TEXAS REGISTER

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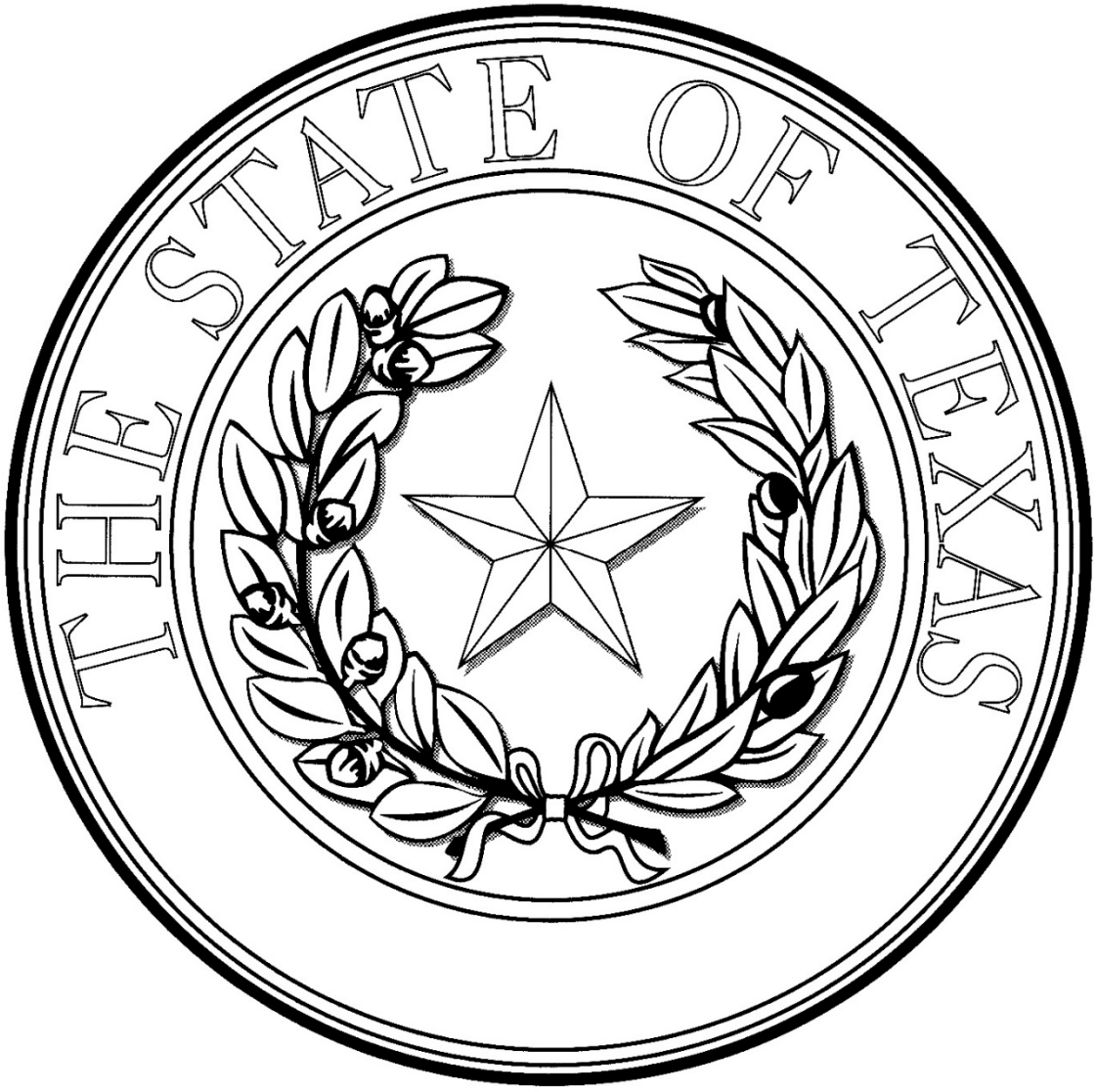

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, Texas 78711
(512) 463-5561
FAX (512) 463-5569

https://www.sos.texas.gov
register@sos.texas.gov

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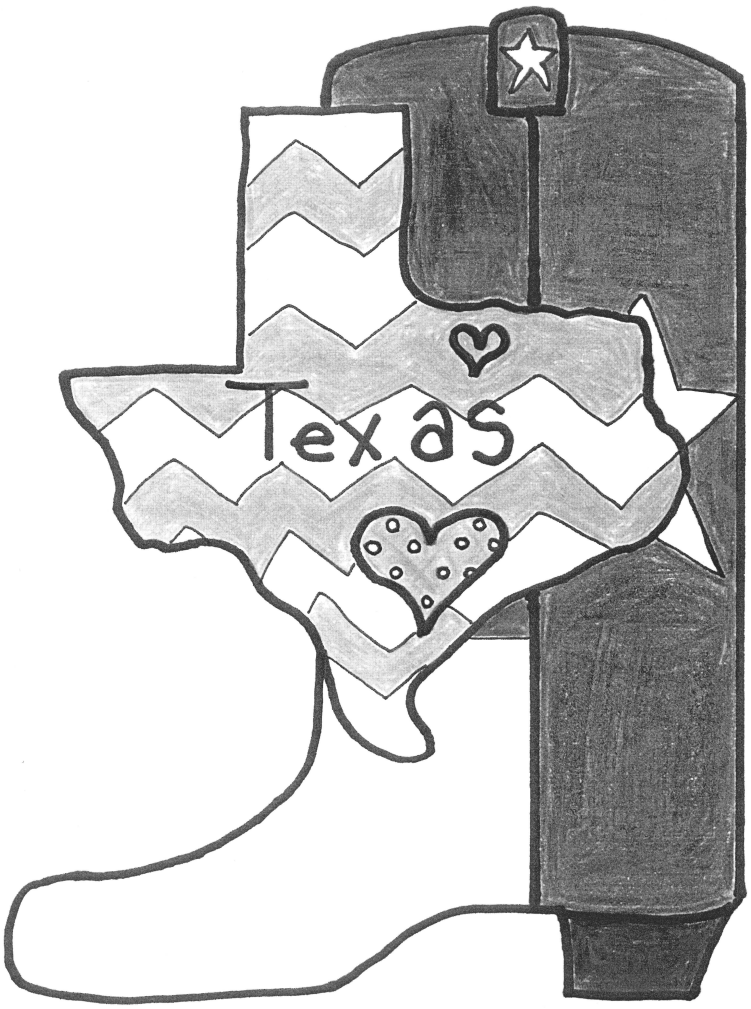
In This Issue


Texas

THE GOVERNOR

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

Appointments

Appointments for August 10, 2022

Appointed to the State Independent Living Council for a term to expire June 20, 2025, Rebecca "Hunter" Adkins of Lakeway, Texas (replacing Garry L. Simmons, Jr. of San Antonio, whose term expired).

