preventing escape, discharge, release, discharge of water/wastewater/waste, or required facility infrastructure. As part of the required notification, permit holders would be required to provide photographs, maps, and diagrams of the prospective modifications. The proposed new paragraph would also provide for inspection at the department's discretion, which is a restatement of existing inspection authority under current §57.119(b) and numerous other provisions of the proposed new rules.

Proposed new §57.126, concerning Discontinuation of Permitted Activities; Sale or Transfer of Permitted Facility, would set forth the powers of the department with regard to compelling a permit holder to cease permit activities and prescribing remedial or terminal directives to prevent or minimize threats to native organisms or ecosystems.

Proposed new §57.126(a) would establish the department's authority to order a permit holder in writing to cease possession, importation, exportation, sale, purchase, transportation, propagation, or culture of controlled exotic species and prescribe a disposition protocol in accordance with the provisions of proposed new §57.113(m), concerning General Provisions and Exceptions. The proposed new subsection would provide for three circumstances under which cessation of permit activities could be ordered by the department. First, cessation could be ordered if the department determines that there is an imminent risk of escape, release, or discharge of controlled exotic species. Second, cessation could be ordered if a required permit, license, authorization, or exemption is revoked or suspended by the TCEQ or the TDA. Third, cessation could be ordered if any of the required permits, licenses, authorizations, or exemptions have expired or are otherwise no longer valid. The department has determined that the enumerated circumstances represent situations in which the intervention of the department is critical to prevent damages to public resources.

Proposed new §57.126(b) would prescribe the actions required of a permit holder in the event that the permit holder no longer desires to engage in permitted activities. The proposed new subsection would require permit holders who intend to discontinue permitted activities to notify the department of that intent at least 14 days prior to discontinuation of permitted activities or permit expiration. Current §57.119(c) requires the immediate lawful sale, transfer, or destruction of all controlled exotic species in the permit holder's possession and notification of the department within 14 days of cessation of permitted activities. The proposed new subsection would eliminate the current requirement for immediate destruction or transfer of inventory in possession upon discontinuation and replace it with a requirement that such destruction or transfer be effected to prior to permit expiration date or the expected date that permitted activities cease, as reported to the department. The proposed rule also would stipulate that that a final report that is compliant with the provisions of proposed new §57.125 must submitted to the department within 30 days of discontinuation of activities.

Proposed new §57.126(c) would set forth the actions required of a permit holder in the event that the permit holder intends to sell a facility and controlled exotic species within the facility. The proposed new subsection would require permit holders who intend to sell a permitted facility to notify the department of that intent at least 14 days prior to the expected closing date and again, in writing, with 72 hours of finalizing the sale. Current §57.119(l) requires immediate notification of the department in the event of a change of ownership of a permitted facility. Rather than requiring immediate notification, the proposed new subsection would require notification of intent to sell at least 14 days in advance of expected closing date to ensure the department is prepared to accommodate transitional operation needs in accordance with the provisions of proposed new §57.126(d). The proposed new subsection also would require the permit holder to notify the department within 72 hours of finalizing the sale of the facility, which would include the name, address, and phone number of the purchaser.

Proposed new §57.126(d) would provide for the transitional operation of a facility for the period of time between a change in ownership and the acquisition of a valid controlled exotic species permit by the new owner. The proposed new subsection would allow permitted operations to continue provided the facility is in compliance with the provisions of the subchapter, the new owner has submitted an application for a controlled exotic species permit and has obtained or is in the process of obtaining required TCEQ and TDA permits, and the department has authorized continued operation in writing, pending approval or denial of permits required by TCEQ and TDA. In the case of commercial aquaculture, existing stocks may be sold to the new owner along with the facility. The proposed new provision is intended to facilitate changes in ownership with minimal disruptions while continuing to ensure lawful operation.

Proposed new §57.127, concerning Memorandum of Understanding between the Texas Parks and Wildlife Department, the Texas Commission on Environmental Quality, and the Texas Department of Agriculture, would consist of the contents of current §57.135, which is being relocated for organizational purposes.

Proposed new §57.128, concerning Violations and Penalties, would consist of the provisions of current §57.137, concerning Penalties, retitled to clarify that the section applies to violations as well as penalties and reworded to specifically tie the penalties for criminal conduct to the actions of a person.

Ken Kurzawski, Manager, Information and Regulations in the Inland Fisheries Division, has determined that for each of the first five years the proposed rules are in effect, there will be no fiscal implications to state and local governments as a result of en-

forcing or administering the rules as proposed, as department personnel currently allocated to the administration and enforcement of controlled exotic species regulations will continue to administer and enforce the rules as part of their current duties using current resources.

Mr. Kurzawski also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be rules that are more comprehensive, better organized, and user-friendly, which will enhance and promote the agency's efforts to protect native resources and ecosystems from negative biological and economic impacts of harmful and potentially harmful exotic fish, shellfish, and aquatic plants. Furthermore, the permitting burden will be reduced for aquaculturists, pond stocking sellers, and individuals removing certain exotic shellfish and aquatic plants along property shorelines, and exceptions will facilitate necessary exotic species management activities not authorized under the current rules.

There will be minimal adverse economic effects on persons required to comply with the rules as proposed. The aspects of those effects that apply to small and microbusinesses as well as individuals affected by the rules are addressed in the small and microbusiness impact statement later in this preamble; however, there are provisions that do not directly impact small and microbusinesses but do affect persons required to comply with the rules as proposed.

The proposed new rules would allow persons to possess for noncommercial purposes certain species of tilapia without a permit, provided the tilapia are kept in a recirculating aquaculture system constructed in such a manner that escape, release, or dish discharge of tilapia into public water is not likely to occur. The proposed new rules would require "adequate security measures to be in place to prevent unauthorized removal of species." The department has determined that there is possible cost to persons required to comply with the proposed provision, which will vary, ranging from no cost (if the location where the tilapia are possessed is a place where people are present continuously, enclosed in a building or other structure, or enclosed by preexisting fencing, if outdoors) to a minimal cost for installing a locking tank cover or a lock on a greenhouse door.

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

Department records indicate that there are 195 persons currently holding an exotic species permit of some kind other than for the purpose of authorizing possession and introduction into private or public waters of triploid grass carp for noncommercial purposes. To ensure that this analysis captures all small businesses, microbusiness, and rural communities that might be affected by the proposed rules, the department assumes that all permit holders are small or microbusinesses. Therefore, the department has prepared the economic impact statement and regulatory flexibility analysis described in Government Code, Chapter 2006.

The proposed new rules would provide for the department to prescribe a disposition protocol for persons not legally permitted to possess or continue to possess controlled exotic species permits. Should the department have to implement the disposition protocol prescribed by the department due to noncompliance, these persons would be required to bear the department's costs associated with the destruction, transfer, and disposal of controlled exotic species in the person's possession. The department has determined that the costs to the department associated with the destruction, transfer, and disposal of controlled exotic species under the circumstances contemplated by the proposed new rules could range from minimal cost to several hundred to many thousands of dollars, depending on the scale involved. However, the proposed new requirement would apply exclusively to persons who possess of controlled exotic species in violation of the subchapter, who have been refused permit renewal on the basis of criminal violations set forth in the proposed new rules, or who cease or discontinue regulated activities and fail to properly destroy or transfer controlled exotic species in their possession as provided by a disposition protocol prescribed by the department under the proposed rules, requiring the department to implement the disposition protocol. The department considered several alternatives to the proposed provisions. The department considered proposing no provisions regarding remediation costs. That alternative was rejected because the threat posed by controlled exotic species to native systems is compelling, the department does not have the resources to undertake remediation costs and does not believe that the public should bear those costs, and in any event, the potential cost of compliance with the proposed provision in all cases is predicated on the loss of permit privileges as a result of unlawful activity. The department also considered proposing some sort of bonding process to be required of all permittees in order to provide assurance that remediation activities necessary to prevent threats to public resources and native ecosystems could be undertaken in the event that a permittee could no longer lawfully possess controlled exotic species. That alternative was rejected because the preponderance of persons who possess exotic species do so lawfully, and the department concluded that requiring the posting of a bond by all permittees would be burdensome and could preclude many individuals from obtaining a permit.

The proposed new rules would require all facilities to have an emergency plan in place to prevent escape, release, or discharge of controlled exotic species into public water during a natural event such as a hurricane or flood. Facilities within the current exotic species exclusion zone are already required to have an emergency plan under current rules; therefore, the emergency plan component of the proposed new rules would apply only to the current 57 facilities and any new facilities outside the exotic species exclusion zone. The department has determined that a facility emergency plan can be created at minimal expense using a department form, the permit holder's professional expertise and other widely available resources and does not require the retention of outside professional expertise or services.

The department considered several alternatives to the proposed new provisions. The department considered continuing with the status quo (i.e., requiring an emergency plan only for facilities within the exotic species exclusion zone). However, that alternative was rejected because the proposed new provision is appropriate from a risk-analysis perspective. The department believes that all facilities should be prepared to act proactively to prevent unintentional discharge of controlled exotic species in the event of natural phenomena that threaten the biosecurity of the facility. The department also considered imposing emergency plans on a case-by-case basis, which was rejected because that approach would be administratively complex, and the current standard is proven to be effective.

The proposed new rules would require all facilities to train employees and staff to understand permit requirements, including activation of the emergency plan. The training requirement of the proposed new rules would apply to all facilities. The department has also determined that because permit holders must train employees to perform facility operation, which likely includes emergency procedures, and those operations must be conducted in compliance with the subchapter, employees are likely already in some form or fashion trained to understand permit requirements and implement emergency procedures and additional training effort to comply with the proposed new rules would be minimal. The department considered leaving the training of staff and employees unaddressed. This alternative was rejected because the goal of the proposed training requirement is to create the minimum assurance that persons employed at facilities are knowledgeable about what the permit requirements of the facility are, including required maintenance of measures in place, implementation of the emergency plan and reporting of escapes to the department in order to minimize if not prevent accidental injurious releases of controlled fish, shellfish, or aquatic plants. The department also considered prescribing specific training requirements. This alternative was rejected because the department believes the general nature of the proposed new provision is sufficient to adequately address prevention of escape of controlled exotic species and impress upon the regulated community the importance of training employees without having to compel specific instructional components.

The department has determined that there will be no direct impacts on rural communities as a result of the proposed new rules.

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

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

The department has determined that the proposed rules are in compliance with Government Code §505.11 (Actions and Rule Amendments Subject to the Coastal Management Program).

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will not create a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; create a new regulation (by repealing current rules and replacing them with new rules, although the new rules are almost identical to current rules in scope and effect); repeal existing regulations; expand existing regulations (by requiring an emergency plan for all facilities; by requiring training of employees on permit and regulatory requirements; by requiring department approval of stocking of tilapia in private ponds within a designated Conservation Zone where impacts of escapes on native species are likely; and by adding selected species to the controlled exotic species list); limit existing regulations (by reducing the record retention time for water spinach documentation from two years to one; by instituting more flexible rules regarding the execution, possession, and retention of water spinach transport invoices; by eliminating specific infrastructure specifications in favor of a generalized standard of functionality; by allowing additional species of tilapia to be used; by providing for multi-year permits for commercial aquaculture; by reducing the reporting burden for commercial aquaculturists; by eliminating the facility requirement for individuals purchasing rather than culturing tilapia and triploid grass carp for sale for pond stocking; and by creating exceptions for lakefront landowners and other affected entities to deal with nuisance shellfish and aquatic plants without a permit); and not positively or adversely affect the state's economy.

Comments on the proposed rules may be sent to Ken Kurzawski, Texas Parks and Wildlife Department, 4200 Smith School Rd, Austin, Texas 78744; (512) 392-4591; email: ken.kurzawski@tpwd.texas.gov; or via the department website at www.tpwd.texas.gov.

31 TAC §§57.111 - 57.128

STATUTORY AUTHORITY

The amendment and new rules are proposed under the authority of Parks and Wildlife Code, §66.007, which authorizes the department to make rules necessary to authorize the import, possession, sale, or introduction of harmful or potentially harmful exotic fish.

The proposed amendment and new rules affect Parks and Wildlife Code, Chapter 66.

§57.111. Definitions.

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

(1) Active partner--A governmental, quasi-governmental, or non-governmental organization or other entity that is currently engaged in department-coordinated efforts to monitor and/or manage controlled exotic species in Texas as authorized by a letter of approval from the Director of the Inland Fisheries Division or Coastal Fisheries Division (or their designee) of the Texas Parks and Wildlife Department, as appropriate.

(2) Agent--A person designated to conduct activities on behalf of any person or permit holder who is authorized by a controlled exotic species permit or other provision of this subchapter to conduct those activities. For the purposes of this subchapter, the term 'permit holder' includes their agent.

(3) [~~(1)~~] Aquaculture--As defined by Agriculture Code, §134.001(4)[~~or fish farming--The business of producing and selling cultured species raised in private facilities~~].

[~~(2) Aquaculturist or fish farmer--Any person engaged in aquaculture.~~]

[(3) Aquaculture facility--The property, including all drainage ditches and private facilities where cultured species are produced, held, propagated, transported or sold.]

[(4) Aquaculture complex--A group of two or more separately owned aquaculture facilities located at a common site and sharing privately owned water diversion or drainage structures.]

(4) [(5)] Beheaded--The complete detachment of the head (that portion of the fish from the gills to the nose; that portion of the shrimp called the carapace) from the body.

(5) Biological control agent--a natural enemy or predator of a plant or animal that can be used to control the growth, spread, or deleterious impact of that plant or animal.

[(6) Certified Inspector--An employee of the Texas Parks and Wildlife Department who has satisfactorily completed a department approved course in clinical analysis of shellfish.]

[(7) Cultured species--Aquatic plants, fish, or shellfish raised under conditions where at least a portion of their life cycle is controlled by an aquaculturist.]

(6) [(8)] Clinical Analysis Checklist--A department-approved [TPWD] form specifying sampling protocols and listing certain characteristics that [which] may constitute manifestations of shrimp disease.

(7) Commercial aquaculture facility--As defined in §134.001(7) of the Texas Agriculture Code.

(8) Common carrier--A person or entity that is:

(A) in the business of shipping goods or products; and

(B) not a party to a transaction under a permit issued under this subchapter.

(9) Controlled exotic species--Any species listed in §57.112 of this title (relating to Exotic Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants).

(10) Controlled exotic species permit--Any permit issued under this subchapter that authorizes the import, export, propagation, possession, purchase, sale, and/or transport of a controlled exotic species.

(11) Conveyance--Any means of transporting persons, goods, or equipment on the water.

(12) [(9)] Department--The Texas Parks and Wildlife Department or a designated employee of the department.

(13) [(10)] Director--The executive director of the Texas Parks and Wildlife Department.

(14) [(11)] Disease--Contagious pathogens or injurious parasites that [which] may be a threat to the health of natural populations of aquatic organisms.

(15) [(12)] Disease-Free--A status, based on the results of an examination conducted by a department approved shellfish disease specialist that certifies a group of aquatic organisms as being free of disease.

(16) Disease inspector--An employee of the department who is trained to perform clinical analysis of shrimp disease.

(17) Disease specialist--A third-party person approved by the department that possesses the education and experience to identify shellfish disease, such as a degree in veterinary medicine or a Ph.D. specializing in shellfish disease.

(18) Dock or pier--a structure built over and/or floating on water that is used to provide access to water and/or for the mooring of boats.

(19) Emergency--A situation or event beyond the control of any person, including but not limited to a natural disaster, power outage, or fire.

(20) Exotic shrimp exclusion zone--That part of the state that is both south of SH 21 and east of I-35, but not including Brazos County.

(21) [(13)] Exotic species--Any [A nonindigenous] aquatic plant, fish, or shellfish not indigenous to[not normally found in public water of] this state.

[(14) Gutted--The complete removal of all internal organs and entrails.]

[(15) Harmful or potentially harmful exotic fish.]

[(A) Lampreys: Family Petromyzontidae--all species except Ichthyomyzon castaneus and I. gagei;]

[(B) Freshwater Stingrays: Family Potamotrygonidae--all species;]

[(C) Arapaima: Family Arapaimidae--Arapaima gigas;]

[(D) South American Pike Characoids: Family Acestrorhynchidae--all species of genus Acestrorhynchus;]

[(E) African Tiger Fishes: Family Alestidae--all species of genus Hydrocynus;]

[(F) Piranhas: Family Characidae (Subfamily Serrasalminae)--all species of the genera Catoprion, Pristobrycon, Pygocentrus, Pygopristis, and Serrasalmus;]

[(G) Dogtooth characins (Payara and vampire tetras): Family Cynodontidae--all species of genera Hydrolycus, Rhaphiodon, and Cynodon;]

[(H) Dourados: Family Characidae (Subfamily Salmininae)--all species of genus Salminus;]

[(I) South American Tiger Fishes: Family Erythrinidae--all species;]

[(J) South American Pike Characids: Family Ctenoluciidae--all species of genera Ctenolucius and Boulengerella;]

[(K) African Pike and Lute Fishes: Families Hepsetidae and Citharinidae--all species;]

[(L) Electric Eels: Family Gymnotidae--Electrophorus electricus;]

[(M) Carps and Minnows: Family Cyprinidae--all species and hybrids of species of genera: Aspius, Pseudaspius, and Aspiolucius (Asps); Abramis, Blicca, Megalobrama, and Parabramis (Old World Breams); Hypophthalmichthys (Bighead and Silver Carp); Mylopharyngodon (Black Carp); Ctenopharyngodon (Grass Carp); Cirrhinus; Thynnichthys; Gibelion (Catla); Leuciscus (Eurasian Daces); Tor, and Neolissochilus hexagonolepsis (Barbs and Mahseers); Rutilus (Roaches); Scardinius (Rudds); Elopichthys (Yellowcheek); Catlocarpio (Giant Barb); all species of the genus Labeo except Labeo chrysophekadion (Black Sharkminnow);]

[(N) Walking Catfishes: Family Clariidae--all species;]

[(O) Electric Catfishes: Family Malapteruridae--all species;]

[(P) South American Parasitic Candiru Catfishes: Family Trichomycteridae--all species;]

[(Q) Pike Killifish: Family Poeciliidae--Belonesox belizanus;]

[(R) Marine Stonefishes: Family Synanceiidae--all species;]

[(S) Tilapia: Family Cichlidae--all species of genera Tilapia, Oreochromis, and Sarotherodon;]

[(T) Asian Pikeheads: Family Osphronemidae--all species of the genus Luciocephalus;]

[(U) Snakeheads: Family Channidae--all species;]

[(V) Perch: Family Percidae--all species of the genus Sander except Sander canadensis and S. vitreus and hybrids between these two species and all species of genus Gymnocephalus;]

[(W) Nile Perch: Family Latidae--all species of genus Lates;]

[(X) Seatrouts and Corvinas: Family Sciaenidae--all species of genus Cynoscion except Cynoscion arenarius, C. nebulosus, and C. nothus;]

[(Y) Whale Catfishes: Family Cetopsidae--all species;]

[(Z) Airsac Catfishes: Family Heteropneustidae--all species;]

[(AA) Swamp Eels, Rice Eels, or One-Gilled Eels: Family Synbranchidae--all species;]

[(BB) Freshwater Eels: Family Anguillidae--all species except Anguilla rostrata;]

[(CC) Round Gobies: Family Gobiidae--all species of genus Neogobius;]

[(DD) Temperate Basses: Family Moronidae--all species except Morone chrysops, M. mississippiensis, and M. saxatilis and hybrids of these species; and]

[(EE) Temperate Perches: Family Percichthyidae--all species.]

[(16) Harmful or potentially harmful exotic shellfish.]

[(A) Crayfishes: Family Parastacidae--all species;]

[(B) Mitten Crabs: Family Varunidae--all species of genus Eriocheir;]

[(C) Zebra Mussels: Family Dreissenidae--all species of genus Dreissena;]

[(D) Penaeid Shrimp: Family Penaeidae--all species of genera Penaeus, Litopenaeus, Farfantepenaeus, Fenneropenaeus, Marsupenaeus, and Melicertus except Litopenaeus setiferus, Farfantepenaeus azteceus, and F. duorarum;]

[(E) Oysters: Family Ostreidae--all species except Crassostrea virginica and Ostrea equestris; and]

[(F) Applesnails and Giant Rams-Horn Snails: Family Ampullariidae--all species of the genera Marisa and Pomacea except Pomacea bridgesi (spiketop applesnail).]

[(17) Harmful or potentially harmful exotic plants.]

[(A) Dotted Duckweed: Family Araceae--Landoltia punctata;]

[(B) Salvinia: Family Salviniaceae--all species of genus Salvinia;]

[(C) Water hyacinth: Family Pontederiaceae--Eichhornia crassipes (floating water hyacinth) and E. azurea (rooted water hyacinth);]

[(D) Waterlettuce: Family Araceae--Pistia stratiotes;]

[(E) Hydrilla: Family Hydrocharitaceae--Hydrilla verticillata;]

[(F) Lagarosiphon: Family Hydrocharitaceae--Lagarosiphon major;]

[(G) Eurasian Watermilfoil: Family Haloragaceae--Myriophyllum spicatum;]

[(H) Alligatorweed: Family Amaranthaceae--Alternanthera philoxeroides;]

[(I) Paperbark: Family Myrtaceae--Melaleuca quinquenervia;]

[(J) Torpedograss: Family Poaceae--Panicum repens;]

[(K) Water spinach (also called ong choy, rau mong and kangkong): Family Convolvulaceae--Ipomoea aquatica.]

[(L) Ambulia (Asian marshweed): Family Scrophulariaceae--Limnophila sessiliflora;]

[(M) Arrowleaf False Pickerelweed: Family Pontederiaceae--Monochoria hastate;]

[(N) Heartshaped False Pickerelweed: Family Pontederiaceae--Monochoria vaginalis;]

[(O) Duck-lettuce: Family Hydrocharitaceae--Ottelia alismoides;]

[(P) Wetland Nightshade: Family Solanaceae--Solanum tampicense;]

[(Q) Exotic Bur-reed: Family Sparganiaceae--Sparganium erectum;]

[(R) Brazilian Peppertree: Family Anacardiaceae--Schinus terebinthifolius; and]

[(S) Purple Loosestrife: Family Lythraceae--Lythrum salicaria.]

(22) Facility--Infrastructure including drainage structures at a location where controlled exotic species are possessed, propagated, cultured, or sold under a controlled exotic species permit excluding private waters permitted for triploid Grass Carp stocking in accordance with §57.116 of this title (relating to Special Provisions--Triploid Grass Carp).

(23) Facility complex--A group of two or more facilities located at a common site and sharing water diversion or drainage structures.

(24) Gill-cutting--Cutting through the base of the gills on the underside of the fish.

[(18) Harmful or potentially harmful exotic species exclusion zone--That part of the state that is both south of SH 21 and east of I-35, but not including Brazos County.]

[(19) Immediately--Without delay; with no intervening span of time.]

(25) [(20)] Manifestations of disease--Include,[Manifestations of disease include,] but are not limited to, one or

more of the following: heavy or unusual predator activity, empty guts, emaciation, rostral deformity, digestive gland atrophy or necrosis, gross pathology of shell or underlying skin typical of viral infection, fragile or atypically soft shell, gill fouling, or gill discoloration.

(26) [~~(21)~~] Nauplius (nauplii, if plural) [~~or nauplii~~]--A larval crustacean (phylum Arthropoda, subphylum Crustacea) having no trunk segmentation and only three pairs of appendages.

~~[(22) Operator--The person responsible for the overall operation of a wastewater treatment facility.]~~

~~[(23) Place of business--A permanent structure on land where aquatic products or orders for aquatic products are received or where aquatic products are sold or purchased.]~~

(27) [~~(24)~~] Post-larva (post-larvae, if plural) [~~Post-larvae~~]--A juvenile crustacean (phylum Arthropoda, subphylum Crustacea) having acquired a full complement of functional appendages.

~~[(25) Private facility--A pond, tank, cage, or other structure capable of holding cultured species in confinement wholly within or on private land or water, or within or on permitted public land or water.]~~

~~[(26) Private facility effluent--Any and all water which has been used in aquaculture activities.]~~

(28) [~~(27)~~] Private pond--A pond or [~~, tank,~~] lake[~~, or other structure~~] capable of holding exotic [~~cultured~~] species of tilapia and/or triploid grass carp in confinement wholly within [~~or on~~] private land for non-commercial purposes.

~~[(28) Public aquarium--An American Association of Zoological Parks and Aquariums accredited facility for the care and exhibition of aquatic plants and animals.]~~

(29) Public water[~~waters~~]--As defined by Parks and Wildlife Code, §66.015, the bays, [~~Bays,~~] estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.

(30) Recirculating aquaculture system--A system for culturing fish that treats or reuses all, or a major portion of the water and is designed for no direct offsite discharge of water.

(31) [~~(30)~~] Quarantine condition--Separation [~~Confinement~~] of exotic shellfish from other stocks of shellfish within a facility such that neither the shellfish nor the water in which they are or were maintained comes into contact with water in the state or [~~and~~] with other fish and/or shellfish.

~~[(31) Shellfish disease specialist--A person with a degree in veterinary medicine or a Ph.D. who specializes in disease of shellfish.]~~

(32) Tilapia and triploid grass carp regulatory zones--Geographic conservation priority zones identified by the department where special provisions apply. Zone designations by county are as follows:

(A) Conservation zone. The conservation zone shall include the following counties: Andrews, Archer, Armstrong, Bailey, Bandera, Baylor, Bell, Bexar, Blanco, Borden, Brewster, Briscoe, Brown, Burnet, Callahan, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Comal, Concho, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Donley, Ector, Edwards, El Paso, Fisher, Floyd, Foard, Gaines, Garza, Gillespie, Glasscock, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hockley, Howard, Hudspeth, Hutchinson, Irion, Jeff Davis, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamb, Lampasas, Lipscomb, Llano, Loving, Lubbock, Lynn, Martin, Mason, Maverick, McCulloch, Medina, Menard, Midland, Mills, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Real, Reeves, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Ward, Wheeler, Wichita, Wilbarger, Williamson, Winkler, Yoakum, Young, and Zavala.

(B) Stocking zone. The stocking zone shall include the following counties: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bosque, Bowie, Brazoria, Brazos, Brooks, Burleson, Caldwell, Calhoun, Cameron, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Comanche, Cooke, Coryell, Dallas, Delta, Denton, DeWitt, Dimmit, Duval, Eastland, Ellis, Erath, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Frio, Galveston, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hamilton, Hardin, Harris, Harrison, Henderson, Hidalgo, Hill, Hood, Hopkins, Houston, Hunt, Jack, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Johnson, Karnes, Kaufman, Kenedy, Kleberg, La Salle, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, McMullen, Milam, Montague, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Palo Pinto, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Starr, Tarrant, Titus, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wilson, Wise, Wood, and Zapata.

(33) [~~(32)~~] Triploid grass [~~or black~~] carp--A grass carp (Ctenopharyngodon idella) [~~or black carp (Mylophryngodon piceus)~~] that has been certified by the United States Fish and Wildlife Service as having 72 chromosomes and as being functionally sterile.

(34) [~~(33)~~] Waste--As defined in Water Code, [~~Waste shall have the same meaning as in Chapter 26,~~] §26.001(6) [~~of the Texas Water Code~~].

(35) [~~(34)~~] Water in the state--As defined in Water Code, [~~Water in the state shall have the same meaning as in Chapter 26,~~] §26.001(5) [~~of the Texas Water Code~~].

(36) [~~(35)~~] Wastewater treatment facility--All contiguous land and fixtures, structures, and associated infrastructure, including drainage structures [~~or appurtenances~~] used for treating wastewater pursuant to a valid permit issued by the Texas Commission on Environmental Quality.

§57.112. Exotic Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants.

(a) The exotic species listed in this section are designated as harmful or potentially harmful, including any hybrid of a species, subspecies, eggs, juveniles, seeds, or reproductive or regenerative parts of any species.

(b) Scientific reclassification or change in nomenclature of taxa at any level in taxonomic hierarchy will not, in and of itself, result in removal from the list of exotic harmful or potentially harmful species in this section.

(c) The following are harmful or potentially harmful exotic species, listed alphabetically and by family:

(1) Fishes.

(A) Family Acestrorhynchidae (South American pike characoids)--all species of genus Acestrorhynchus;

(B) Family Alestiidae (African tiger fishes)--all species of genus Hydrocynus;

(C) Family Anguillidae (freshwater eels)--all species of this family except Anguilla rostrata (American eel);

(D) Family Centropomidae (Nile perch)--all species of genus Lates;

(E) Family Cetopsidae (whale catfishes)--all species of this family;

(F) Family Characidae (dourados and piranhas):

(i) Dourados--all species of genus Salminus; and

(ii) Piranhas--all species of genera Catoprion, Pristobrycon, Pygocentrus, Pygopristis, and Serrasalmus;

(G) Family Channidae (snakeheads)--all species of this family;

(H) Family Cichlidae (tilapia)--all species of genera Coelotilapia, Coptodon Heterotilapia, Oreochromis, Pelmatolapia, Sarotherodon, and Tilapia;

(I) Family Citharinidae, subfamily Distichodontinae (African lute fishes)--all species of genera Belonophago, Euganthichthys, Ichthyborus, Mesoborus, Phago, and Paraphago;

(J) Family Clariidae (walking catfishes)--all species of this family;

(K) Family Ctenoluciidae (South American pike characids)--all species of genera Ctenolucius and Boulengerella;

(L) Family Cynodontidae (dogtooth characins: payara and vampire tetras)--all species of genera Cynodon, Hydrolycus, and Rhaphiodon;

(M) Family Cyprinidae (carps and minnows):

(i) Asps--all species of genera Aspius, Aspiolucius, and Pseudaspius;

(ii) Old World breams--all species of genera Abramis, Blicca, Megalobrama, and Parabramis;

(iii) Bighead, silver, and largescale carp--all species of genus Hypophthalmichthys;

(iv) Black carp--all species of genus Mylopharyngodon;

(v) Grass carp--all species of genus Ctenopharyngodon;

(vi) Catla--all species of genera Cirrhinus, Thynnichthys, and Gibelion;

(vii) European daces--all species of genus Leuciscus;

(viii) Barbs and mahseers--all species of genera Tor and Neolissochilus;

(ix) Roaches--all species of genus Rutilus;

(x) Rudds--all species of genus Scardinius;

(xi) Yellowcheek--all species of genus Elopichthys;

(xii) Giant barb--all species of genus Catlocarpio;

(xiii) Sharkminnows--all species of genus Labeo except L. chrysophekadion (black sharkminnow); and

(xiv) Stone moroko--Pseudorasbora parva;

(N) Family Electrophoridae (electric eels)--Electrophorus electricus (electric eel);

(O) Family Erythrinidae (trahiras)--all species of this family;

(P) Family Gobiidae (round gobies)--all species of genus Neogobius;

(Q) Family Hepsetidae (African pike fishes)--all species of this family;

(R) Family Heteropneustidae (airsac catfishes)--all species of this family;

(S) Family Malapteruridae (electric catfishes)--all species of this family;

(T) Family Moronidae (temperate basses)--all species of this family except Morone chrysops (white bass), M. mississippiensis (yellow bass), and M. saxatilis (striped bass), and hybrids of these species;

(U) Family Odontobutidae (freshwater sleepers)--Perccottus glenii (Amur sleeper);

(V) Family Osphronemidae (Asian pikeheads)--all species of genus Luciocephalus;

(W) Family Osteoglossidae (arapaima)--all species of genus Arapaima;

(X) Family Percichthyidae (temperate perches)--all species of this family;

(Y) Family Percidae (perch):

(i) Pikeperches--all species of genus Sander except S. canadensis and S. vitreus (sauger and walleye) and hybrids of these species;

(ii) European ruffes--all species of genus Gymnocephalus;

(iii) European perch (also called redfin)--Perca fluviatilis;

(Z) Family Petromyzontidae (lampreys)--all species of this family except Ichthyomyzon castaneus (chestnut lamprey) and I. gagei (Southern brook lamprey);

(AA) Family Poeciliidae (Pike Killifish)--Belonesox belizanus;

(BB) Family Potamotrygonidae (freshwater stingrays)--all species of this family;

(CC) Family Sciaenidae (seatrouts and corvinas)--all species of genus Cynoscion except C. arenarius (sand seatrout), C. nebulosus (spotted seatrout), and C. nothus (silver seatrout);

(DD) Family Scorpaenidae (marine stonefishes)--all species of genera Choridactylus, Dampierosa, Erosa, Inimicus, Leptosynanceia, Minous, Pseudosynanceia, Synanceia, and Trachicephalus;

(EE) Family Siluridae (European and Asian catfishes)--Silurus glanis (Wels catfish);

(FF) Family Synbranchidae (swamp eels, rice eels, or one-gilled eels)--all species of this family; and

(GG) Family Trichomycteridae (South American parasitic Candiru catfishes)--all species of this family.

(2) Shellfish.

(A) Family Ampullariidae (applesnails):

(i) Applesnails--all species of genus Pomacea except P. bridgesi (sometimes also known as P. diffusa; spiketop applesnail); and

(ii) Giant rams-horn snails--all species of genus Marisa;

(B) Family Dreissenidae (zebra and quagga mussels)--all species of genus Dreissena;

(C) Family Hydrobiidae (mud snails)--all species of this family;

(D) Family Mytilidae (mussels)--Limnoperna fortunei (golden mussel);

(E) Family Ostreidae (oysters)--all species of this family except Crassostrea rhizophorae (mangrove oyster), C. virginica (Eastern oyster), Dendostrea frons (frond oyster), Ostrea stentina (dwarf oyster), and O. permollis (sponge oyster);

(F) Family Parastacidae (Southern hemisphere freshwater crayfishes, including redclaw crayfish)--all species of this family;

(G) Family Penaeidae (penaeid shrimps)--all species of genera Farfantepenaeus, Fenneropenaeus, Litopenaeus, Marsupenaeus, Melicertus, and Penaeus, except Litopenaeus setiferus (white shrimp), Farfantepenaeus aztecus (brown shrimp), and F. duorarum (pink shrimp); and

(H) Family Varunidae (mitten crabs)--all species of genus Eriocheir.

(3) Aquatic Plants.

(A) Family Amaranthaceae (alligatorweed)--Alternanthera philoxeroides;

(B) Family Anacardiaceae (Brazilian peppertree)--Schinus terebinthifolius;

(C) Family Araceae:

(i) Dotted duckweed--Landoltia punctata;

(ii) Waterlettuce--Pistia stratiotes;

(D) Family Convolvulaceae (water spinach; also called ong choy, rau mong, and kangkong)--Ipomoea aquatica;

(E) Family Haloragaceae (Eurasian watermilfoil)--Myriophyllum spicatum;

(F) Family Hydrocharitaceae:

(i) Hydrilla--Hydrilla verticillata;

(ii) African elodea (also called Lagarosiphon)--Lagarosiphon major; and

(iii) Duck-lettuce--Ottelia alismoides;

(G) Family Lythraceae (purple loosestrife)--Lythrum salicaria;

(H) Family Menyanthaceae (floating hearts)--Nymphoides cristata (crested floating heart) and N. peltata (yellow floating heart);

(I) Family Myrtaceae (paperbark, also called Melaleuca)--Melaleuca quinquenervia;

(J) Family Plantaginaceae (ambulia, also called Asian marshweed)--Limnophila sessiliflora;

(K) Family Poaceae (torpedograss)--Panicum repens;

(L) Family Pontederiaceae

(i) Water hyacinths--Eichhornia crassipes (floating water hyacinth) and E. azurea (rooted water hyacinth); and

(ii) False pickerelweeds--all species of genus Monochoria;

(M) Family Salviniaceae (salvinias)--all species of genus Salvinia;

(N) Family Solanaceae (wetland nightshade, also called aquatic soda apple)--Solanum tampicense; and

(O) Family Typhaceae (exotic bur-reed)--Sparganium erectum.

§57.113. General Provisions and Exceptions.

(a) Nothing in this subchapter shall be construed to relieve any person of the obligation to comply with any applicable provision of local, state, or federal law.

(b) Except as provided by Parks and Wildlife Code or this subchapter, no person shall:

(1) introduce into public water, possess, import, export, sell, purchase, transport, propagate, or culture any species, hybrid of a species, subspecies, eggs, seeds, or any part of any species defined as a controlled exotic species; or

(2) take or possess a live grass carp from public water where grass carp have been introduced under a permit issued by the department, unless the department has specifically authorized removal or the permit is no longer in effect.

(c) An active partner may be exempted from the requirement to obtain a controlled exotic species permit under this subchapter, provided they coordinate with the department to seek authorization by a letter of approval of active partner status, and provide a description of proposed engagement in department-coordinated efforts to monitor and/or manage controlled exotic species in Texas and measures to be taken to prevent introduction of controlled exotic species into public water.

(d) An employee of the department in the performance of official duties is exempt from the permit requirements of this subchapter.

(e) Any person may possess, import, export, sell, purchase, or transport controlled exotic species of fish or shellfish other than mussels or oysters without a permit provided they are:

(1) killed by gutting, beheading, gill-cutting, or using another means;

(2) frozen; or

(3) packaged on ice.

(f) Any person may possess, import, export, sell, purchase, or transport controlled exotic species of oysters without a permit provided they are shucked or otherwise removed from their shells.

(g) No person may possess or transport live or dead controlled exotic species of mussels that are attached to or contained within any vessel, conveyance, or dock or pier except that mussels attached to or contained within a vessel may be possessed and transported if the vessel is traveling directly to a service provider for the purposes of removal of the mussels or vessel maintenance or repair after first notifying the department in writing that the vessel will be transported. Notification shall be provided at least 72 hours in advance and shall consist of:

(1) expected date of transport;

(2) contact information of person or entity transporting the vessel;

(3) vessel registration number;

(4) water body of origin;

(5) service provider location and contact information; and

(6) water body where the vessel will return after service.

(h) A licensed retail or wholesale fish dealer is not required to have a controlled exotic species permit to purchase or possess in the licensed place of business:

(1) live triploid grass carp (Ctenopharyngodon idella) or blue tilapia (Oreochromis aureus), Mozambique tilapia (O. mossambicus), Nile tilapia (O. niloticus), Wami tilapia (O. hornorum), or hybrids of these tilapia species provided that the fish dealer:

(A) obtains the species from a permit holder;

(B) retains a copy of each properly executed transport invoice provided by the permit holder for a period of one year following the invoice date;

(C) does not propagate or culture the species; and

(D) does not sell or transfer possession of the species to another person or entity unless the fish have been gutted, beheaded, gill-cut, killed using another means, packaged on ice, or frozen.

(2) live Pacific blue shrimp (Litopenaeus stylirostris) or Pacific white shrimp (L. vannamei), provided that:

(A) the place of business is not located within the exotic shrimp exclusion zone described in §57.111 of this title (relating to Definitions);

(B) the species were obtained from a permit holder;

(C) the fish dealer retains a copy of each properly executed transport invoice provided by the permit holder for a period of one year following the invoice date; and

(D) the fish dealer does not sell or transfer possession of these species to another person or entity unless the shrimp are dead and packaged on ice or frozen.

(i) The holder of a controlled exotic species permit may not place into public water, possess, import, export, sell, purchase, transport, propagate, or culture controlled exotic species unless authorized by permit conditions.

(j) The owner or manager of a property or their agent, except as provided in subsection (k) of this section, may without a permit possess and transport for the purpose of disposal controlled exotic species of plants, mussels of the genus Dreissena, or applesnails, provided:

(1) the species are physically removed from a private pond, public water adjacent to the property, or the shorelines, docks, or other waterfront infrastructure associated with the property;

(2) mussels or applesnails removed are securely contained in black plastic bags prior to disposal;

(3) plants removed are dried fully or securely contained in black plastic bags prior to disposal; and

(4) plants are physically removed from public water under a current, approved treatment proposal in accordance with Subchapter L of this chapter (relating to Aquatic Vegetation Management).

(k) A person operating a mechanical plant harvester or who otherwise physically removes controlled exotic species of plants from public water in exchange for money or anything of value must be the holder of or be listed as an authorized person on a controlled exotic species permit. Removal and disposal of controlled exotic species of plants from public water or private ponds may only be done by means authorized in the permit.

(l) Governmental or quasi-governmental agencies; operators of power generation, water control or water supply facilities, or private water intakes; entities removing garbage from public water bodies; or contractors working on their behalf may without a permit, possess and transport for the purpose of disposal controlled exotic species removed during standard operations, maintenance, or testing provided they are in compliance with best management practices published by the department.

(m) Any person may purchase, possess, or transport controlled exotic species of plants as hosts for biological control agents without a permit for the purpose of introduction for management of nuisance aquatic vegetation, provided that:

(1) the identity of the plant species to be managed is confirmed by the department; and

(2) controlled exotic species of plants are:

(A) obtained from the department, a biological control facility permitted under this subchapter, or an active partner, as described in §57.111 of this title (relating to Definitions);

(B) possessed and transported with a properly executed transport invoice provided by the biological control agent supplier in accordance with §57.121 of this title (relating to Transport of Live Controlled Exotic Species); and

(C) for public water a permit for introduction of aquatic plants into public water for nuisance aquatic vegetation management must be obtained in accordance with Subchapter C of this chapter (relating to Introduction of Fish, Shellfish and Aquatic Plants) and Subchapter L of this title (relating to Aquatic Vegetation Management).

(n) Specimens of controlled exotic species of mussels or plants may be possessed for educational purposes without a permit if prepared in the following manner:

(1) mussels--fully dried or placed into alcohol, formalin, or other preservative; or

(2) plants--dried and pressed as herbarium specimens or encased in plastic resin.

(o) At the request of any department employee in the performance of official duties, any person, including but not limited to controlled exotic species permit holders, who is in possession of a controlled exotic species shall:

(1) allow the take of or provide samples of any controlled exotic species held in possession for purposes of taxonomic or genetic identification and analysis;

(2) furnish any documentation necessary to confirm controlled exotic species identity, the source of controlled exotic species, and eligibility to possess controlled species;

(3) make available for inspection during normal business hours any records required by this subchapter and any retention location, facility, private pond, recirculating aquaculture system, or transportation vehicle or trailer used to conduct activities authorized under this subchapter; and

(4) demonstrate that activities are conducted in compliance with the requirements of this subchapter and in such a way as to prevent escape, release, or discharge of controlled exotic species.

(p) Disposition Protocols.

(1) The department may prescribe, on a case by case basis, a disposition protocol for destruction, disposal, or transfer of controlled exotic species held by a person who:

(A) is in possession of controlled exotic species in violation of any provision of this subchapter;

(B) is refused permit renewal under the provisions of §57.124 of this title (relating to Refusal to Issue; Review of Agency Decision to Refuse Issuance); or

(C) ceases or discontinues permitted or otherwise authorized activities for any other reason.

(2) If the disposition protocol is not implemented within 14 days of notification by the department, the department may implement a prescribed disposition protocol.

(3) In the event that a disposition protocol is implemented by the department, the person is responsible for all costs associated with the destruction, disposal, or transfer of controlled exotic species held in the facility.

§57.114. Controlled Exotic Species Permits.

(a) Water spinach Culture. Controlled exotic species facility permits may be issued for culture, transport, and sale of water spinach, in accordance with the provisions of this subchapter and §57.118 of this title (relating to Special Provisions--Water Spinach).

(b) Commercial Aquaculture Facility Permits.

(1) Controlled exotic species facility permits may be issued for commercial aquaculture, in accordance with the provisions of this subchapter, only for the following species:

(A) Triploid grass carp (Ctenopharyngodon idella) in compliance with the provisions of §57.116 of this title (relating to Special Provisions--Triploid Grass Carp);

(B) Blue tilapia (Oreochromis aureus), Mozambique tilapia (O. mossambicus), Nile tilapia (O. niloticus), Wami tilapia (O. hornorum), or hybrids of these species in compliance with the provisions of §57.115 of this title (relating to Special Provisions--Tilapia); and

(C) Pacific white shrimp (Litopenaeus vannamei) or Pacific blue shrimp (L. stylirostris) in compliance with the provisions of §57.117 of this title (relating to Special Provisions--Shrimp Aquaculture and Health Certification).

(2) No person may participate in commercial aquaculture activity for which a permit under this subchapter is required unless they are an authorized person on the permit or supervised by an authorized person on the permit.

(c) Research. Controlled exotic species facility permits may be issued for research that benefits indigenous species or ecosystems and/or provides insight on ecology, risks, impacts, or management approaches for controlled exotic species. The sale of controlled exotic species under a research permit is prohibited unless authorized by written approval of the Director of the Coastal Fisheries Division or Inland Fisheries Division (or their designee), as applicable.

(d) Biological Control Production. Controlled exotic species facility permits may be issued for purposes of production of biological control agents for management of controlled exotic species of plants.

(e) Zoological Display. Permits may be issued for zoological display in accordance with the provisions of this subchapter. The sale or intentional propagation of controlled exotic species under this permit is prohibited.

(f) Limited Special Purpose Permits. Permits may be issued for:

(1) sale of live triploid grass carp or tilapia purchased from a commercial aquaculture facility permit holder or lawful out-of-state source or sale by a lawful out-of-state supplier. Holding in a facility in Texas for more than 72 hours and aquaculture of these species is prohibited under this permit;

(2) introduction into public water or private pond stocking of live triploid grass carp, in accordance with the provisions of this subchapter and §57.116 of this title (relating to Special Provisions--Triploid Grass Carp);

(3) interstate transit of controlled exotic species;

(4) possession and disposal of controlled exotic species of plants from public or private waters;

(5) possession of controlled exotic species of plants for wastewater treatment by a wastewater treatment facility; and

(6) possession, transport, and disposal activities not otherwise authorized by the provisions of §57.113 of this title (relating to General Provisions and Exceptions).

§57.115. Special Provisions--Tilapia.

(a) Except as provided in this section or the provisions of §57.113 of this title (relating to General Provisions and Exceptions), no person may possess, import, export, sell, purchase, transport, propagate, or culture, or offer to import, export, sell, purchase, or transport tilapia unless the person is the holder of a valid controlled exotic species permit and is in compliance with the terms of the permit.

(b) Private ponds stocked with tilapia shall be designed and maintained such that escape, release, or discharge of tilapia from the pond into public water is not likely to occur.

(c) Non-commercial aquaculture. No permit is required under this subchapter to purchase, possess, transport, or propagate blue tilapia (O. aureus), Mozambique tilapia (O. mossambicus), Nile tilapia (O. niloticus), Wami tilapia (O. hornorum), and hybrids between these species for non-commercial (i.e., no sale) aquaculture purposes provided that:

(1) Live tilapia purchased in accordance with the provisions of this subchapter are transported to the aquaculture location in accordance with §57.121 of this title (relating to Transport of Live Controlled Exotic Species);

(2) Tilapia are not sold, offered for sale, or exchanged for money or anything of value;

(3) Tilapia are possessed solely in a recirculating aquaculture system constructed such that:

(A) escape, release, or discharge of tilapia into public water is not likely to occur; and

(B) no discharge of wastewater or waste into or adjacent to water in the state is likely to occur;

(4) Adequate security measures are in place to prevent unauthorized removal of tilapia; and

(5) Tilapia are killed in accordance with the provisions of §57.113(e) of this title prior to being transferred to another person or disposed.

(d) Stocking in private ponds.

(1) No person holding tilapia in a private pond may sell, offer for sale, or exchange tilapia for money or anything of value.

(2) Upon reclassification of any county in the stocking zone to conservation zone, the conservation zone provisions shall apply to all future stockings in that county.

(3) Conservation zone provisions. Prior to stocking tilapia into a private pond in the conservation zone, the landowner or their agent must obtain written approval from the department.

(A) Approval shall be requested by completing and submitting a department form at least 30 days prior to the intended stocking. The request shall contain the following information, legibly written:

(i) the name, address, and phone number of the person requesting approval;

(ii) the specific address or coordinates of the location of the private pond;

(iii) a map of the location with the pond clearly marked; and

(iv) the proposed date and purpose of introduction.

(B) The department may provide approval for stocking of blue tilapia (O. aureus), Mozambique tilapia (O. mossambicus), Nile tilapia (O. niloticus), Wami tilapia (O. hornorum), or hybrids between these species into a private pond in the conservation zone upon finding that the private pond is compliant with the provisions of subsection (b) of this section and does not pose a significant risk to species designated as endangered, threatened, or a Species of Greatest Conservation Need.

(C) Written approval provided by the department for stocking of tilapia into a private pond in the conservation zone is specific to the pond for which approval was granted and is transferrable with the sale of the property. Written approval shall not expire or require renewal provided that the pond is not modified in any way that could result in increased risk of escape, release, or discharge of controlled exotic species into public water.

(4) Stocking zone provisions. In the stocking zone no authorization or permit is required under this subchapter to purchase, possess, transport, or stock into a private pond blue tilapia (O. aureus), Mozambique tilapia (O. mossambicus), Nile tilapia (O. niloticus), Wami tilapia (O. hornorum), or hybrids between these species provided that the private pond is compliant with the provisions of subsection (b) of this section.

(5) Tilapia stocked in a private pond must be killed in accordance with the provisions of §57.113(e) of this title prior to being transported or transferred to another person.

(6) A person in possession of live tilapia stocked in a private pond must possess and retain an exotic species transport invoice provided by the seller as described in §57.121 of this title for a period of one year from the date the tilapia were obtained or as long as the tilapia are in the water, whichever is longer.

(e) Commercial sale of tilapia for pond stocking. No tilapia may be stocked in or provided for the purpose of stocking into private ponds within the conservation zone without the landowner or their agent first obtaining written approval from the department as described in subsection (d) of this section.

§57.116. Special Provisions--Triploid Grass Carp.

(a) The department may issue a permit for introduction of triploid grass carp into public water after finding that the introduction is not likely to affect threatened or endangered species or interfere with specific management objectives for other important species or habitats.

(b) The department may issue a permit for stocking of triploid grass carp in a private pond after finding that the triploid grass carp are not likely to escape from the pond into public waters in violation of Parks and Wildlife Code, §66.015, and that the stocking is not likely to affect threatened or endangered species or interfere with specific management objectives for other important species or habitats.

(c) An applicant for a triploid grass carp permit for private pond stocking shall, upon request, allow inspection of their ponds or lakes by an employee of the department during normal business hours for the purposes of evaluating whether the private pond meets the criteria for permit issuance.

(d) Except as otherwise approved by the department, the triploid grass carp stocking rate authorized by a permit shall be determined by consideration of the surface area of the water body to be stocked and the extent of the aquatic vegetation to be managed.

(e) Triploid grass carp may be purchased or obtained only from:

(1) the holder of a valid controlled exotic species permit that authorizes the sale of triploid grass carp; or

(2) directly from any lawful out-of-state source.

(f) The department is authorized to introduce triploid grass carp into public water in situations where the department has determined that there is a management need, and when stocking will not affect threatened or endangered species or other important species or habitats.

(g) Stocking in private ponds.

(1) Private ponds stocked with triploid grass carp shall be designed and maintained such that escape, release, or discharge of triploid grass carp from the private pond into public water is not likely to occur.

(2) Prior to stocking of triploid grass carp into a private pond, the landowner or their agent must obtain a permit for stocking of live triploid grass carp.