Appointed to the State Independent Living Council for a term to expire June 20, 2025, Erik S. Dally of Poolville, Texas (replacing Jimmy D. "Jim" Batchelor of Cooper, whose term expired).

Appointed to the State Independent Living Council for a term to expire June 20, 2025, Eva M. Storey of Sugar Land, Texas (Ms. Storey is being reappointed).

Appointed to the Texas Emergency Services Retirement System Board of Trustees for a term to expire September 1, 2027, Pilar Rodriguez of Edinburg, Texas (Mr. Rodriguez is being reappointed).

Appointed to the Texas Emergency Services Retirement System Board of Trustees for a term to expire September 1, 2027, Brian J. Smith of Austin, Texas (replacing Courtney G. Bechtol of Rockport, whose term expired).

Promoted to the rank of Brigadier General in Headquarters, Texas State Guard, Austin, Texas, with all rights, privileges and emoluments appertaining to this office, effective August 15, 2022, Carl R. Alvarez.

Promoted to the rank of Brigadier General in Headquarters, Texas State Guard, Austin, Texas, with all rights, privileges and emoluments appertaining to this office, effective August 15, 2022, John D. Diggs.

Promoted to the rank of Brigadier General in Headquarters, Texas State Guard, Austin, Texas, with all rights, privileges and emoluments appertaining to this office, effective August 15, 2022, Edwin A. Grantham.

Promoted to the rank of Brigadier General in Headquarters, Texas State Guard, Austin, Texas, with all rights, privileges and emoluments appertaining to this office, effective August 15, 2022, Roger O. Sheridan.

Appointments for August 11, 2022

Appointed to the Correctional Managed Health Care Committee for a term to expire February 1, 2023, Kristen S. "Kris" Coons of San Antonio, Texas (replacing Preston Johnson, Jr. of Sugar Land, who resigned).

Appointments for August 12, 2022

Appointed to the Office of Small Business Assistance Advisory Task Force for a term to expire June 14, 2023, Omar Veliz of El Paso, Texas (replacing Michael E. "Mike" Guyton of Mansfield, whose term expired).

Appointments for August 16, 2022

Designated as vice chair of the Texas Economic Development Corporation Board of Directors, for a term to expire at the pleasure of the Governor, Arun Agarwal of Dallas, Texas.

Appointments for August 17, 2022

Appointed to the State Cemetery Committee for a term to expire February 1, 2027, Thomas N. "Tom" Sellers of Austin, Texas (replacing Benjamin M. "Ben" Hanson of Austin, whose term expired).

Designated as presiding officer of the State Cemetery Committee for a term to expire August 17, 2024, Thomas N. "Tom" Sellers of Austin, Texas (Mr. Sellers is replacing Benjamin M. "Ben" Hanson of Austin as presiding officer).

Greg Abbott, Governor

TRD-202203078

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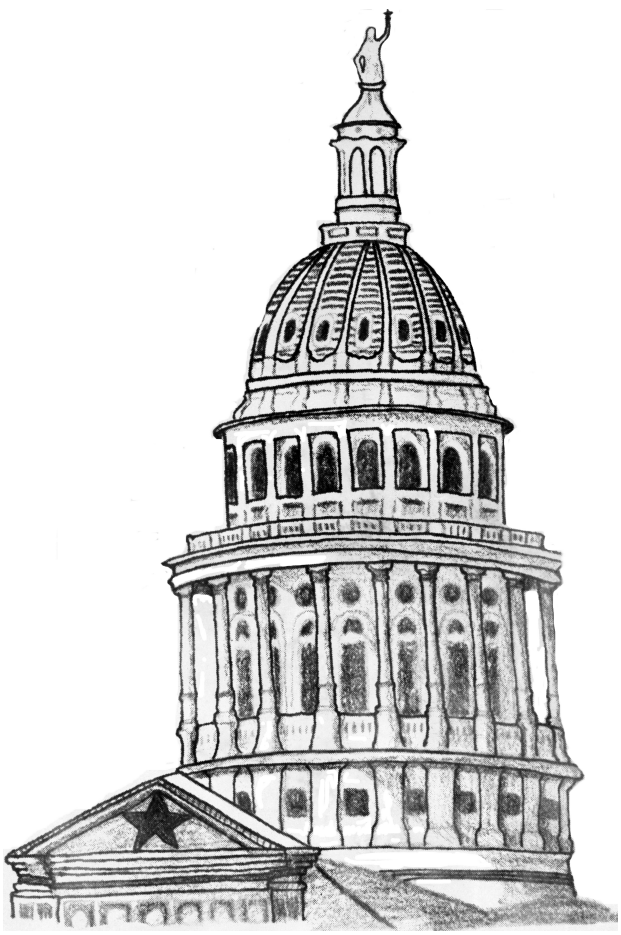


THE ATTORNEY GENERAL

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.)