(3) Permits for stocking of triploid grass carp into private ponds are specific to the ponds on a property, transferrable with the sale of the property, and shall not expire or require renewal provided that the pond is not modified in any way that could result in increased risk of escape, release, or discharge of controlled exotic species into public water.

(4) No person holding triploid grass carp in a private pond may sell, offer for sale, or exchange triploid grass carp for money or anything of value.

(5) Upon reclassification of any county in the conservation zone to stocking zone, the stocking zone provisions shall apply to all future stockings in that county. Zones are as defined in §57.111 of this title (relating to Definitions).

(6) Within the stocking zone, permit applications requesting ten or fewer triploid grass carp require administrative review only. The application shall be submitted at least 14 days prior to the intended stocking.

(7) A person in possession of live triploid grass carp stocked in a private pond must possess and retain for a period of one year from the date the grass carp were obtained or as long as the grass carp are in the water, whichever is longer:

(A) an exotic species transport invoice as described in §57.121 of this title (relating to Transport of Live Controlled Exotic Species) or an aquatic product transport invoice from a lawful out-of-state source in compliance with Parks and Wildlife Code, §47.0181; and

(B) documentation that the grass carp have been certified as triploid by the Grass Carp Inspection and Certification Inspection Program operated by the U.S. Fish and Wildlife Service.

(8) Triploid grass carp stocked in a private pond must be killed in accordance with the provisions of §57.113 of this title (relating to General Provisions and Exceptions) prior to being transported or transferred to another person.

§57.117. Special Provisions--Shrimp Aquaculture and Health Certification.

(a) Any facility containing controlled exotic species of shrimp shall be capable of placing stocks into quarantine condition.

(b) A facility containing live Pacific blue shrimp (Litopenaeus stylirostris) must be located outside the exotic shrimp exclusion zone.

(c) All disease-free certification of controlled exotic species of shrimp must be conducted by a disease specialist.

(d) Any person importing live controlled exotic species of shrimp must, prior to importation:

(1) provide documentation to the department that the controlled exotic species of shrimp to be imported have been certified as disease-free; and

(2) receive written acknowledgment from the department that the requirements of for demonstrating disease-free status have been met.

(e) Any person in possession of controlled exotic species of shrimp for the purpose of production of post-larvae must provide to the department monthly documentation that nauplii and post-larvae have been examined and are certified to be disease-free. If monthly certification cannot be provided, the shrimp must be maintained in quarantine condition until the department acknowledges in writing that the requirements for demonstrating stock is disease-free or conditions specified in writing by the department under which the quarantine condition can be removed have been met.

(f) Any person who possesses controlled exotic species of shrimp in a facility regulated under this subchapter who observes one or more of the manifestations of diseases of concern listed on the clinical analysis checklist provided by the department shall place the entire facility under quarantine condition immediately, notify the department, and:

(1) request an inspection from a disease inspector; or

(2) submit samples of the affected shrimp to a disease specialist for analysis and forward results of such analyses to the department upon receipt.

(g) No more than 14 days prior to harvesting ponds or discharging any waste into or adjacent to water in the state, the permit holder shall:

(1) request an inspection from a disease inspector; or

(2) submit samples of the shrimp from each pond or other structure containing such shrimp to a disease specialist for analysis and submit the results of such analyses to the department upon receipt, using the clinical analysis checklist.

(h) Upon receiving a request for an inspection from a permit holder, a disease inspector may visit the facility, examine samples of shrimp from each pond or other structure from which waste will be discharged or harvest will occur, complete the clinical analysis checklist provided by the department, sample shrimp from or inspect any pond or structure the disease inspector determines requires further investigation, and provide a copy of the clinical analysis checklist and any other inspection reports to the permit holder.

(i) If the results of an inspection performed by a disease inspector indicate the presence of one or more manifestations of disease, the permit holder shall immediately place or continue to maintain the entire facility under quarantine condition and submit samples of the controlled exotic species of shrimp from the affected portion(s) of the facility to a disease specialist for analysis. Results of such analyses shall be forwarded to the department upon receipt.

(j) If the results of analyses performed by a disease specialist under subsection (g)(2) of this section indicate the presence of disease, the permit holder shall immediately place the entire facility under quarantine condition.

(k) If the results of inspections or analyses of controlled exotic species of shrimp from a facility placed under quarantine condition indicate the presence of disease, the facility shall remain under quarantine condition until the department removes the quarantine condition in writing or authorizes in writing other actions deemed appropriate by the department based on the required analyses.

(l) If the results of inspections or analyses performed under subsection (g) of this section indicate the absence of any manifestations of disease, the permit holder may begin discharging from the facility.

§57.118. Special Provisions--Water Spinach.

(a) Except as authorized by a permit issued under this section, or otherwise provided by this section, no person may:

(1) culture water spinach; or

(2) possess or transport water spinach in exchange for or with the intent to exchange for money or anything of value.

(b) No permit issued under this section is required to purchase or possess water spinach for personal consumption, provided the water spinach was lawfully purchased or obtained and is not propagated or cultured.

(c) No permit issued under this section is required to purchase or obtain water spinach for sale or re-sale, provided:

(1) the water spinach is purchased or obtained from a controlled exotic species permit holder authorized for culture and sale of water spinach or a lawful out-of-state source;

(2) copies of all invoices and receipts are retained for a period of one year following the date of purchase or receipt;

(3) the water spinach is sold or transferred directly to a consumer (defined as a person purchasing or obtaining water spinach for personal consumption); and

(4) water spinach that is not sold, transferred or consumed is disposed of in such a manner as to prevent the dispersal of water spinach beyond the establishment or location where it is sold or stored.

(d) For a facility where water spinach is cultured:

(1) culture shall take place only in enclosed greenhouses;

(2) a copy of the permit shall be prominently displayed at the facility for which it was issued;

(3) all water spinach plants within the facility must be free of flowers and seeds at all times;

(4) propagation shall be by cuttings only and propagation using seeds is prohibited;

(5) water spinach shall be grown in only in moist soil and culture in aqueous media is prohibited;

(6) all equipment used in the cultivation of water spinach must be cleaned of all vegetation prior to being removed from a facility;

(7) a buffer area void of all plants, with the exception of mature woody vegetation, shall be created and maintained around the perimeter of all areas where water spinach is cultured, handled, packed, processed, stored, shipped, or disposed. The width of the buffer area shall be at least 10 feet unless the department grants a modification of buffer width based on the location of greenhouses;

(8) the greenhouse shall be maintained at all times in such a way as to prevent escape or release of water spinach and the department shall be notified if facility repairs are necessary; and

(9) satisfactorily demonstrate to the department, during annual facility inspections that activities authorized under this subchapter are conducted in compliance with the requirements of this subchapter and the facility is maintained in such a way as to prevent escape or release of water spinach.

(e) Packaging. All water spinach transported from a facility including water spinach transported under an interstate transport authorization shall be:

(1) packaged in a closed or sealed container having a volume no greater than three cubic feet and may not be mixed or commingled with any other material or substance; and

(2) identified such that each container of water spinach shall have a label placed on the outside of the container. The label must be clearly visible and shall bear the legend "Water Spinach" in English.

(f) Processing. All handling and packaging of water spinach must be done at the permitted facility within the buffer area. All water spinach fragments must be collected and disposed as described in subsection (k) of this section.

(g) Transport invoice. The permit holder shall generate a transport invoice for each sale or transfer of water spinach. Except as provided by subsection (h) of this section, no person may remove water spinach from a permitted facility unless the water spinach is accompanied by a separate transport invoice for each receiver. The transport invoice required by this section shall contain the following information, legibly written:

(1) a unique transport invoice number;

(2) the date of shipment;

(3) the name, address and phone number of the permit holder;

(4) the name, address, and phone number of the common carrier, if a common carrier is used to transport the water spinach;

(5) the name, address and phone number of the person receiving the water spinach; and

(6) the controlled exotic species permit number of the permit holder and receiver, as applicable.

(h) Transport log. A permit holder may transport water spinach to and from a permitted facility for the purposes of sale without first generating individual transport invoices provided the permit holder:

(1) generates a water spinach transport invoice for each receiver at the time the water spinach is delivered; and

(2) maintains and possesses a current and accurate daily transport log at all times during transport. The water spinach transport log required by this section shall be on a department form and shall contain the following information, legibly written, for each sale:

(A) the date and time of shipment;

(B) the name, address, phone number, and exotic species permit number of the permit holder;

(C) the number of boxes of water spinach in possession at the time transport is commenced from the facility;

(D) for each delivery or acquisition of water spinach:

(i) the water spinach transport invoice number for each transfer of water spinach to or from the permit holder;

(ii) receiver/supplier's name, address, and phone number;

(iii) type of transfer--delivery or receipt; and

(iv) the number of boxes of water spinach transferred; and

(E) the number of boxes of water spinach in possession upon return to the facility.

(i) Recordkeeping. A copy of each daily transport log, if applicable, or transport invoice must be retained for a period of one year following the date of purchase or receipt. If water spinach is purchased or obtained from a lawful source outside the state, a copy of the receipt and documentation of lawful sale, if applicable, must be retained for a period of one year following the date of purchase or receipt. All records required by this section shall promptly be provided upon request during normal business hours to any department employee acting within the scope of official duties.

(j) Reporting. A person permitted under this section to grow water spinach shall submit quarterly reports to the department on a form supplied by the department. The quarterly reports required by this subsection shall be submitted by March 15, June 15, September 15, and December 15 of each year and must be submitted even if no sales occurred during the quarter.

(k) Escape or release prevention, notification, and emergency plan implementation.

(1) The permit holder shall not allow water spinach to escape from a facility or be released or spread outside the facility during cultivation, handling, packaging, processing, storage, shipping, or disposal.

(2) The use of water spinach to feed animals is prohibited.

(3) Water spinach that is not sold, transferred, or consumed and all fragments of water spinach not growing in soil or packaged must be placed into a secure container until packaged or transported to a secure waste or compost bin and composted, dried fully, or placed into black plastic bags prior to disposal.

(4) The holder of a permit issued under this subchapter shall notify the department within 72 hours of discovering the escape or release of water spinach from their facility or during transport.

(5) In the event that a facility subject to a permit issued under this section appears to be in imminent danger of flooding or other

circumstance that could result in the escape or release of water spinach, the permit holder shall:

(A) immediately begin implementation of emergency measures to prevent the escape or release of water spinach; and

(B) notify the department of implementation of emergency measures in accordance with permit provisions.

(6) In the event that water spinach escapes or is released from a greenhouse or a facility, the facility permit holder is responsible for all costs associated with the detection, control, and eradication of free-growing water spinach resulting from such escape or release and subsequent dispersal. Water spinach growing outside a greenhouse is considered to be escaped.

(l) Disposition of water spinach cultured without a permit. In the event that any facility is found to be culturing water spinach without a permit or following a decision by the department to refuse issuance or renewal of a permit, the department may prescribe a disposition protocol in accordance with §57.113 of this title (relating to General Provisions and Exceptions).

§57.119. Minimum Facility Requirements.

(a) General facility requirements.

(1) Unless specifically provided otherwise under this subchapter or the conditions of a permit issued under this subchapter, a facility operating under a controlled exotic species permit shall:

(A) prominently display a copy of the permit at the facility for which it was issued;

(B) be maintained in compliance with the standards set forth in this section at all times unless the department has been notified that facility repairs are necessary;

(C) satisfactorily demonstrate to the department at intervals of no more than five years, unless longer intervals are approved by the department based on systematic risk analysis, that activities authorized under this subchapter are conducted in compliance with the requirements of this subchapter and the facility is maintained in such a way as to prevent escape, release, or discharge of controlled exotic species; and

(D) train staff on permit conditions and requirements and ensure staff are prepared to implement the facility's department-approved emergency plan to prevent escape, release, or discharge of controlled exotic species into public water during a natural disaster such as a hurricane or flood.

(2) For limited special purpose permit holders who purchase, transport, and sell controlled exotic species for stocking in private ponds, a facility is not required. Required records shall be made available to department staff for inspection during normal business hours within 72 hours following a request by the department.

(3) Any facility containing controlled exotic species shall have security measures in place to minimize to the extent practicable the risk of unauthorized removal of controlled exotic species.

(4) The department may prescribe additional security measures as a condition of a permit upon determining that the facility requirements described in this section are not feasible or may not be sufficient to minimize risk of escape, release, or discharge or impacts to native species and ecosystems.

(b) Water spinach culture facility requirements. Water spinach culture facility requirements are described in §57.118 of this title (relating to Special Provisions--Water Spinach).

(c) Commercial aquaculture facility requirements.

(1) A facility holding controlled exotic species shall be designed to prevent escape, release, or discharge of controlled exotic species or unauthorized discharge of wastewater by means of appropriately designed and constructed screens, barriers, filters, recirculating aquaculture systems, or other methods that are approved by the department. All screens, barriers, or other approved devices intended to prevent escape, release, or discharge as required under this section shall be specified in the conditions of the permit and must be properly maintained at all times.

(2) If the facility employs screens to comply with the provisions of this section:

(A) screens must have a mesh size that is capable of preventing the passage of controlled exotic species at the smallest life stage present in the facility at the time of discharge;

(B) screens must be redundant or otherwise designed and constructed such that the level of protection against escape, release, or discharge of controlled exotic species is not reduced if a screen is damaged or must be removed to accomplish cleaning, repair, or other maintenance; and

(C) wastewater discharged from the facility must be routed through all screens in accordance with department approval prior to the point where wastewater leaves the facility.

(3) In addition to any other requirements of this subchapter, any portion of a facility that is to contain controlled exotic species and is located within the 100-year flood plain (referred to as Zone A on the National Flood Insurance Program Flood Insurance Rate Map) must be elevated above the 100-year floodplain or enclosed within an earthen or concrete dike or levee constructed in such a manner as to exclude all flood waters. No section of the crest of the dike or levee or building foundation, as applicable, may be less than one foot above the 100-year flood elevation. Dike and levee design and construction must be approved by the department.

(4) Facility Complex. For a facility that is part of a facility complex, the following additional facility standards apply:

(A) For a facility complex with a common drainage, each permit holder shall:

(i) maintain at least one screen or barrier capable of preventing the escape, release, or discharge of controlled exotic species into a common drainage; and

(ii) have authority to stop the discharge of wastewater from the entire complex in the event of escape, release, or discharge of controlled exotic species from the permit holder's facility.

(B) In addition to any other requirements of this subchapter, a permit holder whose facility is part of a facility complex shall ensure the installation of signage that clearly identifies each pond or other component of the permit holder's facility. Signage required by this section must:

(i) be legible;

(ii) bear the name and permit number of the permit holder;

(iii) be within 10 feet of the authorized pond or other facility component; and

(iv) correspond to the location of the pond or other facility component as indicated on the map provided to the department as required by §57.122 of this title (relating to Permit Application, Issuance, and Period of Validity).

§57.120. Wastewater Discharge Authority.

(a) An applicant for an initial exotic species permit must provide the following:

(1) written documentation demonstrating that the applicant possesses the appropriate valid wastewater discharge authorization or has received an exemption from the Texas Commission on Environmental Quality; or

(2) adequate documentation to demonstrate that the facility is designed and will be operated in a manner such that no discharge of waste into or adjacent to water in the state will, or is likely to occur.

(b) If the facility or facility complex is designed such that a discharge of waste into or adjacent to water in the state will, or is likely to occur, an applicant for an amendment or a renewal of an exotic species permit must provide written documentation demonstrating that the applicant possesses or has timely applied for and is pursuing the appropriate wastewater discharge authorization or exemption from the TCEQ in accordance with the Texas Pollutant Discharge Elimination System (TPDES) General Permit for concentrated aquatic animal production facilities TXG 130000.

(c) An exotic species permittee whose wastewater discharge authorization or exemption is revoked, suspended or annulled by the TCEQ will be treated as an applicant for an initial permit under subsection (a) of this section.

(d) An applicant for a permit for controlled exotic species of plants is not required to obtain a permit from the TCEQ for the purposes of this section.

§57.121. Transport of Live Controlled Exotic Species.

(a) Except as provided in §57.113 of this title (relating to General Provisions and Exceptions), no person may transport live controlled exotic species, except for:

(1) a person who is a controlled exotic species permit holder, an employee of the permit holder, or a common carrier acting on their behalf and in possession of:

(A) for permit holders or their employees, a copy of a valid permit issued under this subchapter; and

(B) a properly executed transport invoice; and

(C) for triploid grass carp, documentation that the grass carp have been certified as triploid by the Grass Carp Inspection and Certification Inspection Program operated by the U.S. Fish and Wildlife Service.

(2) private pond owners transporting tilapia or triploid grass carp to a private pond for stocking purposes in possession of:

(A) a properly executed transport invoice if obtained from a permit holder; or

(B) an aquatic product transport invoice in compliance with Parks and Wildlife Code, §47.0181 if obtained from a lawful out-of-state source; and

(C) for triploid grass carp, a copy of the permit for stocking triploid grass carp.

(3) a common carrier, provided that the shipment is:

(A) transported by aircraft from a point outside the state of Texas to a destination outside of the state of Texas;

(B) is not moved overland within the state of Texas; and

(C) is accompanied at all times by documentation of compliance with all applicable local source and destination, federal, and international regulations and statutes.

(4) a common carrier, provided the shipment is accompanied at all times by:

(A) a properly executed transport invoice generated by a controlled exotic species permit holder as described in subsection (c) of this section; or

(B) for triploid grass carp obtained from a lawful out-of-state source transported to a private pond for the purpose of stocking under a permit issued in accordance with §57.116 of this title (relating to Special Provisions--Triploid Grass Carp):

(i) a copy of the permit for stocking of triploid grass carp;

(ii) an aquatic product transport invoice in compliance with Parks and Wildlife Code, §47.0181; and

(iii) documentation that the grass carp have been certified as triploid by the Grass Carp Inspection and Certification Inspection Program operated by the U.S. Fish and Wildlife Service.

(b) Water spinach transport. Water spinach transport requirements are described in §57.118 of this title (relating to Special Provisions--Water Spinach).

(c) Transport invoice.

(1) A separate transport invoice shall be generated by the controlled exotic species permit holder for each delivery location in advance of transport except as provided in §57.118 of this title and shall accompany the controlled exotic species during transit.

(2) A transport invoice shall contain the following information, legibly written:

(A) date of shipment;

(B) for the controlled exotic species permit holder from whom the controlled exotic species was obtained:

(i) name;

(ii) facility address;

(iii) phone number; and

(iv) controlled exotic species permit number, if applicable;

(C) for the person or entity to whom the controlled exotic species is being transported:

(i) name;

(ii) physical address including county where the controlled exotic species will be possessed if different from the mailing address (not a post office box);

(iii) phone number; and

(iv) controlled exotic species permit number, if applicable;

(D) species being transported--for each species listed on the transport invoice, provide:

(i) the common and scientific names as they appear on the controlled exotic species permit; and

(ii) the number or weight, by size class; and

(E) type of transport--import, export, or intrastate (within Texas).

(d) Interstate transit.

(1) The holder of a controlled exotic species special purpose permit for interstate transit may transport live or viable controlled exotic species from a point outside of Texas via a route through Texas to another point outside of Texas in accordance with this subsection.

(2) The department may issue a transit permit that is valid for a single use or for a period of one year. Permits issued for one year shall expire on December 31.

(3) An annual or single-use transit permit may be obtained by completing and submitting an application on a department form and payment of the fee as specified in §53.15 of this title (relating to Miscellaneous Fisheries and Wildlife Licenses and Permits). The initial application for a transit permit shall be submitted at least 30 days prior to any intended transit activity.

(4) A person transporting controlled exotic species under the provisions of this subsection shall physically possess a copy of the transit permit at all times during transit and be able to provide documentation accounting for all controlled exotic species being transported.

(5) A person transporting controlled exotic species under a transit permit shall ensure that:

(A) controlled exotic species are securely contained at all times;

(B) controlled exotic species are not offloaded or transferred; and

(C) the department is notified immediately following any incident resulting in inadvertent escape, release, or discharge of controlled exotic species from containment, in accordance with permit provisions.

(6) For each intended transit, a notice shall be submitted on a department form. The completed notice form shall be submitted with the initial application for a single-use transit permit and at least 24 hours prior to any each intended transit under an annual transit permit. All notices must include:

(A) the dates and times that the permit holder expects to enter and depart the state of Texas while in possession of controlled exotic species;

(B) the common and scientific names of each controlled exotic species to be transported;

(C) the quantity (volumetric, number, weight, or other measurement convention) of each controlled exotic species being transported;

(D) the specific points of origin and destination of each controlled exotic species being transported;

(E) the specific route the transport will follow, including the locations where the transporter will enter and depart the state of Texas;

(F) a description of the make, model, and color of the vehicle, trailer, or other conveyance to be employed in transport and license plate numbers; and

(G) the name, driver's license number, and contact numbers of the driver or contact information for the commercial shipper transporting the controlled exotic species through the state of Texas.

§57.122. Permit Application, Issuance, and Period of Validity.

(a) Interstate transit permits. Interstate transit permit application, issuance, and period of validity are described in §57.121 of this title (relating to Transport of Live Controlled Exotic Species).

(b) Permit application.

(1) Submission deadline. An initial application for any permit under this subchapter shall be submitted at least 30 days prior to any prospective activity involving controlled exotic species.

(2) General requirements. An applicant for any permit under this subchapter shall submit:

(A) Application--a completed and signed application for the appropriate permit on a form supplied by the department;

(B) Applicant information--Texas driver's license or identification number, Social Security number, and date of birth for the applicant and each manager or other person who is to supervise permitted activities;

(C) Additional required documentation--as described in subsection (3) of this section or otherwise specified by this subchapter; and

(D) Fees--the appropriate fee specified in §53.15 of this title (relating to Miscellaneous Fisheries and Wildlife Licenses and Permits), except that fees shall be waived for:

(i) public school educational programs meeting the conditions in Parks and Wildlife Code, §66.007(c-1) provided that the applicant submits a written request for a fee waiver, including course descriptions or curriculum demonstrating controlled exotic species will be part of an educational program that includes tilapia aquaculture and hydroponics;

(ii) physical removal of controlled exotic species of plants from public water in accordance with an approved treatment proposal in accordance with §57.932 of this title (relating to State Aquatic Vegetation Plan); and

(iii) stocking triploid grass carp in public water.

(3) Additional documentation requirements.

(A) Required licenses. Applicants for commercial aquaculture facility permits or limited special purpose permits for private pond stocking shall submit a copy of the appropriate, valid aquaculture license or fish farm vehicle license issued by the Texas Department of Agriculture under Agriculture Code, Chapter 134.

(B) Wastewater discharge authorization. Applicants for commercial aquaculture facility permits shall submit documentation required by §57.120 of this title (relating to Facility Wastewater Discharge Requirements).

(C) Nuisance Aquatic Vegetation treatment proposal. Applicants for a permit to possess, transport, and dispose controlled exotic species of plants shall also submit a treatment proposal on a department form in accordance with §57.932 of this title that includes maps showing the location where plant removal and/or disposal is to occur and routes from the removal location to the location for disposal of controlled exotic species of plants.

(D) Facility map. Applicants for commercial aquaculture facility permits, biological control production permits, zoological display or research permits with outdoor holding facilities, or limited special purpose permits for wastewater treatment shall submit an accurate map or aerial photograph of the facility location with the initial application. For facilities located within the 100-year flood plain, a professionally surveyed map may be required by the department. Maps shall be clearly labeled to indicate, at a minimum, the location of:

(i) any facility ponds, greenhouses, recirculating aquaculture systems or other infrastructure used to possess, propagate, culture, or transport controlled exotic species;

(ii) all drainage routes and structures, including adjacent ditches or natural drainage features;

(iii) all points at which water, wastewater, or waste is capable of being discharged or else noting that the facility does not discharge; and

(iv) all screens, barriers, or other structures that are intended or serve to prevent escape, release, discharge, or unauthorized removal of controlled exotic species.

(E) Emergency plan. Applicants for commercial aquaculture facility permits, water spinach culture facility permits, research permits (when live controlled exotic species are possessed), zoological display permits, and biological control production permits shall submit a written emergency plan, on the appropriate department form, demonstrating that the applicant has identified measures sufficient to prevent escape, release, or discharge of controlled exotic species into public water during a natural event such as a hurricane or flood. Approved emergency plan shall be posted and maintained on file at the facility.

(F) Research proposal and researcher qualifications. An applicant for a permit to conduct scientific research involving controlled exotic species shall also submit a research proposal and documentation of applicant qualifications to conduct controlled exotic species research.

(G) Biological control production plan. An applicant for a permit to culture controlled exotic species of plants as hosts for the purposes of production of biological control agents shall also submit a written production plan statement to include, at a minimum:

(i) the proposed number of biological control agents, if any, to be collected from public waters each year;

(ii) the expected production of the controlled exotic species of plants in acres or square feet; and

(iii) the intended use of the biological control agents including water bodies where the biological control agents may be introduced.

(c) Permit issuance. The department will not issue a permit under this subchapter for any purpose until:

(1) the application and additional documentation required by this section are determined to be adequate and complete;

(2) fees have been submitted, if applicable;

(3) facility has been inspected and approved in accordance with the requirements of §57.119 of this title (relating to Minimum Facility Requirements), if applicable; and

(4) the department has determined that the prospective activity is consistent with the department's management policies and goals and will not detrimentally affect threatened or endangered species or their habitat or affect existing biological ecosystems.

(d) Period of validity. Unless otherwise provided in this subchapter, a controlled exotic species permit issued under this subchapter is valid from the date of issuance until December 31 of the year of issuance, except that a permit to physically remove controlled exotic plants from public water in accordance with an approved vegetation treatment proposal shall have the same period of validity as the vegetation treatment proposal, as specified in the guidance document required by §57.932 of this title.

§57.123. Permit Amendment and Renewal.

(a) A permit issued under this subchapter for a specific facility is valid only for the site named on the permit and may not be amended to authorize any other facility.

(b) A permit must be amended and the permit holder must receive the amended permit prior to any of the following actions on the part of the permit holder:

(1) obtaining species or subspecies of controlled exotic species requested for addition to the amended permit;

(2) transferring managerial or supervisory responsibilities to a person other than the current permit holder;

(3) changing methods of preventing discharge of wastewater; or

(4) changing methods of preventing escape, discharge, or release of controlled exotic species.

(c) A permit issued under this subchapter may be amended or renewed upon a finding by the department that the applicant has:

(1) submitted a written request for permit amendment or renewal application on a department form prior to the expiration date of the current permit at least 7 days prior to transfer of managerial or supervisory responsibilities to a new person;

(2) submitted the appropriate fee if required by the department, including inspection fee for facility modifications as specified in §53.15 of this title (relating to Miscellaneous Fisheries and Wildlife Licenses and Permits);

(3) has complied with all permit provisions; and

(4) met the requirements of §57.119 of this title (relating to Minimum Facility Requirements), if applicable, and/or demonstrate that the facility and demonstrated that the facility is operated and maintained in a manner such that no escape, release, or discharge of controlled exotic species into public water or into facility ponds or drainage structures not meeting minimum facility requirements will or is likely to occur.

(d) A Commercial aquaculture facility permit issued under this subchapter may be renewed for a period at the request of the permit holder of:

(1) one permit year upon a finding by the department that the applicant and facility have complied with all provisions of this subchapter for a period of at least an entire permit year;

(2) three permit years upon a finding by the department that the applicant and facility have complied with all provisions of this subchapter and maintained a permit for a period of at least three entire consecutive permit years; or

(3) five permit years upon a finding that the applicant and the facility have complied with all provisions of this subchapter for a period of at least five entire consecutive permit years.

§57.124. Refusal to Issue; Review of Agency Decision to Refuse Issuance.

(a) Refusal to issue.

(1) The department may refuse issuance or renewal, as applicable, of a permit to any person or for any facility if the department determines that a prospective activity constitutes a threat to native species, habitats, or ecosystems or is inconsistent with department management goals and objectives.

(2) The department may refuse issuance, amendment, or renewal, as applicable, of a permit to any person:

(A) who has been convicted of, pleaded guilty or nolo contendere to, received deferred adjudication or pre-trial diversion for, or been assessed an administrative or civil penalty for a violation of:

(i) this subchapter;

(ii) Parks and Wildlife Code, §§66.007, 66.0072, or 66.015;

(iii) Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony;

(iv) Penal Code, §37.10;

(v) Lacey Act, 16 U.S.C. §§3371-3378; or

(vi) a provision of federal law applicable to grass carp.

(B) if another person employed, authorized, or otherwise utilized to perform permitted activities by the applicant has been convicted of, pleaded guilty or nolo contendere to, or received deferred adjudication or pre-trial diversion for an offense listed in subsection (a)(2)(A) of this section.

(3) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is not eligible for a permit under the provisions of this subchapter.

(4) The department may refuse to renew the permit of any person who is not in compliance with applicable reporting or record-keeping requirements.

(5) The duration of the denial period may be:

(A) determined by the department based upon the severity and relevance of the conviction and the applicant's conviction and permit compliance history; and

(B) up to a period of five calendar years.

(b) Review of agency decision to refuse issuance.

(1) An applicant for a permit or permit renewal may request a review of a decision of the department to refuse issuance of a permit or permit renewal (as applicable).

(2) An applicant seeking review of a decision of the department must submit a written request for review within 10 working days of being notified by the department that the application for a permit or permit renewal has been denied.

(3) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.

(4) The department shall seek to conduct the review within 30 days of receipt of the request required by paragraph (2) of this subsection unless another date is established in writing by mutual agreement between the department and the requestor.

(5) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with knowledge of relevant resources or programs, appointed or approved by the executive director or designee.

(6) The decision of the review panel is final.

§57.125. Reporting, Recordkeeping, and Notification Requirements.

(a) Reporting, recordkeeping, and notification requirements for holders of water spinach culture facility permits are described in §57.118 of this title (relating to Special Provisions--Water Spinach).

(b) Reporting requirements.

(1) All reports will be submitted on department forms or in a format prescribed by the department, as applicable.

(2) All annual reports for permits other than for water spinach shall be due by January 30 of the year following the calendar year for which the permit was issued.

(3) Commercial aquaculture facility.

(A) The holder of a commercial aquaculture facility permit authorizing aquaculture and sale of controlled exotic species of shrimp or triploid grass carp shall submit to the department an annual report that accounts for the total quantity or weight of controlled exotic species of shrimp or triploid grass carp for all instances of purchase, transfer, sale, importation, exportation, or other disposition of any controlled exotic species during the permit period.

(B) The holder of a commercial aquaculture facility permit authorizing aquaculture and sale of tilapia is not required to submit an annual report.

(4) Biological control production. The holder of a permit for biological control production shall submit to the department a report of host plant production, biological control agent production, number and locations of collections and introductions, and number of sales if applicable.

(5) Research. The holder of a permit for controlled exotic species research shall submit to the department a report describing the research activities conducted on all species listed on the permit.

(6) Zoological display. The holder of a permit for zoological display shall submit a report accounting for all controlled species in possession, obtained, transferred, or dispatched during the permit year.

(7) Limited special purpose permits.

(A) The holder of a limited special purpose permit for tilapia and triploid grass carp sale for private pond stocking issued under §57.114(f)(2) of this title (relating to Controlled Exotic Species Permits) shall submit to the department an annual report that accounts for total quantity or weight of triploid grass carp for all instances of purchase, transfer, sale, importation, exportation, or other disposition during the permit period.

(B) Holders of limited special purpose permits for possession, transport, and disposal activities not otherwise authorized by the provisions of proposed §57.113 (relating to General Provisions and Exceptions) may be required to submit a report to the department in accordance with permit conditions.

(C) Reports are not required for other limited special purpose permits.

(c) Recordkeeping requirements for permits. The holder of a permit issued under this subchapter shall maintain at the facility or record-keeping location, and upon the request of any department employee acting within the scope of official duties during normal business hours, promptly make available for inspection:

(1) copies of transport invoices for the previous one year, generated in accordance with §57.121 of this title (relating to Transport of Live Controlled Exotic Species);

(2) any other permit or records required by this subchapter; and

(3) documentation of current permits or authorizations required as a prerequisite for any permits issued under this subchapter and issued under the authority of:

(A) Water Code, Chapter 26; and

(B) Agriculture Code, Chapter 134.

(d) Notification requirements for permits.

(1) Notification requirements for limited special purpose permits for interstate transit are described in §57.121(d) of this title.

(2) The holder of a permit issued under this subchapter shall notify the department within 24 hours of discovering the escape, release, or discharge of controlled exotic species from their facility or during transport.

(3) In the event that a facility or facility complex subject to a permit issued under this subchapter appears to be in imminent danger of overflow, flooding, or other circumstance that could result in the escape, release, or discharge of controlled exotic species into public water, the permit holder shall immediately:

(A) begin implementation of the emergency plan approved by the department to prevent the escape, release, or discharge of controlled exotic species into public water; and

(B) notify the department in accordance with permit provisions.

(4) Except in case of an emergency, the holder of a controlled exotic species permit authorizing possession of controlled exotic species of shrimp must notify the department at least 72 hours prior to, but not more than 14 days prior to any harvesting of permitted shrimp. In an emergency, notification of harvest must be made as early as practicable prior to beginning of harvest operations.

(5) The holder of a commercial aquaculture facility permit must notify the department not less than 72 hours prior to any instance of the import or export of triploid grass carp. The notification must include:

(A) number of grass carp being purchased;

(B) source of grass carp;

(C) ploidy level of grass carp;

(D) final destination of grass carp;

(E) name of certifying authority who conducted triploid grass carp certification; and

(F) name, address, and exotic species permit number and aquaculture license number (as applicable) of both the transporter and the receiver.

(6) The holders of permits for commercial aquaculture facilities, zoological display or research facilities when live controlled exotic species are possessed, and biological control production facilities shall:

(A) notify the department at least 14 days prior to making modifications:

(i) to the methods of preventing escape, release, or discharge of controlled exotic species approved under the current permit provisions;

(ii) affecting the discharge of water, wastewater, or waste from a facility; or

(iii) to the required facility infrastructure set forth under the permit provisions or §57.119 of this title (relating to Minimum Facility Requirements).

(B) The permit holder must furnish to the department photographs and revised maps of modifications. The department may conduct an onsite inspection upon a determination that the nature of a prospective modification requires further investigation.

§57.126. Discontinuation of Permitted Activities; Sale or Transfer of Permitted Facility.

(a) The department may order a permit holder in writing to cease possession, importation, exportation, sale, purchase, transportation, propagation, or culture of controlled exotic species until such time as clearly stated conditions are met and prescribe a disposition protocol in accordance with §57.113(m) of this title (relating to General Provisions and Exceptions), if:

(1) the department determines that there is a threat of escape, release, or discharge of controlled exotic species and/or potential threat to native species or ecosystems; or

(2) the permit holder's permit, license, authorization, or exemption is revoked or suspended by:

(A) the Texas Commission on Environmental Quality (TCEQ); or

(B) the Texas Department of Agriculture (TDA); or

(3) the permit holder fails to renew a permit, license, authorization, or exemption issued by:

(A) the TCEQ; or

(B) the TDA.

(b) If a permit holder chooses to discontinue permitted activities involving controlled exotic species, the permit holder shall:

(1) notify the department at least 14 days prior to permit expiration or expected date permitted activities will be discontinued;

(2) lawfully sell, transfer, or destroy all remaining inventory of the species in possession prior to permit expiration or expected date upon which permitted activities will be discontinued; and

(3) provide a final report to the department, if applicable, within 30 days following discontinuation of activities and in accordance with the provisions of §57.125 of this title (relating to Reporting, Recordkeeping, and Notification Requirements).

(c) If a permit holder intends to sell a facility containing controlled exotic species along with remaining inventory of the species in possession, the permit holder shall inform in the department in writing of intent to sell at least 14 days in advance of expected closing date and notify the department within 72 hours of finalizing the sale of the facility and provide the name, address, and phone number of the purchaser.

(d) Transitional Operation. A permitted facility may continue to operate under the permit in effect for the facility following a change in ownership provided:

(1) the facility is in compliance with the provisions of this subchapter;

(2) the new owner submits an application for a controlled exotic species permit to the department in accordance with §57.122 of this title (relating to Permit Application, Issuance, and Period of Validity); and

(3) the new owner provides proof to the department that the necessary permits from the TCEQ and TDA as identified in §57.122 of this title have been obtained or applications submitted and complies with all applicable regulations from those agencies; and

(4) the department provides written approval of transitional operation until such time as the necessary wastewater and aquaculture permits are:

(A) issued by the regulatory authority and the controlled exotic species permit is issued by the department; or

(B) denied by the regulatory authority.

§57.127. Memorandum of Understanding between the Texas Parks and Wildlife Department, the Texas Commission on Environmental Quality, and the Texas Department of Agriculture.

The provisions of 30 TAC §7.103 (relating to Memorandum of Understanding (MOU) between the Texas Commission on Environmental Quality (Commission), the Texas Parks and Wildlife Department (TPWD), and the Texas Department of Agriculture (TDA), which were adopted by the Commission to take effect January 9, 2001, are adopted by reference.

§57.128. Penalties.

A person who violates a provision of this subchapter or a provision of a permit issued under this subchapter commits an offense punishable by the penalties prescribed by the Parks and Wildlife Code, §66.012.

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 September 14, 2020.

TRD-202003735
Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 389-4775

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31 TAC §§57.112 - 57.137

STATUTORY AUTHORITY

The repeals are proposed under the authority of Parks and Wildlife Code, §66.007, which authorizes the department to make rules necessary to authorize the import, possession, sale, or introduction of harmful or potentially harmful exotic fish.

The proposed repeals affect Parks and Wildlife Code, Chapter 66.

§57.112. General Rules.
§57.113. Exceptions.
§57.114. Health Certification of Harmful or Potentially Harmful Exotic Shellfish.
§57.115. Transportation of Harmful or Potentially Harmful Exotic Species.
§57.116. Exotic Species Transport Invoice.
§57.117. Exotic Species Permit: Application Requirements.
§57.118. Exotic Species Permit Issuance.
§57.119. Exotic Species Permit: Requirements for Permits.
§57.120. Exotic Species Permit: Expiration and Renewal.
§57.121. Exotic Species Permit--Amendment.
§57.122. Permit Denial Review.
§57.123. Exotic Species Permit Reports.
§57.124. Triploid Grass Carp; Sale, Purchase.
§57.125. Triploid Grass Carp Permit; Application, Fee.
§57.126. Triploid Grass Carp Permit; Terms of Issuance.
§57.127. Triploid Grass Carp Permit; Denial.
§57.128. Exotic Species Permits, Triploid Grass Carp Permits; Revocation.
§57.129. Exotic Species Permit: Private Facility Criteria.
§57.130. Exotic Species Interstate Transport Permit.
§57.131. Exotic Species Interstate Transport Permit: Application and Issuance.
§57.132. Exotic Species Interstate Transport Permit: Permittee Requirements.
§57.133. Exotic Species Interstate Transport Permit: Expiration and Renewal.
§57.134. Wastewater Discharge Authority.
§57.135. Memorandum of Understanding between the Texas Parks and Wildlife Department, the Texas Commission on Environmental Quality, and the Texas Department of Agriculture.
§57.136. Special Provisions--Water Spinach.
§57.137. Penalties.

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

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CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.21

The Texas Parks and Wildlife Department proposes an amendment to 31 Texas Administrative Code §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

The proposed amendment would prohibit the harvest of oysters for two years at six sites: three sites in Conditionally Approved Area TX-4 in upper Galveston Bay (Trinity Sanctuary Reef, Trinity Harvestable Reef 1, and Trinity Harvestable Reef 2; approximately 23.0, 16.9 and 16.9 acres, respectively), one site in Conditionally Approved Area TX-6 in Galveston Bay (Resignation Reef, 27.2 acres), one site in Conditionally Approved Area TX-1 in Galveston Bay (Pepper Grove Reef, 11.9 acres), and one site in Approved Area TX-30 in Aransas Bay (Grass Island Reef, 80 acres). The Texas Department of State Health Services (DSHS) regulates shellfish sanitation and designates specific areas where oysters may be harvested for human consumption. The designation of "Conditionally Approved" or "Approved" is determined by DSHS. The proposed amendment would also correct the name of a reef complex in subsection (c)(2)(A)(ii). The current rules refer to that area as South Redfish Reef. It is more commonly known as Pasadena Reef.

The temporary closures will allow for the planting of oyster cultch to repopulate in those areas and enough time for those oysters to reach legal size for harvest. Oyster cultch is the material to which oyster spat (juvenile oysters) attach in order to create an oyster bed.

Under Parks and Wildlife Code, §76.115, the department may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked. Oyster reefs in Texas have been impacted due to drought, flooding, and hurricanes (Hurricane Ike, September 2008 and Hurricane Harvey, August 2017), as well as high harvest pressure. The department's oyster habitat restoration efforts to date have resulted in a total of approximately 1,720 acres of oyster habitat returned to productive habitat within these bays.

House Bill 51 (85th Legislature, 2017) included a requirement that certified oyster dealers re-deposit department-approved cultch materials in an amount equal to thirty percent of the total volume of oysters purchased in the previous license year. For the 2021 fiscal year, the department anticipates this requirement will result in the restoration of more than thirty acres. Funds generated from House Bill 51 were used to restore 4.5 acres on Pepper Grove Reef in 2019 and are expected to be used to restore up to 27.2 acres on Resignation Reef in 2020-2021.

Following Hurricane Harvey in 2017, the National Marine Fisheries Service (NMFS) awarded the Texas Parks and Wildlife Department over $13 million of fisheries disaster relief funding that was appropriated by Congress under the Bipartisan Budget Act of 2018 (P.L. 115-123). The notification to the governor of Texas from National Marine Fisheries Service (NMFS) stated that funds should be spent to "strengthen the long-term economic and environmental sustainability of the fishery", and over $4 million was dedicated specifically to oyster restoration activities. A portion of these funds, combined with funding generated by House Bill 51 (2017) and the Shell Recovery Program (Chapter 76.020, Senate Bill 932, 82nd Leg., 2011), will be used to restore oyster habitats within an 80-acre area on Grass Island reef in Aransas Bay. Oyster abundance on this reef has severely declined over time, and average oyster abundance on Grass Island is 75% less than the average oyster abundance on other reefs in Aransas Bay. The portion of the reef selected for restoration is characterized by degraded substrates. The restoration activities will focus on establishing stable substrate and providing suitable conditions for spat settlement and oyster bed development.

The upper Galveston Bay sites are located in the proximity of Beasley Reef near Trinity Bay and have been degraded due to a variety of stressors. The Nature Conservancy (TNC) secured funding through the National Fish and Wildlife Foundation (NFWF) Gulf Environmental Benefit Fund (GEBF) program to restore oyster habitat. The three sites in upper Galveston Bay include two 16.9-acre sites that will be restored on a degraded oyster reef that is commercially- and recreationally-fished, and 23.0 acres that will serve as a sanctuary reef. The sanctuary reef will be constructed of cultch materials of a size that will limit commercial harvest activities and provide a source of oyster larvae that will colonize other oyster habitat in this bay system.

Lance Robinson, Deputy Division Director, Coastal Fisheries Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Robinson also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state; the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens; the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices; the potential for increased oyster production by repopulating damaged public oyster reefs and allowing these oysters to reach legal size and subsequent recreational and commercial harvest; and providing protection from harvest to a reef complex, thus establishing a continual supply of oyster larvae to colonize oyster habitat within the bay system.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that because the areas designated for closure have been degraded to the extent that they no longer support any commercial exploitation, the closures effected by the proposed rules will not result in direct adverse economic impacts to any small business, microbusiness, or rural community. The department does note, however, that numerous areas previously closed (South Redfish Reef, Texas City 1, and Texas City 2, Hanna's Reef, and Middle Reef), are now home to healthy populations of oysters that have reached legal size and may be harvested by both recreational and commercial users.

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

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

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

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

The department has determined that the proposed rules is in compliance with Government Code §505.11 (Actions and Rule Amendments Subject to the Coastal Management Program).

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

Comments on the proposed rule may be submitted to Dr. Tiffany Hopper, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650; email: *tiffany.hopper@tpwd.texas.gov,* or via the department website at *www.tpwd.texas.gov.*

The amendment is proposed under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase and sale of oysters, including prescribing the times, places, conditions, and means and manner of taking oysters.

The proposed amendment affects Parks and Wildlife Code, Chapter 76.

§58.21. Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

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

(c) Area Closures.

(1) (No change.)

(2) No person may take or attempt to take oysters within an area described in this paragraph. The provisions of subparagraphs (A)(i) - (ii), (B), and (C) [~~(A)~~ - ~~(C)~~] of this paragraph cease effect on November 1, 2021. The provisions of subparagraphs (A)(iii) - (vii), (D) and (E) of this paragraph cease effect on November 1, 2022.

(A) Galveston Bay.

(i) (No change.)

(ii) Pasadena Reef [~~South Redfish Reef~~]. The area within the boundaries of a line beginning at 29° 28' 21.1"N, 94° 49' 17.3"W (29.472517°N, -94.821472°W; corner marker buoy A); thence, to 29° 28' 08.3"N, 94° 49' 00.3"W (29.468971°N, -94.816744°W; corner marker buoy B); thence to 29° 27' 58.9"N, 94° 49' 09.7"W (29.466359°N, -94.81935°W; corner marker buoy C); thence to 29° 28' 12.0"N, 94° 49' 26.5"W (29.469989N, -94.824025 °W; corner marker buoy D); and thence and back to corner marker buoy A.

(iii) Pepper Grove Reef. The area within the boundaries of a line beginning at 29° 29' 14.7"N, 94° 40' 01.0"W (29.487421°N, -94.666944°W; corner marker buoy A); thence, to 29° 29' 14.8"N, 94° 39' 52.3"W (29.48745°N, -94.664525°W; corner marker buoy B); thence to 29° 29' 08.1"N, 94° 39' 52.2"W (29.485596°N, -94.664497°W; corner marker buoy C); thence to 29° 29' 08.0"N, 94° 40' 00.9"W (29.485567°N, -94.666915°W; corner marker buoy D); and thence back to corner marker buoy A.

(iv) Resignation Reef. The area within the boundaries of a line beginning at 29° 28' 54.3"N, 94° 52' 23.6"W (29.481741°N, -94.873234°W; corner marker buoy A); thence, to 29° 28' 49.3"N, 94° 52' 35.4"W (29.480370°N, -94.876513°W; corner marker buoy B); thence to 29° 28' 39.5"N, 94° 52' 27.5"W (29.477627°N, -94.874316°W; corner marker buoy C); thence to 29° 28' 47.7"N, 94° 52' 18.1"W (29.479921°N, -94.871687°W; corner marker buoy D); and thence back to corner marker buoy A.

(v) Trinity Sanctuary Reef. The area within the boundaries of a line beginning at 29° 38' 26.2"N, 94° 51' 53.1"W (29.640616°N, -94.864753°W; corner marker buoy A); thence, to 29° 38' 22.9"N, 94° 51' 48.7"W (29.639701°N, -94.863539°W; corner marker buoy B); thence to 29° 38' 17.9"N, 94° 51' 49.8"W (29.638304°N, -94.863857°W; corner marker buoy C); thence to 29° 38' 13.2"N, 94° 51' 50.1"W (29.636994°N, -94.863926°W; corner marker buoy D); thence to 29° 38' 10.1"N, 94° 51' 53.2"W (29.636131°N, -94.864777°W; corner marker buoy E); thence to 29° 38' 17.1"N, 94° 52' 01.3"W (29.638092°N, -94.867041°W; corner marker buoy F); and thence back to corner marker buoy A.

(vi) Trinity Harvestable Reef 1. The area within the boundaries of a line beginning at 29° 38' 56.2"N, 94° 51' 34.4"W (29.648936°N, -94.859552°W; corner marker buoy A); thence, to 29° 38' 58.8"N, 94° 51' 29.5"W (29.649673°N, -94.858202°W; corner marker buoy B); thence to 29° 38' 55.4"N, 94° 51' 27.1"W (29.648733°N, -94.857531°W; corner marker buoy C); thence to 29° 38' 56.7"N, 94° 51' 24.8"W (29.649075°N, -94.856906°W; corner marker buoy D); thence to 29° 38' 50.5"N, 94° 51' 20.5"W (29.647369°N, -94.855690°W; corner marker buoy E); thence to 29° 38' 46.8"N, 94° 51' 27.7"W (29.646345°N, -94.857704°W; corner marker buoy F); and thence back to corner marker buoy A.

(vii) Trinity Harvestable Reef 2. The area within the boundaries of a line beginning at 29° 36' 47.0"N, 94° 52' 23.7"W (29.613063°N, -94.873269°W; corner marker buoy A); thence, to 29° 36' 37.2"N, 94° 52' 22.9"W (29.610327°N, -94.873046°W; corner marker buoy B); thence to 29° 36' 36.7"N, 94° 52' 31.1"W (29.610187°N, -94.875306°W; corner marker buoy C); thence to 29° 36' 46.5"N, 94° 52' 31.9"W (29.612924°N, -94.875529°W; corner marker buoy D); and thence back to corner marker buoy A.

(B) - (C) (No change.)

(D) Aransas Bay - Grass Island Reef. The area within the boundaries of a line beginning at 28° 06' 17.9"N, 97° 00' 25.6"W (28.104990°N, -97.007128°W; corner marker buoy A); thence, to 28° 06' 06.1"N, 97° 00' 12.7"W (28.101691°N, -97.003527°W; corner marker buoy B); thence to 28° 06' 20.45"N, 96° 59' 55.9"W (28.105682°N, -96.998876°W; corner marker buoy C); thence to 28° 06' 32.3"N, 97° 00' 08.9"W (28.108981°N, -97.002476°W; corner marker buoy D); and thence back to corner marker buoy A.

(E) [~~(D)~~] Christmas Bay, Brazoria County.

(F) [~~(E)~~] Carancahua Bay, Calhoun and Matagorda County.

(G) [~~(F)~~] Powderhorn Lake, Calhoun County.

(H) [~~(G)~~] Hynes Bay, Refugio County.

(I) [~~(H)~~] St. Charles Bay, Aransas County.

(J) [~~(I)~~] South Bay, Cameron County.

(K) [~~(J)~~] Areas along all shorelines extending 300 feet from the water's edge, including all oysters (whether submerged or not) landward of this 300-foot line.

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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Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 389-4775

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Department of Family and Protective Services (DFPS) proposes amendments to §700.1753 and §700.1755 and deletion of §700.1757 and §700.1759 in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter Q, Division 3, relating to Reimbursement Methodology for 24-Hour Child Care Facilities. DFPS also proposes new rule §700.348 in Chapter 700, Subchapter C, relating to Eligibility for Child Protective Services.

BACKGROUND AND PURPOSE

Rule §700.1753 is being amended to capture rate increases from the HB 1, Article II, Rider 26, 86th Legislature. New rule §700.348 is being added and rule §700.1755 is being amended to allow providers to deliver additional case management services to young adults who might not otherwise be able to successfully adjust to and maintain in a Supervised Independent Living (SIL) placement. SIL placements are designed to be independent environments with less supervision than traditional foster care settings. Some young adults who have complex needs require more case management to be able to successfully acclimate to a SIL placement. These rules will allow providers to deliver such services.