Request for Opinions

RQ-0471-KP

Requestor:

The Honorable Micheal E. Jimerson

Rusk County & District Attorney

115 North Main, Suite 302

Henderson, Texas 75652

Re: Required mental state under Local Government Code section 111.012, which creates a criminal offense for an officer, employee, or official of a county government who refuses to comply with applicable budget preparation requirements (RQ-0471-KP)

Briefs requested by September 14, 2022

RQ-0472-KP

Requestor:

The Honorable Luis V. Saenz

Cameron County District Attorney

964 East Harrison Street, Fourth Floor

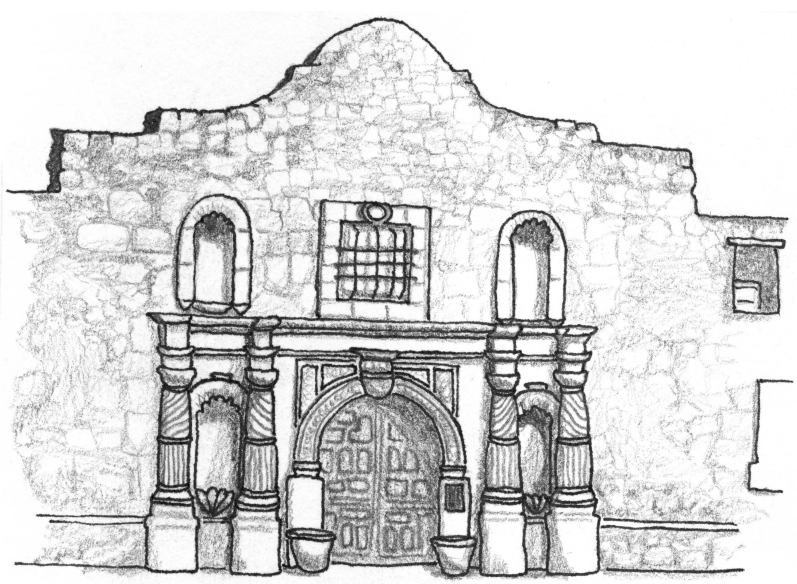
Brownsville, Texas 78520

Re: Commencement of the terms of city council positions after an election under Texas Constitution article XI, section 11 and the validity of the election in particular circumstances (RQ-0472-KP)

Briefs requested by September 15, 2022

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

TRD-202203067
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: August 16, 2022



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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 8. ADVISORY OPINIONS

1 TAC §8.11

The Texas Ethics Commission (the Commission) proposes an amendment to a Texas Ethics Commission rule in Chapter 8. Specifically, the Commission proposes amended §8.11, regarding Review and Processing of a Request.

Historically, the Commission has released drafts in advance of Commission meetings to provide the public with an opportunity to prepare comments or objections. Requestors will sometimes seek to withdraw their request if they expect to get an answer they don't like. The proposed rule amendment would permit requestors to withdraw their requests up until it is placed on a public agenda. This would allow the Commission to release the drafts ahead of time while preventing requestors from backing out of the process after seeing the draft.

The Commission has not released early drafts of its opinions for the last two meetings. A member of the regulated community has indicated that he would likely seek a legislative change if the Commission does not reverse course. The purpose of the proposed rule is to resolve the regulated community's concerns, allow for maximum disclosure, but also prevent bad actors from abusing the process.

J.R. Johnson, General Counsel, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended rule.

The General Counsel has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefit will be consistency and clarity in the Commission's rules regarding the timing of a withdrawal of advisory opinions. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rule.

The General Counsel has determined that during the first five years that the proposed amended rule is in effect, it will: not create or eliminate a government program; not require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; not increase or decrease the number of individuals subject to the rules' applicability; and will neither positively nor adversely affect this state's economy.

The Commission invites comments on the proposed amended rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rule may do so at any Commission meeting during the agenda item relating to the proposed amended rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amended rule is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposed amended rule affects Subchapter D of Chapter 571 of the Government Code.

§8.11. Review and Processing of a Request.

(a) Upon receipt of a written request for an advisory opinion, the executive director shall determine whether the request:

(1) pertains to the application of a law specified under §8.3 of this chapter;

(2) meets the standing requirements of §8.5 of this chapter;

(3) meets the form requirements of §8.7 of this chapter; and

(4) cannot be answered by written response under §8.17 of this chapter by reference to the plain language of a statute, commission rule, or advisory opinion.

(b) If the executive director determines that a request for an opinion meets the requirements of this chapter as set forth in subsections (a)(1) - (3) of this section and that the request cannot be answered by written response under §8.17 of this chapter, the executive director shall assign an AOR number to the request. The executive director shall notify the person making the request of the AOR number and of the proposed wording of the question to be answered by the commission.

(c) If the executive director determines that a request for an opinion does not meet the requirements of this chapter as set forth in subsections (a)(1) - (3) of this section or that the request can be answered by written response under §8.17 of this chapter, the executive director shall notify the person making the request of the reason the person making the request is not entitled to an advisory opinion in response to the request.

(d) A person who requests an opinion may withdraw the request prior to its inclusion on a meeting agenda filed by the Commission pursuant to the Open Meetings Law. Once a request is included on such an agenda, it may not be withdrawn by the requestor.

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 August 10, 2022.

TRD-202202973
J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-5800

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CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.31

The Texas Ethics Commission (the Commission) proposes amendments to Texas Ethics Commission rules in Chapter 18. Specifically, the Commission proposes amendments to §18.31, regarding Adjustments to Reporting Thresholds.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of $10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2023, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in the statutes listed in Figures 1 through 4 of §18.31 are also duplicated in numerous Commission rules, and therefore those rules must be similarly adjusted so they are consistent; amendments to these rules have been submitted concurrently with this proposal.

J.R. Johnson, General Counsel, has determined that for the first five-year period the rule amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

The General Counsel has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefit will be consistency and clarity in the Commission's rules that set out reporting thresholds. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rule.

The General Counsel has determined that during the first five years that the proposed amended rule is in effect, they will: not create or eliminate a government program; not require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; not increase or decrease the number of individuals subject to the rules' applicability; or not positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rule may do so at any Commission meeting during the agenda item relating to the proposed amended rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rule affects Title 15 of the Election Code.

§18.31. Adjustments to Reporting Thresholds.

(a) Pursuant to section 571.064 of the Government Code, the reporting thresholds are adjusted as follows:
Figure 1: 1 TAC §18.31(a)
[~~Figure 1:~~ ~~1 TAC §18.31(a)~~]
Figure 2: 1 TAC §18.31(a)
[~~Figure 2:~~ ~~1 TAC §18.31(a)~~]
Figure 3: 1 TAC §18.31(a)
[~~Figure 3:~~ ~~1 TAC §18.31(a)~~]
Figure 4: 1 TAC §18.31(a)
[~~Figure 4:~~ ~~1 TAC §18.31(a)~~]

(b) The changes made by this rule apply only to conduct occurring on or after the effective date of this rule.

(c) The effective date of this rule is January 1, 2023 [~~2022~~].

(d) In this section:

(1) "CEC" means county executive committee;

(2) "DCE" means direct campaign expenditure-only filer;

(3) "GPAC" means general-purpose political committee;

(4) "MPAC" means monthly-filing general-purpose political committee;

(5) "PAC" means political committee;

(6) "PFS" means personal financial statement;

(7) "SPAC" means specific-purpose political committee; and

(8) "TA" means treasurer appointment.

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

Filed with the Office of the Secretary of State on August 10, 2022.

TRD-202202981

J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-5800

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

The Texas Ethics Commission (the Commission) proposes amendments to Texas Ethics Commission rules in Chapter 20, Texas Administrative Code (TAC). Specifically, the Commission proposes amendments to §20.62, regarding Reporting Staff Reimbursement, and §20.65, regarding Reporting No Activity; §20.217, regarding Modified Reporting, §20.219, regarding Content of Candidate's Sworn Report of Contributions and Expenditures, §20.220, regarding Additional Disclosure for the Texas Comptroller of Public Accounts, and §20.221, regarding Special Pre-Election Report by Certain Candidates; §20.275, regarding Exception from Filing Requirement for Certain Local Officeholders, and §20.279, regarding Contents of Officeholder's Sworn Report of Contributions and Expenditures, §20.301, regarding Thresholds for Campaign Treasurer Appointment, §20.303, regarding Appointment of Campaign Treasurer, §20.313, regarding Converting to a General-Purpose Committee, §20.329, regarding Modified Reporting, §20.331, regarding Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures, and §20.333, regarding Special Pre-Election Report by Certain Specific-Purpose Committees; §20.401, regarding Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee, §20.405, regarding Campaign Treasurer Appointment for a General-Purpose Committee, §20.431, regarding Monthly Reporting, §20.433, regarding Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures, §20.434, regarding Alternate Reporting Requirements for General-Purpose Committees, and §20.435, regarding Special Pre-Election Reports by Certain General-Purpose Committees; §20.553, regarding County Executive Committee Accepting Contributions or Making Expenditures Under Certain Amount, and §20.555, regarding County Executive Committee Accepting Contributions or Making Expenditures That Exceed Certain Amount.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of $10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2023, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

J.R. Johnson, General Counsel, has determined that for the first five-year period the rule amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

The General Counsel has also determined that for each year of the first five years the proposed amended rules are in effect, the public benefit will be consistency and clarity in the Commission's rules that set out reporting thresholds. There will not be an effect on small businesses, microbusinesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rules.

The General Counsel has determined that during the first five years that the proposed amended rules are in effect, they will: not create or eliminate a government program; not require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation; expand, limit, or repeal an existing regulation; not increase or decrease the number of individuals subject to the rules' applicability; or not positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rules may do so at any Commission meeting during the agenda item relating to the proposed amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.62, §20.65

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§20.62. Reporting Staff Reimbursement.

(a) Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed $6,910 [~~$6,450~~] during the reporting period may be reported as follows IF the reimbursement occurs during the same reporting period that the initial expenditure was made:

(1) the amount of political expenditures that in the aggregate exceed $200 [~~$190~~] and that are made during the reporting period, the full names [~~name~~] and addresses [~~address~~] of the persons to whom the expenditures are made, and the dates and purposes of the expenditures; and

(2) included with the total amount or a specific listing of the political expenditures of $200 [$190] or less made during the reporting period.

(b) Except as provided by subsection (a) of this section, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows:

(1) the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, candidate, or political committee;

(2) the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and

(3) the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee.

§20.65. Reporting No Activity.

(a) As a general rule, a candidate or officeholder must file a report required by Subchapter C of this chapter (relating to Reporting Requirements for a Candidate) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File), even if there has been no reportable activity during the period covered by the report.

(b) This general rule does not apply to:

(1) special pre-election reports;

(2) special session reports; or

(3) a local officeholder who does not have a campaign treasurer appointment on file and who does not accept more than $1,010 [$940] in political contributions or make more than $1,010 [$940] in political expenditures during the reporting period.

(c) If a required report will disclose that there has been no reportable activity during the reporting period, the filer shall submit only those pages of the report necessary to identify the filer and to swear to the lack of reportable activity.

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 August 10, 2022.

TRD-202202975
J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-5800

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SUBCHAPTER C. REPORTING REQUIREMENTS FOR A CANDIDATE

1 TAC §§20.217, 20.219 - 20.221

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute; and Texas Government Code §2155.003, which requires the Commission to adopt rules to implement that section.

The proposed amended rules affect Title 15 of the Election Code.

§20.217. Modified Reporting.

(a) An opposed candidate who does not intend to accept more than $1,010 [$940] in political contributions or make more than $1,010 [$940] in political expenditures (excluding filing fees) in connection with any election in an election cycle may choose to file under the modified schedule.

(b) Under the modified schedule, an opposed candidate is not required to file pre-election reports or a runoff report.

(c) To select modified filing, a candidate must file a declaration of intent not to accept more than $1,010 [$940] in political contributions or make more than $1,010 [$940] in political expenditures (excluding filing fees) in connection with the election. The declaration must include a statement that the candidate understands that if either one of those limits is exceeded, the candidate will be required to file pre-election reports and, if necessary, a runoff report.

(d) A declaration under subsection (c) of this section is filed with the candidate's campaign treasurer appointment.