Rules §700.1753 and §700.1755 are also being amended to remove reference to an automatic public hearing prior to adopting new rates as there is limited public benefit to using this current process to obtain stakeholder feedback on proposed rates. Stakeholders would still have the opportunity to provide more meaningful feedback through regularly scheduled DFPS public meetings involving residential providers; by testifying at state legislative hearings concerning foster care rates as the legislature generally sets rates in the General Appropriations Act; through the cost reporting process which involves residential providers annually reporting allowable costs and revenues to the Health and Human Services Commission (HHSC) to allow HHSC to accurately calculate rates based on financial and statistical information; and through the rulemaking process which requires publishing proposed rules, including DFPS rate rules, in the Texas Register to provide the public an opportunity to comment on rate changes. Also, notwithstanding the above, the DFPS Commissioner is mandated under Human Resources Code §40.004(c) to grant an opportunity for a public hearing if requested by at least 25 persons, a governmental entity, or an association with at least 25 members and also retains the ability to hold a public hearing for any purpose at any time.

Rules §700.1757 and §700.1759 are being deleted as obsolete rates that are no longer in DFPS operations.

SECTION-BY-SECTION SUMMARY

New §700.348 allows for provision of Enhanced Case Management services to eligible young adults in certain SIL placements who require more assistance to successfully adjust to and maintain in a Supervised Independent Living placement.

The proposed amendments to §700.1753 include: (1) replacing language concerning public hearing with language allowing providers of 24-hour residential child care services opportunity to discuss rate changes in regularly scheduled DFPS public meetings; (2) deleting reference to Integrated Care Coordination (ICC) in (q)(7)and renumbering (q)(7) - (11) as a result of deletion of the ICC reference; (3) adding new (q)(11) which provides references to the Intensive Psychiatric Transition Program (IPTP) definition; and (4) adding subsection (v) which details the rates effective September 1, 2019 for 24-Hour Residential Child-Care Reimbursements.

The proposed amendments to §700.1755 include: (1) incorporating the Enhanced Case Management services into the reimbursement section for SIL and (2) deleting reference to §355.105(g) regarding public hearings and replacing with language allowing providers of 24-hour residential child care services opportunity to discuss rate changes in regularly scheduled DFPS public meetings.

§700.1757 is being repealed as an obsolete rate no longer in DFPS operations.

§700.1759 is being repealed as an obsolete rate no longer in DFPS operations.

FISCAL NOTE

David Kinsey, Chief Financial Officer of DFPS, has determined that for each year of the first five years that §700.1753 will be in effect there will be no fiscal implications to local governments as a result of enforcing and administering this section as proposed. There will be an estimated cost of $8.5 million General Revenue/$11.7 million All Funds to the state for the rate increases. DFPS received appropriations through HB 1, 86th Legislature for the rate increases included in §700.1753.

David Kinsey, Chief Financial Officer of DFPS, has determined that for each year of the first five years that §700.348 and §700.1755 will be in effect there will be no fiscal implications to local governments as a result of enforcing and administering these sections as proposed. There will be an estimated cost of $620,583 General Revenue/$1.1 million All Funds to the state for the rate increases. DFPS received appropriations through HB 1, 86th Legislature for the SIL Enhanced Case Management services rate.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the section(s) will be in effect:

(1) §§700.348 and 700.1755 will expand a government program to the extent that DFPS is implementing enhanced case management services which allows Supervised Independent Living (SIL) providers to deliver additional case management services to young adults who might not otherwise be able to successfully adjust to and maintain in a SIL placement;

(2) implementation of the proposed new rule and amendments to existing rules will not affect the number of employee positions;

(3) implementation of the proposed new rule and amendments to existing rules will not require an increase or decrease in future legislative appropriations;

(4) the proposed new rule and amendments to existing rules will not affect fees paid to the agency;

(5) the proposed action will create a new regulation to the extent that §700.348, concerning enhanced case management services for young adults who participate in the SIL program, is being added to Chapter 700;

(6) the proposed action will expand existing regulations to the extent that §700.1753 is being amended to reflect the new foster

care rate and §700.1755 is being amended to include enhanced case management services in the reimbursement methodology for SIL and will also repeal existing regulations to the extent that §700.1757 and §700.17539 are being deleted as obsolete;

(7) the proposed action will change the number of individuals subject to a rule to the extent that §§700.348 and 700.1755 are expanding the population of youth that are eligible for SIL through the implementation of enhanced case management services; and

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

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

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

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with these section as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code §2001.0045, the statute does not apply to a rule that is adopted by the Department of Family and Protective Services.

PUBLIC BENEFIT

For each year of the first five years §700.1753 is in effect, the public benefit anticipated as a result of enforcing the section is that increased rates will lead to improved service delivery by 24 hour residential child care providers.

For each year of the first five years that rules §700.348 and §700.1755 are in effect, the public benefit anticipated as a result of enforcing these sections is that more young adults who have complex needs will successfully adjust to and maintain in SIL placements. This will allow these young adults to successfully transition to independent living after leaving Extended Foster Care. Another anticipated benefit is increased provider capacity for young adults 18 and older who have complex needs.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Electronic comments and questions may be submitted to clare.seagraves@dfps.state.tx.us. Written comments on the proposal may be submitted to Clare Seagraves, Senior Financial Analyst, 701 West 51st Street, Mail Code E672, Austin, Texas 78751, within 30 days of publication of this proposal in the *Texas Register.*

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

40 TAC §700.348

STATUTORY AUTHORITY

The new section is proposed under Human Resources Code §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

No other statutes, articles, or codes are affected by the proposed rules.

§700.348. Enhanced Case Management Services in a Supervised Independent Living Setting.

(a) Enhanced Case Management (ECM) services can be provided to eligible young adults who participate in the Supervised Independent Living (SIL) Program when these young adults require additional support or services to be able to adjust and maintain independence while residing in the SIL placement. ECM services can include, but are not limited to:

(1) assisting the young adult in scheduling, obtaining, and maintaining available medical, educational, employment, or other services through community-based, governmental agencies, or other organizations;

(2) assisting the young adult in arranging transportation to necessary appointments;

(3) developing and monitoring a medication management plan that assists the young adult in understanding, scheduling, and managing their medication; and

(4) assisting the young adult in improving their daily life-skills such as cooking, money management, cleaning, and shopping.

(b) In order to receive ECM services the young adult must:

(1) be referred, assessed, and approved for the SIL program as determined by DFPS, or the Single Source Continuum Contractor (SSCC);

(2) be placed in one of the following SIL settings:

(A) apartment;

(B) non-college dorm;

(C) shared housing; or

(D) host home;

(3) not require 24-hour supervision while in the supervised independent living program;

(4) have basic skills in self-care and the ability to follow a daily routine; and

(5) have one or more of the following characteristics:

(A) frequent, but non-violent, antisocial acts;

(B) frequent or unpredictable physical aggression;

(C) depressive behaviors including being markedly withdrawn and self-isolating;

(D) major self-injurious actions, including attempting suicide in the last 12 months;

(E) current abuse of alcohol, drugs, or other consciousness-altering substances, that results in severe impairment due to the

substance abuse and there is a primary diagnosis of substance abuse or dependency; or

(F) an intellectual or developmental disability.

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

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TRD-202003716
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER Q. PURCHASED PROTECTIVE SERVICES
DIVISION 3. REIMBURSEMENT METHODOLOGY FOR 24-HOUR CHILD CARE FACILITIES

40 TAC §700.1753, §700.1755

STATUTORY AUTHORITY

The amendments are proposed under Human Resources Code §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

Proposed amendment §700.1753 implements the General Appropriations Act, 86th Legislature. No other statutes, articles, or codes are affected by this proposal.

No other statutes, articles, or codes are affected by the proposed rules.

§700.1753. What is the Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements?

(a) The following is the authority and process for determining payment rates:

(1) (No change.)

(2) For payment rates established September 1, 2005 and thereafter, the Department of Family and Protective Services (DFPS) [~~Health and Human Services Commission (HHSC)~~] approves rates that are statewide and uniform. The Health and Human Services Commission (HHSC) calculates the rates for DFPS and [~~In approving rate amounts HHSC~~] takes into consideration staff recommendations based on the application of formulas and procedures described in this chapter when calculating the rates. However, DFPS [~~HHSC~~] may adjust staff recommendations when DFPS [~~HHSC~~] deems such adjustments are warranted by particular circumstances likely to affect achievement of program objectives, including economic conditions and budgetary considerations. Reimbursement amounts will be determined coincident with the state's biennium. Providers of 24-hour residential child care services will have the opportunity to discuss rate changes in regularly scheduled DFPS public meetings. [~~HHSC will hold a public hearing on proposed reimbursements before HHSC approves reimbursements. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten working days before the public hearing takes place, material pertinent to the proposed statewide uniform reimbursements will be made available to the public. This material will be furnished to anyone who requests it.~~]

(b) - (p) (No change.)

(q) Definitions.

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

(7) Intensive Psychiatric Transition Program (IPTP)--Intensive Psychiatric Transition Program as defined in 40 TAC §700.2381. [~~Integrated Care Coordination (ICC)--Integrated Care Coordination as defined in 40 TAC §700.110.~~]

(8) - (11) (No change.)

(r) - (u) (No change.)

(v) Rates effective September 1, 2019. Rates are paid for each level of service identified by DFPS.

(1) For CPAs, the rate consists of a foster home payment described in paragraph (2) of this subsection and a CPA retainage. The combined CPA retainage and foster home payment for each level of service will be:

(A) $49.54 for the basic level of service;

(B) $87.36 for the moderate level of service;

(C) $110.10 for the specialized level of service; and

(D) $186.42 for the intense level of service.

(2) For foster homes, the minimum daily rate to be paid to a foster home each level of service will be:

(A) $27.07 for the basic level of service;

(B) $47.37 for the moderate level of service;

(C) $57.86 for the specialized level of service; and

(D) $92.43 for the intense level of service.

(3) For GROs and RTCs, the rates will be:

(A) $45.19 for the basic level of service;

(B) $108.18 for the moderate level of service;

(C) $197.69 for the specialized level of service;

(D) $277.37 for the intense level of service; and

(E) $400.72 for the intense plus level of service.

(4) For emergency care services, the rate will be $137.30.

(5) For treatment foster care, the rate consists of a foster home payment and a CPA retainage. The combined CPA retainage and foster home payment will be $277.37.

(6) For Intensive Psychiatric Transition Program (IPTP), the rate will be $374.33.

(7) For Temporary Emergency Placement (TEP), the rate will be $400.72.

§700.1755. What is the Reimbursement Methodology for Supervised Independent Living?

(a) Payment rate determination. Payment rates for the Supervised Independent Living Program, and if applicable to the young

adult an additional rate for Enhanced Case Management services under §700.348 of this title (relating to Enhanced Case Management Services in a Supervised Independent Living Setting), are developed based on rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a modeled pro forma approach in accordance with §355.105(h) of Title 1 [~~this title~~] (relating to General Reporting and Documentation Requirements, Methods, and Procedures). A pro forma analysis makes assumptions about the types of staff and service requirements and estimates the basic types and costs of salaries, products, and services necessary to deliver services that meet federal and state requirements.

(b) Providers of 24-hour residential child care services will have the opportunity to discuss rate changes in regularly scheduled DFPS public meetings. [~~Related information. The information in §355.101 of this title (relating to Introduction) and §355.105(g) of this title, which concerns public hearings, also applies.~~]

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

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Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 438-3397

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40 TAC §700.1757, §700.1759

STATUTORY AUTHORITY

The repeals are proposed under Human Resources Code §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

No other statutes, articles, or codes are affected by the proposed rules.

§700.1757. What is the Reimbursement Methodology for Sub-Acute Inpatient Treatment Programs?

§700.1759. What is the Reimbursement Methodology for Residential Child Care Case Management and Family-Based Safety Services?

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

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Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 438-3397

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (TWC) proposes amendments to the following section of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.68

TWC proposes the following new section to Chapter 800, relating to General Administration:

Subchapter F. Interagency Matters, §800.206

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

House Bill (HB) 3 and HB 1949, enacted by the 86th Texas Legislature, Regular Session (2019), require TWC to develop rules to implement that legislation.

HB 3 §1.046 adds §48.302 to the Texas Education Code, titled "Subsidy for High School Equivalency Examination for Certain Individuals." This section requires the Texas Education Agency (TEA) to enter into a memorandum of understanding (MOU) with TWC when transferring funds to provide a subsidy for the cost of a high school equivalency exam for individuals who are 21 years of age or older. It also requires TWC to develop rules addressing program implementation and eligibility requirements for this subsidy program, which TWC shall develop in Chapter 805, new Subchapter E, High School Equivalency Subsidy Program.

Additionally, HB 1949 amended Texas Labor Code §315.007, "Performance Incentive Funding," dedicated to the process for awarding performance-based funds to Adult Education and Literacy (AEL) grantees, and adds new subsections (c), (d), and (e) to add new performance-based funding criteria for AEL programs to receive performance-based funds. These new criteria relate to enrollment and performance benchmarks for enrollment in a high school equivalency program or postsecondary ability-to-benefit program and achievement measures for AEL students enrolled in such programs by the end of the program year.

Both HB 3 and HB 1949 went into effect September 1, 2019.

To implement HB 1949, on October 8, 2019, TWC's three-member Commission (Commission) approved the performance-based funding criteria for AEL Program Year 2019 - 2020 (PY'19 - '20) and also approved the performance criteria for performance-based funding in PY'20 - '21. Additionally, the Commission approved a performance-based measure for grant recipients meeting milestones toward enrollment and the performance measures required under HB 1949 and requested that rules be developed to address this measure.

For the high school equivalency subsidy program, TEA appropriated $750,000 each year of the 2020 - 2021 biennium. In early 2020, TEA and TWC worked with the two high school equivalency test publishers approved to operate in Texas, Pearson for the GED and ETS for the HiSET, to create a process that would be administratively efficient for programs managing the distribution of the subsidy at the local level to eligible and test-ready individuals. On February 10, 2020, TEA and TWC entered into an interagency contract to transfer funds to TWC to implement this program. While TWC moved forward to develop rules, the COVID-19 pandemic impacted TWC's ability to implement the program.

On May 8, 2020, TWC submitted a letter to the Legislative Budget Board requesting any unexpended and unobligated funds for the subsidy program from the current fiscal year be transferable to the next fiscal year beginning September 1, 2020. In this request, TWC noted that the reasons it had been unable to expend funding for this program were the lack of remote testing options from Pearson and ETS, (both of which were in early stages of implementing remote testing guidelines) and the closures of most high school equivalency testing centers and their unknown future reopening status. Additionally, TWC noted that all appropriated funds for the subsidy program would be fully obligated by the end of the biennium.

On March 31, 2020, the Commission approved a policy concept for the required rule development for both the performance-based funding criteria and the high school equivalency subsidy program. This policy concept included proposed rule language for the Commission's future consideration and was posted in the *Texas Register* for 30 days for public comment. TWC received comments from two commenters.

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.)

The comments noted in this section reflect those received from one of two commenters during the policy concept comment period of April 10, 2020, to May 11, 2020.

SUBCHAPTER B. ALLOCATIONS

TWC proposes the following amendments to Subchapter B:

§800.68. Adult Education and Literacy

Section 800.68 is amended to add criteria for performance-based funding benchmarks for high school equivalency and postsecondary ability-to-benefit enrollment and achievements in new §800.68(g) and includes a definition for "postsecondary ability-to-benefit program." New language allows grant recipients that meet milestones toward the performance measures outlined in HB 1949 to receive performance-based funding. It further clarifies that the Commission will approve the award of AEL grant funds, as is required under HB 1949 and other guidance received from the legislature. Additionally, two technical edits are made to change an outdated reference from Workforce Investment Act to the Workforce Innovation and Opportunity Act (WIOA) and to correct a misspelled word.

As the definition of "postsecondary ability-to-benefit program" in HB 1949 does not align with the federal definition for "Pell Grant Ability-to-Benefit," the rule emphasizes that this definition relates to performance-based funding criteria for AEL programs and is modified to align with federal AEL performance measure definitions under WIOA.

The performance funding benchmarks require that 25 percent of all participants served in the program year be enrolled in a high school equivalency subsidy program or a postsecondary ability-to-benefit program, and at least 70 percent of those participants who exited to achieve a high school equivalency or recognized postsecondary credential.

Comments: One commenter stated that the true legislative intent of HB 1949 was not to tie the criteria for high school equivalency and postsecondary ability-to-benefit enrollment and performance measures to performance-based funding but, instead, to federal, state, Temporary Assistance for Needy Families (TANF), and EL Civics AEL funding. The commenter provided the context for how these intended measures would positively impact the unmet need for high school equivalency credentials in the commenter's region. The commenter further suggested that the language in HB 1949 be amended to move the performance criteria to Texas Labor Code §315.006, titled "State Funding," and that the criteria should be added to §800.68 as a requirement for training providers receiving AEL funds, and not as a performance-based incentive.

Additionally, this commenter proposed that TWC modify the proposed definition to match HB 1949 and change "postsecondary education or training program" to "postsecondary certificate program" and "results in a recognized postsecondary credential" to "results in a recognized postsecondary certificate."

Response: HB 1949 explicitly states that criteria for the high school equivalency program and the postsecondary ability-to-benefit enrollment and performance measures amends Texas Labor Code §315.007. TWC rules must reflect the legislation as codified in statute and does not have the authority to move the HB 1949 criteria into a new subsection of the Texas Labor Code.

Regarding the proposed definition, TWC used the term "recognized postsecondary credential" to ensure that the rule would pertain to all entities eligible to receive funding under WIOA Title II, which is the primary funding source for adult education in Texas. The term "recognized postsecondary credential" includes "certificates," which is the term used by junior, community, and technical colleges for awards under the Texas Higher Education Coordinating Board Guidelines for Instructional Programs in Workforce Education (GIPWE). The WIOA term also includes a wide variety of credentials awarded in recognition of an individual's attainment of measurable technical or industry or occupational skills necessary to obtain employment or advance within an industry or occupation. These include industry-recognized certificates or certifications, certificates of completion of an apprenticeship, licenses recognized by state or federal governments, and degrees. Each credential recognizes industry or occupational skills based on standards developed or endorsed by employers or industry associations.

TWC maintains that the proposed rule language sufficiently captures HB 1949 language but includes the variety of other credentials of value available to participants in Texas AEL programs and reported in state and WIOA federal performance measures. The broader definition ensures that the measure pertains to the widest number of entities eligible for AEL funds under federal law and ensures that the measure captures the broadest number of recognized credentials, thereby reaching the greatest number of participants. Because the broader definition applies to all entities eligible for AEL funds, it encourages the greatest possible range of increases in performance related to the HB 1949 measure under federal law and ensures that non-college providers that offer high school equivalency and workforce training programs are not excluded from or disadvantaged in earning performance-based funding.

SUBCHAPTER F. INTERAGENCY MATTERS

TWC proposes the following new section to Subchapter F:

§800.206. Interagency Contract with the Texas Education Agency for High School Equivalency Subsidy Program

New §800.206 adopts by reference the terms of an interagency contract entered into with the TEA, as required by Texas Edu-

cation Code §48.302, relating to the transfer of funds to implement a high school equivalency subsidy program, set out in TWC Chapter 805, Subchapter E, §§805.71 - 805.73.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to:

-- outline new performance-based funding criteria as required under HB 1949 enacted by the 86th Legislative Session, Regular Session (2019), for high school equivalency and ability-to-benefit enrollment and performance benchmarks; and

-- describe the interagency agreement between TEA and TWC for transferring funds appropriated for a high school equivalency subsidy program.

The proposed rulemaking action will not create any additional burden on private real property.

The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the proposed amendments will be in effect:

--the proposed amendments will not create or eliminate a government program;

--implementation of the proposed amendments will not require the creation or elimination of employee positions;

--implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to TWC;

--the proposed amendments will not require an increase or decrease in fees paid to TWC;

--the proposed amendments will not create a new regulation;

--the proposed amendments will not expand, limit, or eliminate an existing regulation;

--the proposed amendments will not change the number of individuals subject to the rules; and

--the proposed amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide clarity to AEL grant recipients on how to implement new legislation for accessing performance-based funding.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards), AEL grant recipients, and AEL service providers. TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on March 31, 2020. TWC also conducted a conference call with AEL grant recipients and providers on April 2, 2020, and May 7, 2020, and then on April 10, 2020, with Board executive directors and Board staff to discuss the concept paper and comment period. Additionally, information on the concept paper and comment period were posted on the TWC rules web page and on the Texas Center for the Advancement of Literacy & Learning website, which is the website managed by Texas' AEL

professional development organization. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.state.tx.us. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER B. ALLOCATIONS

40 TAC §800.68

The rule is proposed 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 proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.68. Adult Education and Literacy.

(a) AEL funds available to the Commission to provide services under the federal Adult Education and Family Literacy Act (AEFLA), WIOA [~~WIA~~] Title II, together with associated state general revenue matching funds and federal TANF funds--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be used by the Commission, as set forth in subsections (b) - (f) of this section. Prior to any grant recipient receiving notice of an award, the Commission shall review and approve the award of grant funds to be issued under this program.

(b) At least 82.5 percent of the federal funds constituting the total state award of AEFLA state grants--including amounts allotted to the eligible agency having a state plan, as provided by AEFLA §211(c) and amounts provided to the eligible agency under §243 for English Literacy/Civics (EL/Civics)--will be allocated by the Commission to the workforce areas. From the amount allotted to the eligible agency having a state plan, as provided by AEFLA §211(c), the Commission will allocate amounts to the workforce areas according to the established federal formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain procedure.

(2) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) shall apply with effective justification, as appropriate.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

(c) At least 80 percent of the state general revenue matching funds associated with the allotment of federal funds to the eligible agency having a state plan, as provided by AEFLA §211(c), will be allocated by the Commission to the workforce areas according to the established federal formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain procedure.

(2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by Commission policy.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

(d) At least 82.5 percent of the federal funds provided to the eligible agency from amounts under AEFLA §243 for EL/Civics will be allocated by the Commission among the workforce areas according to the established federal formula, as follows:

(1) The relative proportion based on:

(A) 65 percent of the average number of legal permanent residents during the most recent 10-year period, available from U.S. Citizenship and Immigration Services data; and

(B) 35 percent of the average number of legal permanent residents during the most recent three-year period, available from U.S. Citizenship and Immigration Services data;

(2) a base amount of 1 percent for each workforce area; and

(3) the application of a hold-harmless/stop-gain procedure.

(4) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA.

(5) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

(e) At least 80 percent of federal TANF funds associated with the AEL program--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be allocated by the Commission to the workforce areas according to a need-based formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of the unduplicated number of TANF adult recipients with educational attainment of less than a secondary diploma during the most recently completed calendar year;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain procedure.

(2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

(f) AEL performance accountability benchmarks shall be established to coincide with performance measures and reports, or other periods, as determined by the Commission. Levels of performance shall, at a minimum, be expressed in an objective, quantifiable, and measurable [~~measureable~~] form, and show continuous improvement.

(g) Performance accountability benchmarks shall:

(1) include measures for high school equivalency program or ability-to-benefit program enrollment and achievement, as outlined in paragraph (2) of this subsection. A postsecondary ability-to-benefit program, as outlined in paragraphs (2) and (3) of this subsection, is a postsecondary education or training program that:

(A) results in a recognized postsecondary credential; and

(B) enrolls AEL eligible participants who:

(i) do not have a high school diploma or recognized equivalency;

(ii) qualify for federal student financial aid eligibility under the federal Ability-to-Benefit provisions enacted in §484(d) of the Higher Education Act of 1965; and

(iii) demonstrate on an assessment instrument that the participant can pass college-level courses with some support;

(2) include measures that require:

(A) at least 25 percent of all participants served in the program year to be enrolled in a high school equivalency or postsecondary ability-to-benefit program; and

(B) at least 70 percent of participants who were in a high school equivalency or postsecondary ability-to-benefit program during the program year and exited during the program year to achieve either a high school equivalency or a recognized postsecondary credential; and

(3) be approved by the Commission each program year for milestones toward meeting high school equivalency program or postsecondary ability-to-benefit program enrollment and achievement as outlined in paragraph (2) of this subsection.

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 September 10, 2020.

TRD-202003708
Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 689-9855

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SUBCHAPTER F. INTERAGENCY MATTERS

40 TAC §800.206

The new rule is proposed 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 proposed new rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.206. Interagency Contract with the Texas Education Agency.

The Texas Workforce Commission adopts by reference the terms of an interagency contract entered into with the Texas Education Agency, as required by Texas Education Code, §48.302, relating to the transfer of funds to implement a high school equivalency subsidy program set out in Chapter 805, Subchapter E, §§805.71 - 805.73 of this title (relating to High School Equivalency Subsidy Program).

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 September 10, 2020.

TRD-202003709
Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 689-9855

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CHAPTER 805. ADULT EDUCATION AND LITERACY

SUBCHAPTER E. HIGH SCHOOL EQUIVALENCY SUBSIDY PROGRAM

40 TAC §§805.71 - 805.73

The Texas Workforce Commission (TWC) proposes the following new subchapter to Chapter 805, relating to Adult Education and Literacy:

Subchapter E. High School Equivalency Subsidy Program, §§805.71 - 805.73.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 805 rule change is to create new Subchapter E, High School Equivalency Subsidy Program, which outlines the program implementation and eligibility requirements of a high school equivalency subsidy program required under House Bill (HB) 3 §1.046, enacted by the 86th Texas Legislature, Regular Session (2019). HB 3 adds new §48.302, Texas Education Code, titled "Subsidy for High School Equivalency Examination for Certain Individuals" and requires the Texas Education Agency (TEA) to enter into a memorandum of understanding (MOU) with TWC when transferring funds to provide a subsidy for the cost of a high school equivalency exam for individuals who are 21 years of age or older. It also requires TWC to develop rules addressing program implementation and eligibility requirements for this subsidy program. TEA appropriated $750,000 each year of the 2020 - 2021 biennium for this program.

In early 2020, TEA and TWC worked with the two high school equivalency test publishers approved to operate in Texas, Pearson for the GED and ETS for the HiSET, to create a process that would be administratively efficient for programs managing

the distribution of the subsidy at the local level to eligible and test-ready individuals. On February 10, 2020, TEA and TWC entered into an interagency contract to transfer funds to TWC to implement this program. While TWC moved forward to develop rules, the COVID-19 pandemic impacted TWC's ability to implement the program.

On May 8, 2020, TWC submitted a letter to the Legislative Budget Board requesting that any unexpended and unobligated funds for the subsidy program from the current fiscal year be transferable to the next fiscal year, beginning September 1, 2020. In this request, TWC noted that the reasons it had been unable to expend funding for this program were the lack of remote testing options from Pearson and ETS (both of which were in the early stages of implementing remote testing guidelines) and the closures of most high school equivalency testing centers and their unknown future reopening status. Additionally, TWC noted that all appropriated funds for the subsidy program would be fully obligated by the end of the biennium.

On March 31, 2020, TWC's three-member Commission (Commission) approved a policy concept for the required rule development for both the performance-based funding criteria and the high school equivalency subsidy program. This policy concept included proposed rule language for the Commission's future consideration and was posted in the Texas Register for 30 days for public comment. TWC received comments from two commenters.

A separate proposed rulemaking amending TWC Chapter 800 General Administration rules, Subchapter F, Interagency Matters, describes the interagency contract adopted by TEA and TWC for the high school equivalency subsidy program.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

The comments noted in this section reflect those received from one of two commenters during the comment period of April 10, 2020, through May 11, 2020.

SUBCHAPTER E. HIGH SCHOOL EQUIVALENCY SUBSIDY PROGRAM

TWC proposes new Subchapter E:

§805.71. Purpose.

New §805.71 describes the purpose of the high school equivalency subsidy program.

§805.72. Definitions.

New §805.72 provides a list of terms and definitions regarding the high school equivalency subsidy program.

§805.73. Implementation.

New §805.73 gives direction on how TWC will manage and implement this subsidy program via AEL grant recipients and how it will prioritize eligible individuals participating in the AEL program to receive this subsidy.

Comment 1: One comment was about the documentation requirements for confirming eligibility for individuals receiving the subsidy and noted concern for the possibility of individuals using different names and documentation to receive additional benefits from the subsidy.

Response 1: TWC has considered this comment and will release guidance on how an AEL grant recipient can confirm the eligibility of an individual, as defined by "eligible individual" in proposed §805.72.

Comment 2: One comment noted that as grant recipients are required to determine an individual's preparedness to take a high school equivalency test, additional guidelines are needed; otherwise, the rule should explain that grant recipients are not responsible for a high test-failure rate.

Response 2: The proposed rule does not indicate that there are performance measures related to the subsidy program, as this is not required by the legislation.

Comment 3: One comment noted that the timing of a midyear evaluation of the subsidy distribution to grant recipients may not accurately address the true demand of test takers.

Response 3: Proposed rule §805.73(b) states that TWC staff may indicate a time other than midyear to adjust the distribution of vouchers statewide for Commission approval.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to develop rules addressing the implementation and eligibility requirements

of the high school equivalency program administered by TWC with funds transferred by TEA for this purpose.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the proposed amendments will be in effect:

--the proposed amendments will not create or eliminate a government program;

--implementation of the proposed amendments will not require the creation or elimination of employee positions;

--implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to TWC;

--the proposed amendments will not require an increase or decrease in fees paid to TWC;

--the proposed amendments will not create a new regulation;

--the proposed amendments will not expand, limit, or eliminate an existing regulation;

--the proposed amendments will not change the number of individuals subject to the rules; and

--the proposed amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rule will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide a subsidy to eligible individuals for the cost of a high school equivalency exam who may otherwise have to pay for such a cost out-of-pocket, enabling such individuals to obtain a Texas Certificate of High School Equivalency (TxCHSE) certificate.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on March 31, 2020. TWC also conducted a conference call with Board executive directors and Board staff on April 10, 2020, to discuss the concept paper. In addition, TWC conducted a conference call with AEL grant recipients and providers on April 2, 2020, and on May 7, 2020, and then on April 10, 2020, with Board executive directors and Board staff, to discuss the concept paper and comment period. Additionally, information on the concept paper and comment period were posted on the TWC rules web page and on the Texas Center for the Advancement of Literacy & Learning website, which is the website managed by Texas' AEL's professional development organization. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.state.tx.us. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register.*

The new rules are proposed 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 proposed new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.71. Purpose.

The purpose of the high school equivalency subsidy program, as provided in an interagency contract between the Texas Education Agency (TEA) and the Agency, is to provide subsidized high school examination fees to eligible individuals.

§805.72. Definitions.

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

(1) "Eligible high school equivalency subsidy recipient" means a Texas resident who is 21 years of age or older at the time that a voucher for the subsidy is issued to the individual and who lacks a high school diploma or its equivalent.

(2) "High school equivalency exam" refers to an exam, as approved by the Texas State Board of Education, for obtaining a Texas Certificate of High School Equivalency (TxCHSE).

(3) "Subsidy" is an amount not to exceed the cost of one high school equivalency exam, inclusive of all subject areas, as negotiated by TEA.

(4) "Subsidy program" refers to the high school equivalency subsidy program.

(5) "Voucher" refers to an electronic or paper-based voucher provided to an eligible individual for taking an individualized high school equivalency test.

(6) "Voucher allotment" means the annual allotment of vouchers to grant recipients. The allotment is based on the number of high school equivalency tests taken by the participants of each grant recipient.

§805.73. Implementation.

(a) When implementing the high school equivalency subsidy program, the Agency will prioritize the subsidy to eligible high school equivalency subsidy recipients who are AEL program participants or former AEL participants within 365 days of their program exit. The

Agency may provide the subsidy to eligible high school equivalency subsidy recipients who are not current or former AEL participants, based on a plan approved by the Commission.

(b) The Commission will approve an initial voucher allotment to the AEL grant recipient based on high school equivalency test-taking data for the grant recipient.

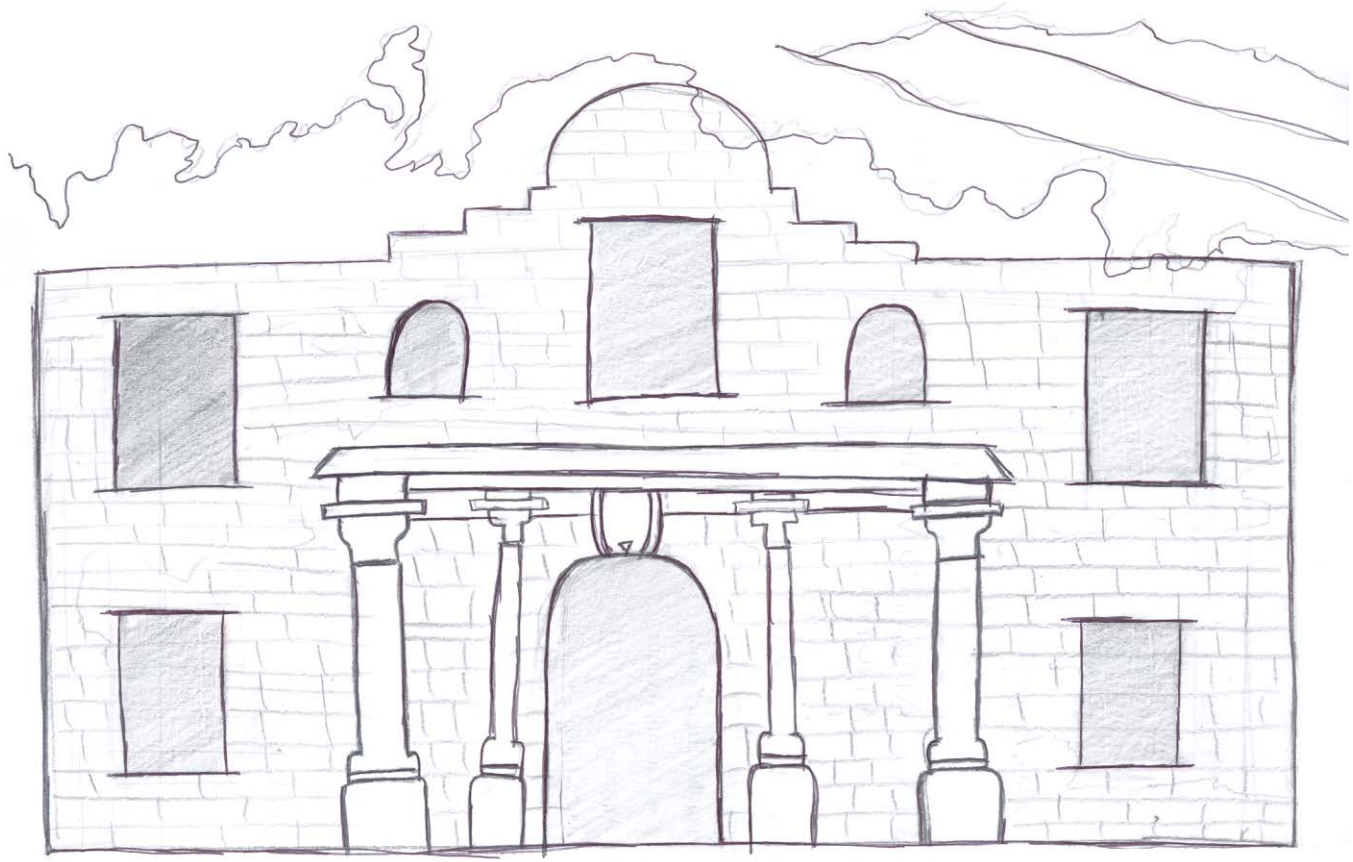
(c) The Commission will approve an initial voucher allotment, by September 1, for each grant recipient. Additionally, the Commission may approve an adjustment of a grant recipient's voucher allotment midyear, or at another time designated by the Commission, based on a grant recipient's voucher usage or demonstrated demand.

(d) AEL grant recipients will manage the distribution of vouchers to eligible high school equivalency subsidy recipients and shall confirm the eligibility of a recipient to receive the subsidy via a voucher.

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 September 10, 2020.

TRD-202003710
Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
Earliest possible date of adoption: October 25, 2020
For further information, please call: (512) 689-9855



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §102.1, concerning fees. This amendment will increase certain fees to account for the agency changing to biennial renewals for dental licensure. This amendment will correct the fee as it pertains to patient protection and the Texas.gov internet portal. This amendment will reduce the fee collected for the prescription monitoring program. This amendment will add a late fee for the nitrous oxide monitoring fee and remove the nitrous oxide monitoring fee duplicate certificate fee. This amendment will increase the fee for peer assistance to the maximum amount allowed under §467.0041 of the Texas Health and Safety Code, and remove the fee from the rule. This amendment is adopted with no changes to the proposed text as published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5084), and will not be republished.

The Board received no written comments regarding this amendment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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 September 11, 2020.

TRD-202003729
Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: October 1, 2020
Proposal publication date: July 24, 2020
For further information, please call: (512) 305-8910

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CHAPTER 110. SEDATION AND ANESTHESIA

22 TAC §110.2

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §110.2, concerning the requirements for obtaining a sedation/anesthesia permit. This amendment requires applicants to complete an anesthesia jurisprudence assessment prior to obtaining a sedation/anesthesia permit. This rule is being adopted to comply with the requirements of Texas Occupations Code §258.1551. This amendment is adopted without changes to the proposed text as published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5086). The rule will not be republished.

The Board received no written comments regarding this amendment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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 September 11, 2020.

TRD-202003731
Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: October 1, 2020
Proposal publication date: July 24, 2020
For further information, please call: (512) 305-9380

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22 TAC §110.9

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §110.9, concerning the requirements for renewing an anesthesia permit. This amendment requires permit holders to complete an anesthesia jurisprudence assessment once every five years. This rule is being adopted to comply with the requirements of Texas Occupations Code §258.1552. This amendment is adopted without changes to the proposed text as published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5087). The rule will not be republished.

The Board received no written comments regarding this amendment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with

state laws relating to the practice of dentistry to protect the public health and safety.

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 September 11, 2020.

TRD-202003732
Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: October 1, 2020
Proposal publication date: July 24, 2020
For further information, please call: (512) 305-8910

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PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 133. LICENSING

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to the following rules in Title 22, Chapter 133 of the Texas Administrative Code. The rules are adopted without changes to the proposed text as published in the May 15, 2020, issue of the *Texas Register* (45 TexReg 3199):

(1) §133.21, regarding Application for Standard License;

(2) §133.23, regarding Applications from Former Standard License Holders,

(3) §133.25, regarding Applications from Engineering Educators;

(4) §133.27, regarding Application for Temporary License for Engineers Currently Licensed Outside the United States;

(5) §133.73, regarding Examination Results and Analysis; and

(6) §133.89, regarding Processing of Administratively Withdrawn Applications.

The rules will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The adopted rules implement necessary changes as required by House Bill (HB) 1523, 86th Legislature, Regular Session (2019).

As required by HB 1523, the adopted rules modify the citations in Board rules to correctly identify the specific sections of Chapter 1001 of the Texas Occupations Code.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rule. The 30-day public comment period began on May 15, 2020, and ended June 15, 2020. The Board received no comments from the public.

SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §§133.21, 133.23, 133.25, 133.27

STATUTORY AUTHORITY

The amendments are adopted pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaw necessary to perform its duties, govern its proceedings, and regulate the practice of engineering and land surveying. The adopted amendments are also adopted in compliance with HB 1523.

No other statutes, articles or codes are affected by the adopted amendments.

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 September 10, 2020.

TRD-202003704
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Effective date: September 30, 2020
Proposal publication date: May 15, 2020
For further information, please call: (512) 440-3080

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SUBCHAPTER G. EXAMINATIONS

22 TAC §133.73

STATUTORY AUTHORITY

The amendments are adopted pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaw necessary to perform its duties, govern its proceedings, and regulate the practice of engineering and land surveying. The adopted amendments are also adopted in compliance with HB 1523.

No other statutes, articles or codes are affected by the adopted amendments.

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 September 10, 2020.

TRD-202003705
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Effective date: September 30, 2020
Proposal publication date: May 15, 2020
For further information, please call: (512) 440-3080

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SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

22 TAC §133.89

STATUTORY AUTHORITY

The amendments are adopted pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaw necessary to perform its duties, govern its proceedings, and regulate the practice of engineering and land surveying. The adopted amendments are also adopted in compliance with HB 1523.

No other statutes, articles or codes are affected by the adopted amendments.

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 September 10, 2020.

TRD-202003706
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Effective date: September 30, 2020
Proposal publication date: May 15, 2020
For further information, please call: (512) 440-3080

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CHAPTER 137. COMPLIANCE AND PROFESSIONALISM
SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §§137.7, 137.9, 137.13

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to Title 22, Chapter 137 of the Texas Administrative Code, specifically §137.7, regarding License Expiration and Renewal; §137.9, regarding Renewal for Expired License; and §137.13, regarding Inactive Status, without changes to the proposed text as published in the May 15, 2020 issue of the *Texas Register* (45 TexReg 3202). The rules will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The adopted rules implement necessary changes as required by House Bill (HB) 1523, 86th Legislature, Regular Session (2019).

As required by HB 1523, the adopted rules modify the citations in Board rules to correctly identify the specific sections of Chapter 1001 of the Texas Occupations Code.

As required by SB 37, the adopted rules repeal a section prohibiting the renewal of an engineer license based on the loan default proceedings of the Texas Guaranteed Student Loan Corporation which have been removed by the bill.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rule. The 30-day public comment period began on May 15, 2020, and ended June 15, 2020. The Board received no comments from the public.

STATUTORY AUTHORITY

The amendments are adopted pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaw necessary to perform its duties, govern its proceedings, and regulate the practice of engineering and land surveying. The adopted amendments are also adopted in compliance with HB 1523 and SB37.

No other statutes, articles or codes are affected by the adopted amendments.

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 September 10, 2020.

TRD-202003707
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Effective date: September 30, 2020
Proposal publication date: May 15, 2020
For further information, please call: (512) 440-3080

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Texas

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Office of the Attorney General

Title 1, Part 3

Chapter 57

The Office of the Attorney General (OAG) files this notice of its intent to review 1 TAC Chapter 57, Outside Counsel Contracts. The review is conducted in accordance with Government Code §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During the review, the OAG will assess whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Comments should be directed to Joshua Godbey, Division Chief, Financial Litigation and Charitable Trusts Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, Joshua.Godbey@oag.texas.gov.

Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption.

Chapter 58

The Office of the Attorney General (OAG) files this notice of its intent to review 1 TAC Chapter 58, Legal Sufficiency Review of Comprehensive Development Agreements. The review is conducted in accordance with Government Code §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During the review, the OAG will assess whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Comments should be directed to Joshua Godbey, Division Chief, Financial Litigation and Charitable Trusts Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, Joshua.Godbey@oag.texas.gov.

Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption.

Chapter 68

The Office of the Attorney General (OAG) files this notice of its intent to review 1 TAC Chapter 68, Negotiation and Mediation of Certain Contract Disputes. The review is conducted in accordance with Government Code §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During the review, the OAG will assess whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Comments should be directed to Joshua Godbey, Division Chief, Financial Litigation and Charitable Trusts Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, Joshua.Godbey@oag.texas.gov.

Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption.

TRD-202003727
Lesley French
General Counsel
Office of the Attorney General
Filed: September 11, 2020

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Adopted Rule Reviews

Office of the Attorney General

Title 1, Part 3

The Office of the Attorney General (OAG) has completed its rule review of 1 TAC Chapter 54, Special Programs. The proposed notice of intent to review rules was published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 5015).

The OAG has assessed whether the reasons for adopting these rules continue to exist. The OAG received no comments regarding this review.

As a result of this review, the OAG finds that the reasons for adopting the rules in Chapter 54 continue to exist, and this chapter is readopted in accordance with the requirements of Texas Government Code §2001.039.

TRD-202003728
Lesley French
General Counsel
Office of the Attorney General
Filed: September 11, 2020

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Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 Texas Administrative Code (TAC) Chapter 100, Charters, pursuant to the Texas Government Code, §2001.039. The rules in 19 TAC Chapter 100 are organized under the following subchapters: Subchapter A, Open-Enrollment Charter Schools; and Subchapter B, Home-Rule School District Charters. The SBOE proposed the review of 19 TAC Chapter 100 in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1721).

Relating to the review of 19 TAC Chapter 100, Subchapter A, the SBOE finds that the reasons for adopting Subchapter A continue to exist and readopts the rules. The SBOE received comments related to the review of Subchapter A. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 100, Subchapter B, the SBOE finds that the reasons for adopting Subchapter B continue to exist and readopts the rules. The SBOE received comments related to the review of Subchapter B. No changes are necessary as a result of the review.

Comment: A school district administrator commented that a for-profit charter school should not be allowed to build a campus unless the campus is within two miles of an underperforming school with a rating of C, D, or F.

Board Response: Regarding the current rules in 19 Texas Administrative Code, Chapter 100, Subchapters A and B, the SBOE clarifies under Texas Education Code (TEC), §12.101, eligible entities for an open-enrollment charter school are defined as an institution of higher education as defined under TEC §61.003; a nonprofit organization incorporated under §501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)); or a governmental entity. None of the eligible entity categories allow a for-profit entity to apply for a charter. As such, charter schools are considered non-profit, public schools in Texas.

As set forth in TEC, §12.001, charter schools are intended to provide an additional choice for learning opportunities within the public school system that encourage innovative learning methods designed to improve student learning. TEC, §12.001, sets out to establish a new form of accountability for public schools and to create professional opportunities that will assist in attracting new teachers to the public-school system.

As to limiting the building of campuses within two miles of a traditional school district campus rated A or B, applicants seldom have a specific address to cite in their application, instead a general geographical area is proposed in the application based on community need. Unless an applicant has property that is already owned or being provided to the applicant, the application phase is too early to make specific address determinations. Furthermore, the SBOE has broad authority granted in TEC, §12.101, to vote against the grant of a charter that the commissioner proposes without any specific limitations.

The SBOE further clarifies that TEC, §12.131, prohibits a charter school from expelling a student for a reason that is not authorized under current law as a reason for expulsion from a public school, or any offense specified in the charter school's code of conduct.

TRD-202003738
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: September 14, 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: 28 TAC §1.601(a)(2)(C)

Have a workers' compensation complaint or need help?

Contact your insurance company if you have a question or problem about your premium or a claim:

[Insert insurance company name]
Call: [insert title] at [insert phone number]
Toll-free: [insert phone number]
[optional] Online: [insert company URL]
Email: [insert email address]
Mail: [insert mailing address]

For problems with your policy

If your problem with the premium is not resolved, contact the National Council on Compensation Insurance, Dispute Resolution Services:

Mail: 901 Peninsula Corporate Circle, Boca Raton, FL 33487-1362
Fax: 561-893-5043
Email: regulatoryoperations@ncci.com
Phone: 1-800-622-4123

If you believe there has been a violation of law related to your workers' compensation policy, file a complaint with the Texas Department of Insurance:

Call: 1-800-252-3439
Online: www.tdi.texas.gov
Email: ConsumerProtection@tdi.texas.gov
Mail: MC 111-1A, P.O. Box 149091, Austin, Texas 78714-9091

For employees with claim issues

If one of your employees has a problem with a claim, contact the Texas Department of Insurance, Division of Workers' Compensation, Compliance and Investigations:

Mail: MS-8, 7551 Metro Center Drive, Suite 100, Austin, TX 78744
Fax: 512-490-1030
Email: DWC-ComplianceReview@tdi.texas.gov
Phone: 1-800-252-7031

¿Tiene una queja de compensación para trabajadores o necesita ayuda?

Comuníquese con su compañía de seguros si tiene una pregunta o problema relacionado con su prima de seguro o con una reclamación:

[Insert insurance company name]

Llame a: [insert title] al [insert phone number]
Teléfono gratuito: [insert phone number]
[optional] En línea: [insert company URL]
Correo electrónico: [insert email address]
Dirección postal: [insert mailing address]

Para problemas con su póliza
Si su problema con la prima de seguro no es resuelto, comuníquese con el Consejo Nacional de Seguros de Compensación (National Council on Compensation Insurance, por su nombre en inglés), Servicios para la Resolución de Disputas:

Correo postal: 901 Peninsula Corporate Circle, Boca Raton, FL 33487-1362
Fax: 561-893-5043
Correo electrónico: regulatoryoperations@ncci.com [regulatoryassurance@ncci.com]
Teléfono: 1-800-622-4123

Si usted piensa que ha habido una violación a la ley, la cual está relacionada con su póliza de compensación para trabajadores, presente una queja ante el Departamento de Seguros de Texas:

Llame al: 1-800-252-3439
En línea: www.tdi.texas.gov
Correo electrónico: ConsumerProtection@tdi.texas.gov
Correo postal: MC 111-1A, P.O. Box 149091, Austin, Texas 78714-9091

Para empleados que tienen problemas con sus reclamaciones
Si uno de sus empleados tiene un problema con una reclamación, comuníquese con la Sección de Cumplimiento e Investigaciones (Compliance and Investigations, por su nombre en inglés) del Departamento de Seguros de Texas, División de Compensación para Trabajadores (Texas Department of Insurance, Division of Workers' Compensation, por su nombre en inglés).

Correo postal: MS-8, 7551 Metro Center Drive, Suite 100, Austin, TX 78744
Fax: 512-490-1030
Correo electrónico: DWC-ComplianceReview@tdi.texas.gov
Teléfono: 1-800-252-7031

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Health and Safety Code and Texas Water Code
Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *Harris County, Texas and the State of Texas v. LaBarge Coating, LLC;* Cause No. 2018-60175; in the 165th Judicial District Court, Harris County, Texas.

Background: Defendant LaBarge Coating, LLC ("LaBarge") owns and operates a pipe storage and coating facility in Harris County, Texas. After investigating numerous complaints from residents concerning large dust clouds created by trucks driving through an unpaved dirt road to reach the facility, Harris County filed suit against LaBarge for its violation of the Texas Clean Air Act and the rules promulgated thereunder by the Texas Commission on Environmental Quality ("TCEQ"). The State, on behalf of TCEQ, is a necessary and indispensable party to the suit by statute. To facilitate settlement of the case, LaBarge had begun applying asphalt emulsion to the dirt road and treating it with water on a regular basis.

Proposed Settlement: The parties propose an Agreed Final Judgment, which provides for injunctive relief and an award of civil penalties of $25,000, to be divided equally between the State and Harris County.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. The proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas 78701, and copies may be obtained by mail for the cost of copying. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Amy Davis, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 475-4142, facsimile (512) 320-0911, or email: Amy.Davis@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202003712
Lesley French
General Counsel
Office of the Attorney General
Filed: (512) 475-3210

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Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - August 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 August 2020 is $22.24 per barrel for the three-month period beginning on May 1, 2020, and ending July 31, 2020. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of August 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 August 2020 is $0.71 per mcf for the three-month period beginning on May 1, 2020, and ending July 31, 2020. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of August 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 August 2020 is $42.39 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of August 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 August 2020 is $2.34 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 August 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 September 15, 2020

TRD-202003781
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: September 15, 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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/21/20 - 09/27/20 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 09/21/20 - 09/27/20 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202003789
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 15, 2020

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Credit Union Department

Application of Out of State Branch

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Eastman Credit Union, Kingsport, Tennessee to operate a Foreign (out of state) Branch Office to be located in US Hwy 80, Hallsville, Texas 75604.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202003816
John J. Kolhoff
Commissioner
Credit Union Department
Filed: September 16, 2020

♦ ♦ ♦

Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from Firstmark Credit Union, San Antonio, Texas, to expand its field of membership. The proposal would permit persons who live, worship, or attend school, and businesses and other legal entities located in Atascosa, Bandera, Bexar, Blanco, Comal, Gillespie, Guadalupe, Kendall, Kerr, Kimble, Llano, Mason, Medina and Wilson Counties, Texas, to be eligible for membership in the credit union.