(e) To file under the modified schedule, a candidate must file the declaration required under subsection (c) of this section no later than the 30th day before the first election to which the declaration applies. A declaration filed under subsection (c) of this section is valid for one election cycle only.

(f) If an opposed candidate exceeds either of the $1,010 [$940] limits, the candidate must file reports under §20.213 of this title (relating to Pre-election Reports) and §20.215 of this title (relating to Runoff Report).

(g) If an opposed candidate exceeds either of the $1,010 [$940] limits after the 30th day before the election, the candidate must file a report not later than 48 hours after exceeding the limit. If this is the candidate's first report filed, the report covers a period that begins on the day the candidate's campaign treasurer appointment was filed. Otherwise, the period begins on the first day after the period covered by the last report required by this subchapter (other than a special pre-election report or a special session report) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File). The period covered by the report continues through the day the candidate exceeded one of the limits for modified reporting.

§20.219. Content of Candidate's Sworn Report of Contributions and Expenditures.

Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

(1) the candidate's full name;

(2) the candidate's address;

(3) the office sought by the candidate, if known;

(4) the identity and date of the election for which the report is filed, if known;

(5) the campaign treasurer's name;

(6) the campaign treasurer's telephone number;

(7) the campaign treasurer's residence or business street address;

(8) for each political committee from which the candidate received notice under §20.319 of this title (relating to Notice to Candidate or Officeholder) or §20.421 of this title (relating to Notice to Candidate or Officeholder):

(A) the committee's full name;

(B) the committee's address;

(C) identification of the political committee as a general-purpose or a specific-purpose committee;

(D) the full name of the committee's campaign treasurer; and

(E) the address of the committee's campaign treasurer;

(9) on a separate page, the following information for each expenditure from political contributions made to a business in which the candidate has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:

(A) the full name of the business to which the expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

(10) for each person from whom the candidate accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than $100 [~~$90~~] in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than $100 [~~$90~~] in value:

(A) the full name of the person making the contribution;

(B) the address of the person making the contribution;

(C) the total amount of contributions;

(D) the date each contribution was accepted; and

(E) a description of any in-kind contribution;

(11) for each person from whom the candidate accepted a pledge or pledges to provide more than $100 [~~$90~~] in money or goods or services worth more than $100 [~~$90~~]:

(A) the full name of the person making the pledge;

(B) the address of the person making the pledge;

(C) the amount of each pledge;

(D) the date each pledge was accepted; [~~and~~]

(E) a description of any goods or services pledged; and

(F) the total of all pledges accepted during the period for $100 [~~$90~~] and less from a person, except those reported under subparagraphs (A)-(E) of this paragraph;

(12) for each person making a loan or loans to the candidate for campaign purposes, if the total amount loaned by the person during the period is more than $100 [~~$90~~]:

(A) the full name of the person or financial institution making the loan;

(B) the address of the person or financial institution making the loan;

(C) the amount of the loan;

(D) the date of the loan;

(E) the interest rate;

(F) the maturity date;

(G) the collateral for the loan, if any; and

(H) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(13) the total amount of loans accepted during the period for $100 [~~$90~~] and less from persons other than financial institutions engaged in the business of making loans for more than one year, except for a loan reported under paragraph (12) of this section;

(14) for political expenditures made during the reporting period that total more than $200 [~~$190~~] to a single payee, other than expenditures reported under paragraph (9) of this section:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

(15) for each political expenditure of any amount made out of personal funds for which reimbursement from political contributions is intended:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure;

(E) a declaration that the expenditure was made out of personal funds;

(F) a declaration that reimbursement from political contributions is intended; and

(G) the amount of the expenditure;

(16) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (9) of this section:

(A) the date of each expenditure;

(B) the full name of the person to whom the expenditure was made;

(C) the address of the person to whom the expenditure was made;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

(17) for each other candidate or officeholder who benefits from a direct campaign expenditure made by the candidate during the reporting period:

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder;

(18) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(19) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds $130 [~~$120~~];

(20) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds $130 [~~$120~~];

(21) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds $130 [~~$120~~];

(22) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds $130 [~~$120~~];

(23) the full name and address of each person from whom an amount described by paragraph (19), (20), (21), or (22) of this section is received, the date the amount is received, and the purpose for which the amount is received;

(24) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of $100 [~~$90~~] and less;

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of $200 [~~$190~~] and less; and

(E) the total amount of all political expenditures; and

(25) an affidavit, executed by the candidate, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.220. Additional Disclosure for the Texas Comptroller of Public Accounts.

(a) For purposes of this section and §2155.003(e) of the Government Code, the term "vendor" means:

(1) a person, who during the comptroller's term of office, bids on or receives a contract under the comptroller's purchasing authority that was transferred to the comptroller by §2151.004 of the Government Code; and

(2) an employee or agent of a person described by subsection (a)(1) of this section who communicates directly with the chief clerk, or an employee of the Texas Comptroller of Public Accounts who exercises discretion in connection with the vendor's bid or contract, about a bid or contract.

(b) Each report filed by the comptroller, or a specific-purpose committee created to support the comptroller, shall include:

(1) for each vendor whose aggregate campaign contributions equal or exceed $650 [~~$620~~] during the reporting period, a notation that:

(A) the contributor was a vendor during the reporting period or during the 12-month [~~12 month~~] period preceding the last day covered by the report; and

(B) if the vendor is an individual, includes the name of the entity that employs or that is represented by the individual; and

(2) for each political committee directly established, administered, or controlled by a vendor whose aggregate campaign contributions equal or exceed $650 [~~$620~~] during the reporting period, a notation that the contributor was a political committee directly established, administered, or controlled by a vendor during the reporting period or during the 12-month [~~12 month~~] period preceding the last day covered by the report.