An application was received from DATCU, Denton, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in Collin, Tarrant, Dallas, Grayson, Jack, and Parker Counties, to be eligible for membership in the credit union.

An application was received from InTouch Credit Union, Plano, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in Tarrant County, to be eligible for membership in the credit union.

An application was received from InTouch Credit Union, Plano, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in Macomb County, Michigan, to be eligible for membership in the credit union.

An application was received from InTouch Credit Union, Plano, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in Wayne County, Michigan, to be eligible for membership in the credit union.

An application was received from InTouch Credit Union, Plano, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in Genesee County, Michigan, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202003815
John J. Kolhoff
Commissioner
Credit Union Department
Filed: September 16, 2020

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

EECU, #1, Fort Worth, Texas - See *Texas Register* issue dated July 24, 2020.

EECU, #2, Fort Worth, Texas - See *Texas Register* issue dated July 24, 2020.

Merger or Consolidation - Withdrawn

Everman Parkway Credit Union (Fort Worth) and America's Credit Union (Garland) - See *Texas Register* issue dated April 24, 2020.

TRD-202003814
John J. Kolhoff
Commissioner
Credit Union Department
Filed: September 16, 2020

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Deep East Texas Council of Governments

Solicitation for Public Comment

Deep East Texas Council of Governments will hold a series of public hearings regarding the submission of applications to the Texas General Land Office (GLO) for funding through Community Development Block Grant Program Mitigation (CDBG-MIT) program. The purpose of these meetings is to allow citizens an opportunity to discuss the Cit-

izen Participation Plan, the development of local housing and community development needs, the amount of funding available, all eligible activities, and the use of past CDBG funds. DETCOG encourages citizens to participate in the development of these CDBG-MIT applications and to make their views known at this public hearing. Written and oral comments regarding the applications will be taken at public hearings scheduled for the following dates, times and locations:

Monday, September 21, 2020 at 6:00 p.m. at DETCOG Regional Headquarters, 1405 Kurth Drive, Lufkin, Texas 75904

Monday, September 28, 2020 at 6:00 p.m. at City of Shepherd Community Center, 11020 Hwy 150, Shepherd, Texas 77371

Tuesday, September 29, 2020 at 6:00 p.m. at the Jasper County Courthouse, 121 N. Austin St., Jasper, Texas 75951

Additional written comments must be received by DETCOG by 4:30 p.m. on Wednesday, September 30, 2020, sent to Attn: Bob Bashaw, Regional Planner, 1405 Kurth Drive, Lufkin, Texas 75904.

DETCOG will provide for reasonable accommodations for persons attending DETCOG functions. Requests from persons needing special accommodations should be received by DETCOG staff 24-hours prior to the function. The public hearing will be conducted in English and requests for language interpreters or other special communication needs should be made at least 48 hours prior to a function. Please call (936) 634-2247 ext. 5302 for assistance.

For information about this posting, please call (936) 634-2247 ext. 5302.

Solicitud de comentario público

El Consejo de Gobiernos de Deep East Texas llevará a cabo una serie de audiencias públicas con respecto a la presentación de solicitudes a la Oficina General de Tierras de Texas (GLO) para obtener fondos a través del programa de Mitigación del Programa de Subvenciones en Bloque para el Desarrollo Comunitario (CDBG-MIT). El propósito de estas reuniones es brindar a los ciudadanos la oportunidad de discutir el Plan de Participación Ciudadana, el desarrollo de viviendas locales y las necesidades de desarrollo comunitario, la cantidad de fondos disponibles, todas las actividades elegibles y el uso de fondos CDBG anteriores. DETCOG anima a los ciudadanos a participar en el desarrollo de estas aplicaciones CDBG-MIT y dar a conocer sus puntos de vista en esta audiencia pública. Los comentarios escritos y orales sobre las solicitudes se tomarán en las audiencias públicas programadas para las siguientes fechas, horas y lugares:

Lunes 21 de septiembre de 2020 a las 6:00 p.m. en la sede regional de DETCOG, 1405 Kurth Drive, Lufkin, Texas 75904

Lunes 28 de septiembre de 2020 a las 6:00 p.m. en City of Shepherd Community Center, 11020 Hwy 150, Shepherd, Texas 77371

Martes 29 de septiembre de 2020 a las 6:00 p.m. en el Palacio de Justicia del Condado de Jasper, 121 N. Austin St., Jasper, Texas 75951

DETCOG debe recibir comentarios adicionales por escrito antes de las 4:30 p.m. el miércoles 30 de septiembre de 2020, enviado a la atención de: Bob Bashaw, Regional Planner, 1405 Kurth Drive, Lufkin, Texas 75904.

DETCOG proporcionará adaptaciones razonables para las personas que asistan a las funciones de DETCOG. Las solicitudes de personas que necesitan adaptaciones especiales deben ser recibidas por el personal de DETCOG 24 horas antes de la función. La audiencia pública se llevará a cabo en inglés y solicitudes de intérpretes de idiomas u otras necesidades especiales de comunicación debe hacerse al menos 48 horas antes de una función. Llame al (936) 634-2247 ext. 5302 para asistencia.

Para obtener información sobre esta publicación, llame al (936) 634-2247 ext. 5302.

TRD-202003777
Lonnie Hunt
Executive Director
Deep East Texas Council of Governments
Filed: September 14, 2020

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Texas Education Agency

Request for Applications Concerning the 2021-2022 Nita M. Lowey 21st Century Community Learning Centers (CCLC), Cycle 11, Year 1 Grant Program

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-21-102 is authorized by Public Law 114-95, Elementary and Secondary Education Act of 1965, as amended by Every Student Succeeds Act (ESSA), Title IV, Part B (20 U.S.C. §§7171-7176).

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-21-102 from eligible applicants, which include local educational agencies, including independent school districts, open-enrollment charter schools, and regional education service centers; community-based organizations; Indian tribe or tribal organization (as such terms are defined in the Indian Self-Determination and Education Act (25 U.S.C. 450b), §4); other public or private entities; or a consortium of two or more eligible organizations. Applications must propose to serve campuses that are eligible for schoolwide programs under ESSA, §1114, and the families of such students. A campus is ineligible to be included in a funded application if it meets either of the following conditions: the campus or school was newly opened in the school year 2019-2020 or the campus is a center or center feeder in an active Texas 21st CCLC, Cycle 10 grant program. If an eligible applicant includes one or more ineligible campus or feeder campus, TEA may deem the entire application ineligible for peer review. Each eligible applicant may submit only one application for funding up to 10 centers.

Description. The federal Nita M. Lowey 21st CCLC program supports the creation of community learning centers that provide academic enrichment opportunities during non-school hours for children, particularly students who attend high-poverty and low-performing schools. The program helps students meet state and local student standards in core academic subjects, such as reading and math; offers students a broad array of enrichment activities that can complement their regular academic programs; and offers literacy and other educational services to the families of participating children.

Dates of Project. The 2021-2022 Nita M. Lowey 21st CCLC, Cycle 11, Year 1 grant program will be implemented during the 2021-2022 school year. Applicants should plan for a starting date of no earlier than July 1, 2021, and an ending date of no later than July 31, 2022.

Project Amount. Approximately $46,049,221 is available for funding the 2021-2022 Nita M. Lowey 21st CCLC, Cycle 11, Year 1 grant program. It is anticipated that approximately 40 grants will be awarded ranging in amounts from $250,000 to $1.75 million each year of the five-year project period. Annually, funding after Year 1 ("continuation funding") is contingent on satisfactory progress of prior year compliance with requirements, achievement of stated service and performance targets, general budget approval by the commissioner of education, and appropriations by the United States Congress. Continuation funding requires grantees to submit a noncompetitive continuation grant appli-

cation each year of the total subgrant period. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Peer reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to 21stcclc@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than Friday, October 23, 2020. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Friday, October 30, 2020. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 11:59 p.m. (Central Time), Thursday, January 7, 2021, to be eligible to be considered for funding. TEA will only accept applications by email to competitivegrants@tea.texas.gov.

Issued in Austin, Texas, on September 16, 2020.

TRD-202003820
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: September 16, 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 **October 26, 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 **October 26, 2020.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 37 Building Products, Ltd.; DOCKET NUMBER: 2020-0785-AIR-E; IDENTIFIER: RN110471588; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: parking lot for company trucks; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance dust conditions; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: C Cooper Custom Homes Incorporated; DOCKET NUMBER: 2020-1038-WQ-E; IDENTIFIER: RN111055562; LOCATION: Tyler, Smith County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: City of Mabank; DOCKET NUMBER: 2019-1483-MWD-E; IDENTIFIER: RN101918845; LOCATION: Mabank, Kaufman 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 WQ0010579001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; PENALTY: $17,437; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $17,437; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Frio LaSalle Pipeline, LP; DOCKET NUMBER: 2020-0611-AIR-E; IDENTIFIER: RN106040488; LOCATION: Dilley, Frio County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit Number O3419/General Operating Permit Number 514, Site-wide Requirements (b)(2), and Texas Health and Safety Code, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; PENALTY: $5,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $2,100; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: KPL South Texas, LLC; DOCKET NUMBER: 2020-0465-WQ-E; IDENTIFIER: RN105507289; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: pipeline; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: LBC Houston, L.P.; DOCKET NUMBER: 2020-0737-AIR-E; IDENTIFIER: RN101041598; LOCATION: Seabrook, Harris County; TYPE OF FACILITY: special warehouse and hydrocarbon liquids storage facility; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 3467B, Special Conditions Number 1, Federal Operating Permit Number O1001, General Terms and Conditions and Special Terms and Conditions Number 18, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $5,275; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Montgomery County Municipal Utility District Number 112; DOCKET NUMBER: 2020-0563-MWD-E; IDENTIFIER: RN104815238; LOCATION: Conroe, Montgomery 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 WQ0014671001, Permit Conditions Number 2.g., by failing to prevent an unauthorized discharge of raw sewage into or adjacent to any water in the state; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Performance Materials NA, Incorporated; DOCKET NUMBER: 2019-1697-AIR-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 20204, Special Conditions Number 1, Federal Operating Permit Number O2055, General Terms and Conditions and Special Terms and Conditions Number 13, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $38,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $19,062; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Sam's Truck Stop Business, Incorporated dba PLATEAU TRUCK STOP; DOCKET NUMBER: 2020-0826-PWS-E; IDENTIFIER: RN101377620; LOCATION: Van Horn, Culberson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's Emergency Well Number 2 into service; PENALTY: $238; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 850-9479; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(10) COMPANY: Shannon Lynn Goins; DOCKET NUMBER: 2020-0624-PWS-E; IDENTIFIER: RN101261667; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's well; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing a minimum of 18 inches above the elevation of the finished floor of the pump house or natural ground surface; 30 TAC §290.42(b)(6), by failing to provide sampling taps for raw water, treated water, and at a point representing water entering the distribution system at every entry point; 30 TAC §290.42(e)(5), by failing to house the hypochlorination solution containers and pumps in a secure enclosure to protect them from adverse weather conditions and vandalism with the solution container top completely covered to prevent the entrance of dust, insects, and other contaminants; 30 TAC §290.42(j), by failing to ensure that all chemicals used in treatment of water supplied by public water systems conform to American National Standards Institute/National Sanitation Foundation Standard 60 for Drinking Water Treatment Chemicals; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(d)(3), by failing to provide a device to readily determine air-water-volume for all pressure tanks greater than 1,000 gallons in capacity; 30 TAC §290.45(b)(1)(A)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 1.5 gallons per minute per connection; 30 TAC §290.45(b)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 50 gallons per connection; 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (B)(iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director (ED) upon request; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connection nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can easily be located during emergencies; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.46(p)(2), by failing to provide the ED with a list of all the operators and operating companies that the public water system uses on an annual basis; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and any associated late fees for TCEQ Financial Administration Account Number 91870016 for Fiscal Year 2019; PENALTY: $4,700; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2020-0092-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 3179 and 3219, Special Conditions Numbers 1 and 6, Federal Operating Permit (FOP) Number O1668, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 22, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(H) and §122.143(4), FOP Number O1668, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to identify all of the required information on the final record for a reportable emissions event; PENALTY: $40,475; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $20,237; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Sigma Agriscience, LLC; DOCKET NUMBER: 2020-0830-AIR-E; IDENTIFIER: RN105211619; LOCATION: Boling, Wharton County; TYPE OF FACILITY: organic fertilizer manufacturing plant; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent nuisance odor conditions; and 30 TAC §106.4(c), Permit by Rule Registration Number 81738, and THSC, §382.085(b), by failing

to maintain all emissions control equipment in good condition and operated properly during operation of the facility; PENALTY: $4,063; ENFORCEMENT COORDINATOR: Richard Garza, (512) 534-5859; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Walter J. Carroll Water Company, Incorporated; DOCKET NUMBER: 2020-0803-PWS-E; IDENTIFIER: RN102688041; LOCATION: Waxahachie, Ellis County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notice to the customers of the facility within 24 hours of a low pressure event or water outage using the prescribed notification language and format as specified in 30 TAC §290.47(c)(1); PENALTY: $1,200; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: WK KIBLER CONSTRUCTION COMPANY LTD; DOCKET NUMBER: 2020-1129-WQ-E; IDENTIFIER: RN111047957; LOCATION: Mertzon, Irion County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, (325) 655-9479.

TRD-202003778
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 15, 2020

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Enforcement Orders

An agreed order was adopted regarding Trent Denman, Docket No. 2019-1274-WR-E on September 15, 2020, assessing $260 in administrative penalties with $52 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Reno, Docket No. 2019-1476-PWS-E on September 15, 2020, assessing $850 in administrative penalties with $170 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Seth Ward Water Supply Corporation, Docket No. 2019-1563-PWS-E on September 15, 2020, assessing $567 in administrative penalties with $113 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2020-0345-PWS-E on September 15, 2020, assessing $150 in administrative penalties with $30 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2020-0346-PWS-E on September 15, 2020, assessing $787 in administrative penalties with $157 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kaneka North America LLC, Docket No. 2020-0435-AIR-E on September 15, 2020, assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding JENSEN HOMEBUILDERS INC, Docket No. 2020-0442-WQ-E on September 15, 2020, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Petra Firma Development Group Inc, Docket No. 2020-0443-WQ-E on September 15, 2020, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation order was adopted regarding Greg Campbell, Docket No. 2020-0470-WOC-E on September 15, 2020, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Billy W. Sensat Sr., Docket No. 2020-0572-OSS-E on September 15, 2020, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202003817
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 16, 2020

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Notice of Commission Action and Response to Public Comments on General Permit WQG100000

After consideration of all public comments and the responses to such comments, the Texas Commission on Environmental Quality (TCEQ) reissued State General Permit Number WQG100000 during its public meeting on September 9, 2020. This general permit authorizes wastewater generated by industrial or water treatment facilities to be disposed of by evaporation from surface impoundments adjacent to water in the state. This general permit does not authorize the discharge of wastewater into water in the state. The TCEQ also issued the Commission's Response to Public Comment. The issued permit and the Commission's Response to Public Comment are available in the TCEQ's public records and on the TCEQ website at: *https://www.tceq.texas.gov/permitting/wastewater/general/index.html.*

TRD-202003722
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 11, 2020

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 26, 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 each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 26, 2020.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Harrington Environmental Services, LLC; DOCKET NUMBER: 2019-0350-MLM-E; TCEQ ID NUMBER: RN108999616; LOCATION: 7501 County Road 1009, Godley, Johnson County; TYPE OF FACILITY: composting facility; RULES VIOLATED: 30 TAC §328.5(b)(4), by failing to report any updates or changes to information contained in the site report within 90 days of the effective date of the change. Specifically, the Notice of Intent was not updated with the type and quantity of mulch feedstock used at the site, based on the site's activities during the April 28, 2017, investigation; 30 TAC §328.5(f)(1) and (2), by failing to maintain recycling records to show compliance with the requirements for limitations on storage of recyclable materials and reasonable efforts to maintain source-separation of materials received by the site. Specifically, respondent did not maintain records demonstrating the amount of material that is recycled, or transferred to a different site for recycling, equals at least 50% by weight or volume of the material accumulated at the beginning of the period; notice of customers of source-separation requirements; training of staff in the inspection of incoming loads to ensure that they contain no more than 10% of incidental non-recyclable waste; records of rejected loads for exceeding 10% of incidental non-recyclable waste; and records that show that incidental non-recyclable waste constitutes no more than 5% of the average total volume of all materials received in the last six-month period; 30 TAC §328.5(d) and §37.921, by failing to establish and maintain financial assurance for the closure of a recycling facility that stores combustible materials outdoors. Specifically, the site's financial assurance was established for 49 cubic yards of combustible material; however, approximately 1,648 cubic yards of combustible material is stored outdoors at the site; 30 TAC §332.8(c)(1), by failing to maintain a setback distance of at least 50 feet from all property boundaries to the edge of the area receiving, processing, or storing feedstock or finished product. Specifically, two mulch feedstock piles were observed in the southeastern corner of the site. The first mulch feedstock pile was located within 23 feet of the boundary of the property located adjacent north. The second mulch feedstock pile was located within 21 feet of the boundary of the property located adjacent east and within seven feet of the boundary of the property located adjacent south; 30 TAC §312.48(1) and Domestic Septage Registration Number 711020, Section V. Standard Provisions, C. Reporting Requirements, by failing to timely submit the annual sludge report by September 30th of each year. Specifically, respondent submitted the 2018 annual report on December 17, 2018; and 30 TAC §312.47(b)(2), (3), and (5) and Domestic Septage Registration Number 711020, Section V. Standard Provisions, C. Reporting Requirements, Numbers two, three and five. Specifically, respondent did not maintain records demonstrating the correct total number of acres where domestic septage applications occurred, date and time of each domestic septage application, and rate of domestic septage application in gallons/acre/year; PENALTY: $5,830; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Leona Bullock dba Blue Ridge Mobile Home Park; DOCKET NUMBER: 2019-0857-PWS-E; TCEQ ID NUMBER: RN101226538; LOCATION: north side of State Highway 27, 4.8 miles northeast of Kerrville, Kerr County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.108(f)(1) and §290.122(b)(3)(A) and (f), by failing to comply with the maximum contaminant level (MCL) of 5 picoCuries per liter (pCi/L) for combined radium-226 and -228 based on the running annual average, and failing to issue additional public notice within three months and submit a copy of the notice, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to comply with the combined radium-226 and -228 MCL for the second and third quarters of 2018. Specifically, the running annual average concentrations for combined radium-226 and -228 at EP001 were 6 pCi/L for the fourth quarter of 2016, 6 pCi/L for the first quarter of 2017, 6 pCi/L for the second quarter of 2017, 6 pCi/L for the third quarter of 2017, 6 pCi/L for the fourth quarter of 2017, 6 pCi/L for the first quarter of 2018, 6 pCi/L for the second quarter of 2018, and 6 pCi/L for the third quarter of 2018, and at EP002 were 7 pCi/L for the third quarter of 2017, 7 pCi/L for the fourth quarter of 2017, 7 pCi/L for the first quarter of 2018, 7 pCi/L for the second quarter of 2018, and 6 pCi/L for the third quarter of 2018. Additionally, letters from the ED required public notification be provided by April 23, 2019, but notifications were not provided; THSC, §341.0315(c) and 30 TAC §290.108(f)(1), by failing to comply with the MCL of 15 pCi/L for gross alpha particle activity based on the running annual average. Specifically, the running annual average concentration of gross alpha particle activity was 16 pCi/L for the fourth quarter of 2017; and 30 TAC §290.108(e), by failing to provide the results of radionuclides sampling to the ED within the first ten days following the end of the monitoring period for the first through third quarters of 2018; PENALTY: $1,530; STAFF ATTORNEY: Christopher Mullins, Litigation Division, MC 175, (512) 239-0141; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202003779

Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 15, 2020

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Notice of Public Meeting on Proposed Remedial Action

Notice of a virtual public meeting on November 5, 2020, concerning the proposed remedial action at the Ballard Pits Proposed state Superfund site in Robstown, Nueces County, Texas (the site).

The public meeting will be held for the purpose of obtaining additional information concerning the facility and the identification of additional potentially responsible parties and to invite public comment concerning the proposed remedy for the site. The public meeting is not a contested case hearing under the Texas Government Code, Chapter 2001.

The executive director of the Texas Commission on Environmental Quality (TCEQ or agency) issues this public notice of the proposed remedy for the site. In accordance with Texas Health and Safety Code, §361.187 and 30 Texas Administrative Code §335.349(a), a public meeting regarding the TCEQ's selection of a proposed remedy for the site shall be held. This notice was also published in the *Corpus Christi Caller Times* newspaper on September 25, 2020.

This meeting was originally scheduled for, April 23,2020, but was postponed. On March 16, 2020, in accordance with Texas Government Code, §418.016, Governor Abbott suspended various provisions of the Open Meetings Act that require government officials and members of the public to be physically present at a specified meeting location. Pursuant to that suspension, the public will not be able to attend the public meeting in person but may attend via Microsoft Teams application at no cost.

The public meeting will be held at 6:00 p.m., on November 5, 2020. The public meeting can be accessed through a Microsoft Teams Live event link. Public meeting information and other site information will be available on the TCEQ's site webpage, prior to the meeting, at https://www.tceq.texas.gov/remediation/superfund/state/ballard.html.

The site was proposed for listing on the state registry of Superfund sites in the January 13, 2006, issue of the *Texas Register* (31 TexReg 316). The site is approximately 296 acres in Section 6 of the Wade Riverside Subdivision, at the end of Ballard Lane, west of its intersection with County Road 73.

The TCEQ's proposed remedy is a Plume Management Zone (PMZ) to manage on-site and off-site impacted groundwater and non-aqueous phase liquid (NAPL). NAPL will be monitored to ensure it remains within the PMZ. During post-closure care of the remedy, if performance monitoring measures indicate that the PMZ is not functioning properly, limited in-situ groundwater treatment will be implemented as a contingency. The PMZ will be established with institutional controls filed in county real property records in accordance with the Texas Risk Reduction Program to restrict exposure to the NAPL and impacted groundwater. If institutional controls are not placed on the off-site properties, the off-site area impacted by NAPL may be excavated, a clay layer would be constructed at the bottom and around the excavation walls, and then the excavation would be backfilled with clean soil.

The TCEQ has also completed a Proposed Remedial Alternative Document that documents the process used to evaluate the proposed remedy.

All persons desiring to comment on the proposed remedial action may do so prior to or at the public meeting. All comments submitted *prior* to the public meeting **must be received by 5:00 p.m. on November 4, 2020, and should be sent in writing** to Scott Settemeyer, P.G., Project Manager, TCEQ, Remediation Division, MC-136, P.O. Box 13087, Austin, Texas 78711-3087, by email at *superfnd@tceq.texas.gov* or by facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on November 5, 2020.

A portion of the record for this site, including documents pertinent to the proposed remedial action, are available for review during regular business hours at the Owen R. Hopkins Public Library, 3202 McKinzie Road, Corpus Christi, Texas 78410, (361) 826-7055. Complete copies of the TCEQ's public records regarding the site may be obtained during regular business hours at the TCEQ's Central File Room, located at 12100 Park 35 Circle, Building E, First Floor, in Austin, Texas, (512) 239-2900; however, the Central File Room is currently closed, but information requests can be submitted through e-mail at *cfrreq@tceq.texas.gov* or through the *CENTRAL FILE ROOM ONLINE (https://www.tceq.texas.gov/agency/data/records-services).* Additional files may be obtained by contacting the TCEQ project manager for the site, Scott Settemeyer, P.G., at (512) 239-3429. Please contact the library directly for hours of operation. Also, for additional assistance obtaining site documents, contact Crystal Taylor, community relations liaison, at (800) 633-9363 or email *superfnd@tceq.texas.gov.*

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-3844. Requests should be made at least 14 days prior to the meeting.

For further information about the site or the public meeting, please call Crystal Taylor, TCEQ Community Relations Liaison, at (800) 633-9363.

TRD-202003792
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 15, 2020

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Notice of Water Rights Application

Notice issued September 11, 2020

APPLICATION NO. 13608; Covey Park Resources LLC, 8401 N Central Expressway, Suite 700, Dallas, Texas 75225, Applicant, seeks a temporary water use permit to divert and use not to exceed 115.5 acre-feet of water within a period of three years from anywhere along the perimeter of an existing reservoir on an unnamed tributary of Caddo Creek, tributary of Caddo Creek, tributary of the Sabine River, Sabine River, Sabine River Basin at a maximum diversion rate of 7.49 cfs (3,360 gpm) for mining purposes in Panola County.

The application was received on April 11, 2019. Additional information and fees were received on June 6 and June 7, 2019. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on June 27, 2019. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and installing a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by September 28, 2020.

PERMIT NO. 5085; The City of Robinson, 111 W. Lyndale Avenue, Robinson, Texas 76706, Applicant, seeks authorization to extend the

time to commence and complete construction of an off-channel reservoir complex in the Brazos River Basin, McLennan County. The application and fees were received on June 18, 2020. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 7, 2020. The Executive Director has determined the applicant has shown due diligence and justification for delay. In the event a hearing is held on this application, the Commission shall also consider whether the appropriation shall be forfeited for failure to demonstrate sufficient due diligence and justification for delay. The Executive Director has completed the technical review of the application and prepared a draft Order. The draft Order, if granted, would authorize the extension of time to commence and complete construction of Reservoir Nos. 2, 3, and 4. 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 Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 13610; Corpus Christi Liquefaction, LLC (Applicant), 2822 La Quinta Road, Gregory, Texas 78359, has applied for a Water Use Permit to divert and use not to exceed 5,000 acre-feet of water per year from a diversion segment on Corpus Christi Bay, San Antonio-Nueces Coastal Basin, at a maximum combined diversion rate of 110.96 cfs (49,804 gpm) for industrial purposes in San Patricio County. The application and fees were received on April 18, 2019. The application was declared administratively complete and filed with the Office of the Chief Clerk on May 22, 2019. The Executive Director has 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, measuring diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk 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-202003818
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 16, 2020

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the TCEQ on August 11, 2020, in the matter of the Executive Director of the Texas Commission on Environmental Quality v. Vachana S. Mao dba N V Food Mart; SOAH Docket No. 582-20-1750; TCEQ Docket No. 2019-0488-PST-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Vachana S. Mao dba N V Food Mart on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Mehgan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-202003819
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 16, 2020

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Lobby Activities Report due September 10, 2019

William Ryan Brannan, 1108 Lavaca St. #100.200, Austin, Texas 78701

Deadline: Lobby Activities Report due January 10, 2020

Court Koenning, P.O. Box 70073, Houston, Texas 77270

Deadline: Lobby Activities Report due May 11, 2020

William Ryan Brannan, 1108 Lavaca St. #100.200, Austin, Texas 78701

Deadline: Lobby Activities Report due June 10, 2020

Court Koenning, P.O. Box 70073, Houston, Texas 77270

Terra Tucker, 1700 Broadway #700, Oakland, California 94612

Deadline: Monthly Report due April 6, 2020 for Committees

Sarah Ullman, One Vote at a Time Texas, 500 N. Brand Blvd. Ste. 2000, Glendale, California 91203

Deadline: Monthly Report due May 5, 2020 for Committees

Mark Rush, Associated Builders & Contractors of Greater Houston Political Action Committee, 11550 Fuqua Ste. 475, Houston, Texas, 77034

TRD-202003713
Anne Temple Peters
Executive Director
Texas Ethics Commission
Filed: September 10, 2020

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of August 17, 2020, to September 11, 2020. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, September 18, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, October 18, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: Sand on Floor, Inc.

Location: The project site is located in coastal dune swale wetlands adjacent to the Gulf of Mexico, at 12083-12135 Bluewater Highway, near the City of Freeport, in Brazoria County, Texas.

Latitude & Longitude (NAD 83): 29.068941, -95.128453

Project Description: The applicant proposes to discharge fill material into a total of 2.51 acres, 0.44 acre temporary and 2.07 acres permanently, of coastal dune swale wetlands adjacent to the Gulf of Mexico during the construction of a residential development. Of the 0.44 acre of temporary impacts, 0.21 acre is due to utility installation and stormwater conveyance and 0.23 acre is due to roadway construction. Of the 2.07 acres of permanent impacts, 0.16 acre is due to utility installation and stormwater conveyance, 0.77 acre is due to roadway construction, and 1.14 acres is due to the residential development.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2007-00485. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 20-1354-F1

FEDERAL AGENCY ACTIVITIES:

Applicant: Bureau of Ocean Energy Management (BOEM)

Project Description: BOEM proposes to offer for lease in proposed GOM Region-wide Lease Sale 257 all available unleased blocks in the Western and Central Planning Areas (WPA and CPA, respectively), and a small portion of the Eastern Planning Area (EPA) not subject to Congressional moratorium. The proposed GOM region-wide lease sale area includes all available unleased blocks within the WPA, CPA, and EPA with the exception of whole blocks and portions of blocks deferred by the Gulf of Mexico Energy Security Act of 2006; blocks that are adjacent to or beyond the U.S. Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap; and whole blocks and partial blocks within the boundary of the Flower Garden Banks National Marine Sanctuary. The final decision on whether and how to proceed with the lease sale and the lease blocks available for leasing will be announced in the Record of Decision and, if the decision is to proceed, a Final Notice of Sale. The proposed lease sale area may be smaller than the area considered herein, but BOEM is not planning for it to be larger than the area considered herein.

CMP Project No: 21-1012-F4

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at *pialegal@glo.texas.gov.* Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at *federal.consistency@glo.texas.gov.*

TRD-202003824
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: September 16, 2020

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Texas Health and Human Services Commission

Public Notice: Waiver Amendment to the Youth Empowerment Services (YES) Waiver Program

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment to the Youth Empowerment Services (YES) waiver program, a waiver implemented under section 1915(c) of the Social Security Act. CMS has approved this waiver through March 31, 2023. The proposed effective date for the amendment is February 1, 2021. The proposed amendment does not affect the cost neutrality of the waiver.

The request proposes to amend Appendix I to require YES program providers to use electronic visit verification for in-home respite. This requirement is being included to comply with §1903(l) of the Social Security Act, as added by the 21st Century Cures Act.

The YES waiver program is designed to provide home and community-based services to children with serious emotional disturbances and their families, with a goal of reducing or preventing children's inpatient psychiatric treatment and the consequent removal from their families. The waiver currently serves eligible children who are at least three years of age and under 19 years of age.

If you want to obtain a free copy of the proposed request to amend the waiver or if you have questions, or need additional information regarding this amendment you may contact Luis Solorio by email or telephone as follows:

Telephone

(512) 487-3449

Email

TX_Medicaid_Waivers@hhsc.state.tx.us

The local mental health authority (LMHA) offices will post this notice for 30 days.

The request to amend the waiver is on the HHSC website at https://hhs.texas.gov/doing-business-hhs/provider-portals/behavioral-health-services-providers/youth-empowerment-services-waiver-providers.

TRD-202003726
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: September 11, 2020

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Texas Higher Education Coordinating Board

Correction of Error

The Texas Higher Education Coordinating Board published proposed amendments to 19 TAC §22.226 in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5752). Due to an error by the Texas Register, the proposed amendments to §22.226(7) were published incorrectly. The correct proposed amended text should read as follows:

(2) [~~(7)~~] Degree [~~or certificate~~] program of four years or less--A baccalaureate degree [~~or certificate~~] program, other than [~~in architecture, engineering or any other~~] a program determined by the Board to require more than four years [~~or less~~] to complete.

TRD-202003831

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Texas Lottery Commission

Scratch Ticket Game Number 2249 "SUPER LOTERIA"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2249 is "SUPER LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2249 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2249.

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: THE ARMADILLO SYMBOL, THE BAT SYMBOL, THE BLUEBONNET SYMBOL, THE BOAR SYMBOL, THE CACTUS SYMBOL, THE CHERRIES SYMBOL, THE CHILE PEPPER SYMBOL, THE CORN SYMBOL, THE COVERED WAGON SYMBOL, THE COWBOY SYMBOL, THE COWBOY HAT SYMBOL, THE FIRE SYMBOL, THE GUITAR SYMBOL, THE HEN SYMBOL, THE HORSE SYMBOL, THE HORSESHOE SYMBOL, THE JACKRABBIT SYMBOL, THE LIZARD SYMBOL, THE LONESTAR SYMBOL, THE MARACAS SYMBOL, THE MOCKINGBIRD SYMBOL, THE MOONRISE SYMBOL, THE MORTAR PESTLE SYMBOL, THE NEWSPAPER SYMBOL, THE OIL RIG SYMBOL, THE PECAN TREE SYMBOL, THE PIÑATA SYMBOL, THE RATTLESNAKE SYMBOL, THE ROADRUNNER SYMBOL, THE SADDLE SYMBOL, THE SHOES SYMBOL, THE SPEAR SYMBOL, THE SPUR SYMBOL, THE STRAWBERRY SYMBOL, THE SUNSET SYMBOL, THE WHEEL SYMBOL, THE WINDMILL SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $200, $500, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2249 - 1.2D

PLAY SYMBOL	CAPTION
THE ARMADILLO SYMBOL	THEARMADILLO
THE BAT SYMBOL	THE BAT
THE BLUEBONNET SYMBOL	THEBLUEBONNET
THE BOAR SYMBOL	THE BOAR
THE CACTUS SYMBOL	THE CACTUS
THE CHERRIES SYMBOL	THECHERRIES
THE CHILE PEPPER SYMBOL	THECHILEPEPPER
THE CORN SYMBOL	THE CORN
THE COVERED WAGON SYMBOL	THECOVEREDWAGON
THE COWBOY SYMBOL	THECOWBOY
THE COWBOY HAT SYMBOL	THECOWBOYHAT
THE FIRE SYMBOL	THE FIRE
THE GUITAR SYMBOL	THE GUITAR
THE HEN SYMBOL	THE HEN
THE HORSE SYMBOL	THE HORSE
THE HORSESHOE SYMBOL	THEHORSESHOE
THE JACKRABBIT SYMBOL	THEJACKRABBIT
THE LIZARD SYMBOL	THELIZARD
THE LONESTAR SYMBOL	THELONESTAR
THE MARACAS SYMBOL	THEMARACAS
THE MOCKINGBIRD SYMBOL	THEMOCKINGBIRD
THE MOONRISE SYMBOL	THEMOONRISE
THE MORTAR PESTLE SYMBOL	THEMORTARPESTLE
THE NEWSPAPER SYMBOL	THENEWSPAPER
THE OIL RIG SYMBOL	THEOILRIG

THE PECAN TREE SYMBOL	THEPECANTREE
THE PIÑATA SYMBOL	THE PIÑATA
THE RATTLESNAKE SYMBOL	THERATTLESNAKE
THE ROADRUNNER SYMBOL	THEROADRUNNER
THE SADDLE SYMBOL	THESADDLE
THE SHOES SYMBOL	THE SHOES
THE SPEAR SYMBOL	THE SPEAR
THE SPUR SYMBOL	THE SPUR
THE STRAWBERRY SYMBOL	THESTRAWBERRY
THE SUNSET SYMBOL	THE SUNSET
THE WHEEL SYMBOL	THE WHEEL
THE WINDMILL SYMBOL	THEWINDMILL
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$5,000	FVTH
$100,000	100TH

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 (2249), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2249-0000001-001.

H. Pack - A Pack of the "SUPER LOTERIA" 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 "SUPER LOTERIA" Scratch Ticket Game No. 2249.

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 "SUPER LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-two (52) Play Symbols. PLAYBOARD: 1) The player completely scratches the CALLER'S CARD area to reveal 21 symbols. 2) The player scratches ONLY the symbols on the PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. 3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. BONUS GAMES: The player scratches ONLY the symbols on the BONUS GAMES that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 4 symbols in the same GAME, the player wins the PRIZE for the GAME. TABLA DE JUEGO: 1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 21 símbolos. 2) El jugador SOLAMENTE raspa los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. 3) Si el jugador revela una línea completa, horizontal, vertical o diagonal, el jugador gana el premio para esa línea. JUEGOS DE BONO: El jugador SOLAMENTE raspa los símbolos de los JUEGOS DE BONO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 4 símbolos en el mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. 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 fifty-two (52) 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 fifty-two (52) 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 fifty-two (52) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-two (52) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to six (6) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. PLAYBOARD/TABLA DE JUEGO: There will be no matching Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. PLAYBOARD/TABLA DE JUEGO: At least eight (8), but no more than twelve (12), CALLER'S CARD/CARTA DEL GRITÓN

Play Symbols will match a symbol on the PLAYBOARD/TABLA DE JUEGO play area on a Ticket.

E. PLAYBOARD/TABLA DE JUEGO: No matching Play Symbols are allowed on the PLAYBOARD/TABLA DE JUEGO play area.

F. BONUS GAMES/JUEGOS DE BONO: Every BONUS GAMES/JUEGOS DE BONO Grid will match at least one (1) Play Symbol to the CALLER'S CARD/CARTA DEL GRITÓN play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER LOTERIA" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and 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 $50.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SUPER LOTERIA" Scratch Ticket Game prize of $5,000 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 "SUPER LOTERIA" 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 "SUPER LOTERIA" 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 "SUPER LOTERIA" 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 54,000,000 Scratch Tickets in Scratch Ticket Game No. 2249. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2249 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	6,480,000	8.33
$10.00	5,400,000	10.00
$15.00	720,000	75.00
$20.00	720,000	75.00
$50.00	720,000	75.00
$100	225,450	239.52
$200	36,900	1,463.41
$500	5,400	10,000.00
$5,000	135	400,000.00
$100,000	27	2,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.77. 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. 2249 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. 2249, 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-202003782
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 15, 2020

♦ ♦ ♦

Scratch Ticket Game Number 2264 "MERRY MAGIC"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2264 is "MERRY MAGIC". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2264 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2264.

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, 06, 07, 08, 09, 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, 5X SYMBOL, 10X SYMBOL, $10.00, $20.00, $40.00, $50.00, $100, $200, $500 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2264 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV

28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
5X SYMBOL	WINX5
10X SYMBOL	WINX10
$10.00	TEN$
$20.00	TWY$
$40.00	FRTY$

$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$100,000	100TH

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 (2264), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2264-0000001-001.

H. Pack - A Pack of the "MERRY MAGIC" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 050 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MERRY MAGIC" Scratch Ticket Game No. 2264.

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 "MERRY MAGIC" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy (70) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the MAGIC NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly seventy (70) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly seventy (70) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the seventy (70) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the seventy (70) 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 either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to thirty-two (32) times.

D. GENERAL: The "5X" (WINX5) and "10X" (WINX10) Play Symbols will never appear in either of the BONUS QUICK WIN play areas.

E. BONUS QUICK WIN: A Ticket can win up to one (1) time in each of the two (2) BONUS QUICK WIN play areas.

F. BONUS QUICK WIN: Winning BONUS QUICK WIN Prize Symbols will not match Prize Symbols from another BONUS QUICK WIN play area.

G. BONUS QUICK WIN: On Non-Winning Tickets, all BONUS QUICK WIN Prize Symbols will be different.

H. BONUS QUICK WIN: A non-winning BONUS QUICK WIN play area will have two (2) different Prize Symbols.

I. MAIN PLAY AREA: A Ticket can win up to thirty (30) times in the main play area.

J. MAIN PLAY AREA: All non-winning YOUR NUMBERS Play Symbols will be different.

K. MAIN PLAY AREA: Tickets winning more than one (1) time will use as many MAGIC NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

L. MAIN PLAY AREA: All MAGIC NUMBERS Play Symbols will be different.

M. MAIN PLAY AREA: On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

N. MAIN PLAY AREA: On Non-Winning Tickets, a MAGIC NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

O. MAIN PLAY AREA: On winning and Non-Winning Tickets, the top cash prize of $100,000 will appear at least once, with respect to other parameters, play action or prize structure.

P. MAIN PLAY AREA: The "5X" (WINX5) Play Symbol will never appear as a MAGIC NUMBERS Play Symbol.

Q. MAIN PLAY AREA: The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

R. MAIN PLAY AREA: The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

S. MAIN PLAY AREA: The "5X" (WINX5) Play Symbol will never appear more than once on a Ticket.

T. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear as a MAGIC NUMBERS Play Symbol.

U. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

V. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the structure.

W. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "MERRY MAGIC" Scratch Ticket Game prize of $10.00, $20.00, $30.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and 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, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MERRY MAGIC" Scratch Ticket Game prize of $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 "MERRY MAGIC" 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 "MERRY MAGIC" 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 "MERRY MAGIC" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 5,520,000 Scratch Tickets in Scratch Ticket Game No. 2264. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2264 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10.00	607,200	9.09
$20.00	386,400	14.29
$30.00	165,600	33.33
$50.00	193,200	28.57
$100	66,240	83.33
$200	13,110	421.05
$500	1,104	5,000.00
$100,000	5	1,104,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.85. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2264 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. 2264, 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-202003783
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 15, 2020

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Scratch Ticket Game Number 2265 "TIC TAC SNOW"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2265 is "TIC TAC SNOW". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2265 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2265.

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: BOW SYMBOL, CANDLE SYMBOL, CANDY CANE SYMBOL, DRUM SYMBOL, GIFT SYMBOL, HOLLY SYMBOL, STAR SYMBOL, SLED SYMBOL, TREE SYMBOL, $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $50.00, $100 and $500.

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. 2265 - 1.2D

PLAY SYMBOL	CAPTION
BOW SYMBOL	BOW
CANDLE SYMBOL	CANDLE
CANDY CANE SYMBOL	CANE
DRUM SYMBOL	DRUM
GIFT SYMBOL	GIFT
HOLLY SYMBOL	HOLLY
STAR SYMBOL	STAR
SLED SYMBOL	SLED
TREE SYMBOL	TREE
$1.00	ONE$
$2.00	TWO$
$3.00	THR$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$500	FVHN

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 (2265), 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: 2265-0000001-001.

H. Pack - A Pack of the "TIC TAC SNOW" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable

rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "TIC TAC SNOW" Scratch Ticket Game No. 2265.

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 "TIC TAC SNOW" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose ten (10) Play Symbols. If a player reveals 3 matching Play Symbols in any one row, column or diagonal line, the player wins the PRIZE. 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 ten (10) 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 ten (10) 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 ten (10) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the ten (10) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to one (1) time in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of Play Symbols in the same order. Consecutive Non-Winning Ticket within a Pack may have matching Prize Symbols because only one Symbol appears on the Ticket.

C. Non-Winning Tickets will have at least one (1) row, column, or diagonal line that contains two (2) matching Play Symbols plus one (1) different Play Symbol.

D. All Tickets will contain at least two (2) matching Play Symbols, unless restricted by other parameters, play action or prize structure.

E. Winning Tickets will only have one (1) occurrence of three (3) matching Play Symbols in any row, column, or diagonal line.

2.3 Procedure for Claiming Prizes.

A. To claim a "TIC TAC SNOW" Scratch Ticket Game prize of $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and 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 $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly.

A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "TIC TAC SNOW" 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.

C. 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.

D. 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 "TIC TAC SNOW" 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 "TIC TAC SNOW" 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. 2265. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2265 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	870,000	10.34
$2.00	480,000	18.75
$3.00	270,000	33.33
$5.00	240,000	37.50
$10.00	105,000	85.71
$20.00	15,000	600.00
$50.00	1,750	5,142.86
$100	750	12,000.00
$500	100	90,000.00

*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 4.54. 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. 2265 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. 2265, 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-202003784
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 15, 2020

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Scratch Ticket Game Number 2266 "WINTER WORDS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2266 is "WINTER WORDS". The play style is "other".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2266 shall be $3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2266.

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: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, $300 and $20,000.

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 letter Play Symbols do not have captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2266 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	

Z	
$3.00	THR$
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$300	THHN
$20,000	20TH

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 (2266), 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: 2266-0000001-001.

H. Pack - A Pack of the "WINTER WORDS" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). There will be 2 fanfold configurations for this game. Configuration A will show the front of Ticket 001 and the back of Ticket 125. Configuration B will show the back of Ticket 001 and the front of Ticket 125.

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 "WINTER WORDS" Scratch Ticket Game No. 2266.

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 "WINTER WORDS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose ninety-one (91) Play Symbols. The player will completely scratch all the YOUR 20 LETTERS Play Symbols. The player will then scratch all the letters found in GAMES 1 through 12 that exactly match the YOUR 20 LETTERS Play Symbols. If a player matches all the letters in the same GAME with the YOUR 20 LETTERS Play Symbols, the player wins the PRIZE for that GAME. 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 ninety-one (91) 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. The letter Play Symbols do not have 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 ninety-one (91) 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 ninety-one (91) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the ninety-one (91) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to twelve (12) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Each Ticket consists of a YOUR 20 LETTERS play area and GAMES 1 - 12 play area.

E. Each letter will only appear once per Ticket in the YOUR 20 LETTERS play area.

F. Each word will appear only once per Ticket in GAMES 1 - 12.

G. There will be a minimum of three (3) vowels in YOUR 20 LETTERS play area. Vowels are A, E, I, O and U.

H. The length of the words found in GAMES 1 - 12 will range from three (3) to eight (8) letters, as shown on the artwork.

I. The $3 and $5 Prize Symbols will only appear in GAMES 3 - 12. The $100 and $300 Prize Symbols will only appear in GAMES 1 - 7. The $20,000 Prize Symbol will only appear in GAMES 1 - 4.

J. Only words from the approved word list (Texas_Winter_V2_Jan2019.doc) will appear in GAMES 1 - 12.

K. None of the TX_REJECTED_WORDS from the (Master Texas Word List 01.09.2019.xlsx) that contain three (3) or more letters will appear vertically or diagonally (in any direction) in GAMES 1 - 12.

L. None of the TX_REJECTED WORDS from the (Master Texas Word List 01.09.2019.xlsx) that contain three (3) or more letters will appear horizontally, vertically or diagonally (in any direction) in the YOUR 20 LETTERS play area.

M. A player will never find a word horizontally (in any direction), vertically (in any direction) or diagonally (in any direction) in the YOUR 20 LETTERS play area that matches a word in GAMES 1 - 12.

N. A minimum of fourteen (14) YOUR 20 LETTERS will open at least one (1) letter in GAMES 1 - 12.

O. Exposed words on winning Tickets will be identical to exposed words on Non-Winning Tickets to avoid pick out.

2.3 Procedure for Claiming Prizes.

A. To claim a "WINTER WORDS" Scratch Ticket Game prize of $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100 or $300, 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, $100 or $300 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WINTER WORDS" Scratch Ticket Game prize of $20,000, 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 "WINTER WORDS" 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 Resi-

dent 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 "WINTER WORDS" 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 "WINTER WORDS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 5,040,000 Scratch Tickets in Scratch Ticket Game No. 2266. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2266 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3.00	524,160	9.62
$5.00	282,240	17.86
$10.00	241,920	20.83
$15.00	120,960	41.67
$20.00	50,400	100.00
$30.00	20,160	250.00
$50.00	10,878	463.32
$100	3,150	1,600.00
$300	630	8,000.00
$20,000	5	1,008,000.00

*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 4.02. 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. 2266 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. 2266, 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-202003785
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 15, 2020

♦ ♦ ♦

Scratch Ticket Game Number 2267 "HOLIDAY BUCKS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2267 is "HOLIDAY BUCKS". The play style is "find symbol".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2267 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2267.

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: NUTCRACKER SYMBOL, HAT SYMBOL, BELLS SYMBOL, SCARF SYMBOL, BOW SYMBOL, REINDEER SYMBOL, CANDY CANE SYMBOL, DRUM SYMBOL, WREATH SYMBOL, MITTEN SYMBOL, STOCKING SYMBOL, CANDLE SYMBOL, SLEIGH SYMBOL, IGLOO SYMBOL, STAR SYMBOL, SNOWMAN SYMBOL, COCOA SYMBOL, HOLLY SYMBOL, GINGERBREAD MAN SYMBOL, PIE SYMBOL, TOYS SYMBOL, HORN SYM-

BOL, EARMUFF SYMBOL, SNOWFLAKE SYMBOL, DOVE SYMBOL, TREE SYMBOL, CABIN SYMBOL, GIFT SYMBOL, $5.00, $10.00, $15.00, $50.00, $100 and $50,000.

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. 2267 - 1.2D

PLAY SYMBOL	CAPTION
NUTCRACKER SYMBOL	NTCRKR
HAT SYMBOL	HAT
BELLS SYMBOL	BELLS
SCARF SYMBOL	SCARF
BOW SYMBOL	BOW
REINDEER SYMBOL	RNDEER
CANDY CANE SYMBOL	CCANE
DRUM SYMBOL	DRUM
WREATH SYMBOL	WRTH
MITTEN SYMBOL	MITTEN
STOCKING SYMBOL	STKING
CANDLE SYMBOL	CANDLE
SLEIGH SYMBOL	SLEIGH
IGLOO SYMBOL	IGLOO
STAR SYMBOL	STAR
SNOWMAN SYMBOL	SNOWMAN
COCOA SYMBOL	COCOA
HOLLY SYMBOL	HOLLY
GINGERBREAD MAN SYMBOL	GINGER
PIE SYMBOL	PIE
TOYS SYMBOL	TOYS
HORN SYMBOL	HORN
EARMUFF SYMBOL	EARMUFF
SNOWFLAKE SYMBOL	SNOWFLK

DOVE SYMBOL	DOVE
TREE SYMBOL	WIN$
CABIN SYMBOL	DBL
GIFT SYMBOL	WINX5
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$50.00	FFTY$
$100	ONHN
$50,000	50TH

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 (2267), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2267-0000001-001.

H. Pack - A Pack of the "HOLIDAY BUCKS" 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 "HOLIDAY BUCKS" Scratch Ticket Game No. 2267.

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 "HOLIDAY BUCKS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty (40) Play Symbols. The Player scratches the Ticket to reveal 20 Play Symbols. If a player reveals a "TREE" Play Symbol, the player wins the prize for that symbol. If the player reveals a "CABIN" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "GIFT" Play Symbol, the player wins 5 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty (40) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty (40) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty (40) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty (40) 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. FIND: A non-winning Prize Symbol will never match a winning Prize Symbol.

D. FIND: A Ticket may have up to six (6) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

E. FIND: No matching non-winning Play Symbols on a Ticket.

F. FIND: The "CABIN" (DBL) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

G. FIND: The "GIFT" (WINX5) 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 "HOLIDAY BUCKS" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and 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 $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOLIDAY BUCKS" Scratch Ticket Game prize of $50,000, 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 "HOLIDAY BUCKS" 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 "HOLIDAY BUCKS" 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 "HOLIDAY BUCKS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2267. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2267 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	768,000	9.38
$10.00	432,000	16.67
$15.00	288,000	25.00
$50.00	168,000	42.86
$100	24,960	288.46
$500	1,440	5,000.00
$50,000	8	900,000.00

*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 4.28. 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. 2267 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. 2267, 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-202003786
Bob Biard
General Counsel
Texas Lottery Commission
Filed: (512) 344-5313

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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