(c) The comptroller, or a specific-purpose committee created to support the comptroller, is considered to be in compliance with this section if:

(1) each written solicitation for a campaign contribution includes a request for the information required by subsection (b) of this section; and

(2) for each contribution that is accepted for which the information required by this section is not provided at least one oral or written request is made for the missing information. A request under this subsection:

(A) must be made not later than the 30th day after the date the contribution is received;

(B) must include a clear and conspicuous statement requesting the information required by subsection (b) of this section;

(C) if made orally, must be documented in writing; and

(D) may not be made in conjunction with a solicitation for an additional campaign contribution.

(d) The comptroller, or a specific-purpose committee created to support the comptroller, must report the information required by subsection (b) of this section that is not provided by the person making the political contribution and that is in the comptroller's or committee's records of political contributions or previous campaign finance reports required to be filed under Title 15 of the Election Code filed by the comptroller or committee.

(e) If the comptroller, or a specific-purpose committee created to support the comptroller, receives the information required by this section after the filing deadline for the report on which the contribution is reported the comptroller or committee must include the missing information on the next required campaign finance report.

(f) The disclosure required under subsection (b) of this section applies only to a contributor who was a vendor or a political committee directly established, administered, or controlled by a vendor on or after September 1, 2007.

§20.221. Special Pre-Election Report by Certain Candidates.

(a) As provided by subsection (b) of this section, certain candidates must file reports about certain contributions accepted during the period that begins on the ninth day before an election and ends at noon on the day before an election. Reports under this section are known as "special pre-election" reports.

(b) An opposed candidate for an office specified by §252.005(1), Election Code, who, during the period described in subsection (a) of this section, accepts one or more political contributions from a person that in the aggregate exceed $2,020 [~~$1,890~~] must file special pre-election reports.

(c) Except as provided in subsection (e) of this section, a candidate must file a special pre-election report so that the report is received by the commission no later than the first business day after the candidate accepts a contribution from a person that triggers the requirement to file the special pre-election report.

(d) If, during the reporting period for special pre-election contributions, a candidate receives additional contributions from a person whose previous contribution or contributions have triggered the requirement to file a special pre-election report during that period, the candidate must file an additional special pre-election report for each such contribution. Except as provided in subsection (e) of this section, each such special pre-election report must be filed so that it is received by the commission no later than the first business day after the candidate accepts the contribution.

(e) A candidate must file a special pre-election report that is exempt from electronic filing under §254.036(c), Election Code, so that the report is received by the commission no later than 5 p.m. of the first business day after the candidate accepts a contribution from a person that triggers the requirement to file the special pre-election report.

(f) A candidate must file a special pre-election report for each person whose contribution or contributions made during the period for special pre-election reports exceed the threshold for special pre-election reports.

(g) A candidate must also report contributions reported on a special pre-election report on the next semiannual, pre-election, or runoff report filed, as applicable.

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

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SUBCHAPTER D. REPORTING REQUIREMENTS FOR AN OFFICEHOLDER WHO DOES NOT HAVE A CAMPAIGN TREASURER APPOINTMENT ON FILE

1 TAC §20.275, §20.279

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rule affects Title 15 of the Election Code.

§20.275. Exception from Filing Requirement for Certain Local Officeholders.

An officeholder is not required to file a semiannual report of contributions and expenditures if the officeholder:

(1) is required to file with an authority other than the commission;

(2) does not have a campaign treasurer appointment on file; and

(3) does not accept more than $1,010 [~~$940~~] in political contributions or make more than $1,010 [~~$940~~] in political expenditures during the reporting period.

§§20.279. Contents of Officeholder's Sworn Report of Contributions and Expenditures.

An officeholder's semiannual report of contributions and expenditures required by this subchapter must cover reportable activity during the reporting period and must include the following information:

(1) the officeholder's full name;

(2) the officeholder's address;

(3) the office held by the officeholder;

(4) for each political committee from which the officeholder received notice under §20.319 of this title (relating to Notice to Candidate or Officeholder) or §20.421 of this title (relating to Notice to Candidate or Officeholder):

(A) the committee's full name;

(B) the committee's address;

(C) identification of the political committee as a general-purpose or a specific-purpose committee;

(D) the full name of the committee's campaign treasurer; and

(E) the address of the committee's campaign treasurer;

(5) on a separate page, the following information for each expenditure from political contributions made to a business in which the officeholder has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:

(A) the full name of the business to which the expenditure was made;

(B) the address of the business to which the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

(6) for each person from whom the officeholder accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than $100 [~~$90~~] in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than $100 [~~$90~~] in value:

(A) the full name of the person making the contribution;

(B) the address of the person making the contribution;

(C) the total amount of contributions;

(D) the date each contribution was accepted; and

(E) a description of any in-kind contribution;

(7) for each person from whom the officeholder accepted a pledge or pledges to provide more than $100 [~~$90~~] in money or goods or services worth more than $100 [~~$90~~]:

(A) the full name of the person making the pledge;

(B) the address of the person making the pledge;

(C) the amount of each pledge;

(D) the date each pledge was accepted; and

(E) a description of any goods or services pledged;

(8) the total of all pledges accepted during the period for $100 [~~$90~~] and less from a person, except those reported under paragraph (7) of this section;

(9) for each person making a loan or loans to the officeholder for officeholder purposes, if the total amount loaned by the person during the period is more than $100 [~~$90~~]:

(A) the full name of the person or financial institution making the loan;

(B) the address of the person or financial institution making the loan;

(C) the amount of the loan;

(D) the date of the loan;

(E) the interest rate;

(F) the maturity date;

(G) the collateral for the loan, if any; and

(H) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(10) the total amount of loans accepted during the period for $100 [~~$90~~] and less from persons other than financial institutions engaged in the business of making loans for more than one year, except those reported under paragraph (9) of this section;

(11) for political expenditures made during the reporting period that total more than $200 [~~$190~~] to a single payee, other than expenditures reported under paragraph (5) of this section:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

(12) for each political expenditure of any amount made out of personal funds for which reimbursement from political contributions is intended:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of each expenditure;

(D) the purpose of the expenditure;

(E) a declaration that the expenditure was made from personal funds;

(F) a declaration that reimbursement from political contributions is intended; and

(G) the amount of the expenditure;

(13) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (5) of this section:

(A) the date of each expenditure;

(B) the full name of the person to whom the expenditure was made;

(C) the address of the person to whom the expenditure was made;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

(14) for each candidate or other officeholder who benefits from a direct campaign expenditure made by the officeholder during the reporting period:

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder;

(15) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(16) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds $130 [~~$120~~];

(17) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds $130 [~~$120~~];

(18) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds $130 [~~$120~~];

(19) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds $130 [~~$120~~];

(20) the full name and address of each person from whom an amount described by paragraph (16), (17), (18), or (19) of the section is received, the date the amount is received, and the purpose for which the amount is received;

(21) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of $100 [~~$90~~] and less;

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of $200 [$190] and less; and

(E) the total amount of all political expenditures; and

(22) an affidavit, executed by the officeholder, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

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

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Texas Ethics Commission
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SUBCHAPTER E. REPORTS BY A SPECIFIC-PURPOSE COMMITTEE

1 TAC §§20.301, 20.303, 20.313, 20.329, 20.331, 20.333

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§20.301. Thresholds for Campaign Treasurer Appointment.

(a) A specific-purpose committee may not accept political contributions exceeding $980 [$920] and may not make or authorize political expenditures exceeding $980 [$920] without filing a campaign treasurer appointment with the appropriate filing authority.

(b) A specific-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding $980 [$920] to support or oppose a candidate in a primary or general election for an office listed below unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day:

(1) a statewide office;

(2) a seat in the state legislature;

(3) a seat on the State Board of Education;

(4) a multi-county district office; or

(5) a judicial district office filled by voters of only one county.

§20.303. Appointment of Campaign Treasurer.

(a) A specific-purpose committee may appoint a campaign treasurer at any time before exceeding the thresholds described in §20.301(a) of this title (relating to Thresholds for Campaign Treasurer Appointment).

(b) After a specific-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded $980 [$920] in political contributions or expenditures.

(c) With the exception of the campaign treasurer appointment, the individual named as a committee's campaign treasurer is legally responsible for filing all reports of the specific-purpose committee, including a report following the termination of his or her appointment as campaign treasurer.

§20.313. Converting to a General-Purpose Committee.

(a) A specific-purpose committee that changes its operation and becomes a general-purpose committee is subject to the requirements applicable to a general-purpose committee as of the date it files its campaign treasurer appointment as a general-purpose committee with the commission.

(b) The campaign treasurer of a specific-purpose committee that becomes a general-purpose committee must deliver written notice of its change in status to the authority with whom the committee was required to file as a specific-purpose committee.

(c) The notice required under subsection (b) of this section is due no later than the next deadline for filing a report under this subchapter that:

(1) occurs after the committee's change in status; and

(2) would be applicable to the political committee if it were still a specific-purpose committee.

(d) The notice must state that future reports will be filed with the commission.

(e) The notice required under subsection (b) of this section is in addition to the requirement that the new general-purpose committee file a campaign treasurer appointment with the commission before it exceeds $980 [$920] in political expenditures or $980 [$920] in political contributions as a general-purpose committee.

§20.329. Modified Reporting.

(a) A specific-purpose committee that would otherwise be required to file pre-election reports and a runoff report, if necessary, may choose to file under the modified schedule if the committee does not intend to accept more than $1,010 [$940] in political contributions or make more than $1,010 [$940] in political expenditures (excluding filing fees) in connection with any election in an election cycle.

(b) Under the modified schedule, the campaign treasurer of a specific-purpose committee is not required to file pre-election reports or a runoff report.

(c) To select modified filing, a specific-purpose committee must file a declaration of the committee's intent not to accept more than $1,010 [$940] in political contributions or make more than $1,010 [$940] in political expenditures (excluding filing fees) in connection with the election. The declaration must include a statement that the committee understands that if either one of those limits is exceeded, the committee's campaign treasurer will be required to file pre-election reports and, if necessary, a runoff report.

(d) A declaration under subsection (c) of this section is filed with the committee's campaign treasurer appointment.

(e) To file under the modified schedule, a specific-purpose committee must file the declaration required under subsection (c) of this section no later than the 30th day before the first election to which the declaration applies. A declaration filed under subsection (c) of this section is valid for one election cycle only.

(f) Except as provided by subsection (g) of this section, a specific-purpose committee's campaign treasurer must file pre-election reports and, if necessary, a runoff report under the schedule set out in §20.325 of this title (relating to Pre-election Reports) and §20.327 of this title (relating to Runoff Report) if the committee exceeds either of the $1,010 [~~$940~~] limits for modified reporting.

(g) If a specific-purpose committee exceeds either of the $1,010 [~~$940~~] limits for modified reporting after the 30th day before the election, the committee's campaign treasurer must file a report not later than 48 hours after exceeding the limit.

(1) The period covered by a 48-hour report shall begin either on the day the committee's campaign treasurer appointment was filed (if it is the committee's first report of contributions and expenditures) or on the first day after the period covered by the last report (other than a special pre-election report or special session report) filed under this subchapter, as applicable.

(2) The period covered by a 48-hour report shall continue through the day the committee exceeded one of the limits for modified reporting.

(h) A specific-purpose committee that exceeds either of the $1,010 [~~$940~~] limits for modified reporting after the 30th day before the election and on or before the 10th day before the election must file a report under §20.325(f) of this title [~~(relating to Pre-Election Reports)~~], in addition to any required special pre-election reports.

§20.331. Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures.

Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

(1) the full name of the specific-purpose committee;

(2) the address of the specific-purpose committee;

(3) the full name of the specific-purpose committee's campaign treasurer;

(4) the residence or business street address of the specific-purpose committee's campaign treasurer;

(5) the committee campaign treasurer's telephone number;

(6) the identity and date of the election for which the report is filed, if applicable;

(7) for each candidate supported or opposed by the specific-purpose committee:

(A) the full name of the candidate;

(B) the office sought by the candidate; and

(C) an indication of whether the committee supports or opposes the candidate;

(8) for each officeholder assisted by the specific-purpose committee:

(A) the full name of the officeholder;

(B) the office held by the officeholder; and

(C) an indication of whether the committee supports or opposes the officeholder;

(9) for each measure supported or opposed by the specific-purpose committee:

(A) a description of the measure; and

(B) an indication of whether the committee supports or opposes the measure;

(10) for each political expenditure by the committee that was made as a political contribution to a candidate, officeholder, or another political committee and that was returned to the specific-purpose committee during the reporting period:

(A) the amount returned;

(B) the full name of the person to whom the expenditure was originally made;

(C) the address of the person to whom the expenditure was originally made; and

(D) the date the expenditure was returned to the specific-purpose committee;

(11) on a separate page, the following information for each expenditure from political contributions made to a business in which the candidate has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:

(A) the full name of the business to which the expenditure was made;

(B) the address of the business to which the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

(12) if the specific-purpose committee supports or opposes measures exclusively, for each contribution accepted from a labor organization or corporation, as defined by §20.1 of this title (relating to Definitions):

(A) the date each contribution was accepted;

(B) the full name of the corporation or labor organization making the contribution;

(C) the address of the corporation or labor organization making the contribution;

(D) the amount of the contribution; and

(E) a description of any in-kind contribution;

(13) for each person from whom the specific-purpose committee accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than $100 [~~$90~~] in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than $100 [~~$90~~] in value:

(A) the full name of the person;

(B) the address of the person;

(C) the total amount of contributions;

(D) the date each contribution was accepted; and

(E) a description of any in-kind contribution;

(14) for each person from whom the specific-purpose committee accepted a pledge or pledges to provide more than $100 [~~$90~~] in money or to provide goods or services worth more than $100 [~~$90~~]:

(A) the full name of the person making a pledge;

(B) the address of the person making a pledge;

(C) the amount of the pledge;

(D) the date each pledge was accepted; and

(E) a description of any goods or services pledged;

(15) the total of all pledges accepted during the period for $100 [$90] and less from a person, except those reported under paragraph (14) of this section;

(16) for each person making a loan or loans to the specific-purpose committee for campaign or officeholder purposes, if the total amount loaned by the person during the period is more than $100 [$90]:

(A) the full name of the person or financial institution making the loan;

(B) the address of the person or financial institution making the loan;

(C) the amount of the loan;

(D) the date of the loan;

(E) the interest rate;

(F) the maturity date;

(G) the collateral for the loan, if any; and

(H) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(17) the total amount of loans accepted during the period for $100 [$90] and less from persons other than financial institutions engaged in the business of making loans for more than one year, except those reported under paragraph (16) of this section;

(18) for political expenditures made during the reporting period that total more than $200 [$190] to a single payee:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

(19) for each direct campaign expenditure benefiting a candidate or officeholder, except for a direct campaign expenditure made by a committee supporting only one candidate or officeholder:

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder;

(20) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (11) of this section:

(A) the date of each expenditure;

(B) the full name of the person to whom the expenditure was made;

(C) the address of the person to whom the expenditure was made;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

(21) for each political contribution accepted from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(22) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds $130 [$120];

(23) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds $130 [$120];

(24) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds $130 [$120];

(25) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds $130 [$120];

(26) the full name and address of each person from whom an amount described by paragraph (22), (23), (24), or (25) of this section is received, the date the amount is received, and the purpose for which the amount is received;

(27) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of $100 [$90] and less;

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of $200 [$190] and less; and

(E) the total amount of all political expenditures; and

(28) an affidavit, executed by the campaign treasurer, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.333. Special Pre-Election Report by Certain Specific-Purpose Committees.

(a) As provided by subsection (b) of this section, certain specific-purpose committees must file reports about certain contributions accepted during the period that begins on the ninth day before an election and ends at noon on the day before an election. Reports under this section are known as "special pre-election" reports.

(b) A campaign treasurer for a specific-purpose committee for supporting or opposing a candidate for an office specified by §252.005(1), Election Code, that, during the period described in subsection (a) of this section, accepts one or more political contributions from a person that in the aggregate exceed $2,020 [$1,890] must file special pre-election reports.

(c) Except as provided in subsection (e) of this section, the campaign treasurer of a specific-purpose committee must file a report so that the report is received by the commission no later than the first

business day after the committee accepts a contribution from a person that triggers the requirement to file the special pre-election report.

(d) If, during the reporting period for special pre-election contributions, a committee receives additional contributions from a person whose previous contribution or contributions have triggered the requirement to file a special pre-election report during the period, the campaign treasurer for the committee must file an additional special pre-election report for each such contribution. Except as provided in subsection (e) of this section, each such special pre-election report must be filed so that it is received by the commission no later than the first business day after the committee accepts the contribution.

(e) The campaign treasurer of a specific-purpose committee must file a special pre-election report for each person whose contribution or contributions made during the period for special pre-election reports exceed the threshold for special pre-election reports.

(f) A campaign treasurer of a specific-purpose committee must also report contributions reported on a special pre-election report on the next semiannual, pre-election, or runoff report filed, as applicable.

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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J.R. Johnson
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Texas Ethics Commission
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For further information, please call: (512) 463-5800

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SUBCHAPTER F. REPORTING REQUIREMENT FOR A GENERAL PURPOSE COMMITTEE

1 TAC §§20.401, 20.405, 20.431, 20.433 - 20.435

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§20.401. Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee.

(a) A general-purpose committee may not accept political contributions exceeding $980 [~~$920~~] and may not make or authorize political expenditures exceeding $980 [~~$920~~] without filing a campaign treasurer appointment with the commission.

(b) Unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day, a general-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding $980 [~~$920~~] to support or oppose a candidate in a primary or general election for the following:

(1) a statewide office;

(2) a seat in the state legislature;

(3) a seat on the State Board of Education;

(4) a multi-county district office; or

(5) a judicial district office filled by voters of only one county.

§20.405. Campaign Treasurer Appointment for a General-Purpose Committee.

(a) A general-purpose committee may appoint a campaign treasurer at any time before exceeding the thresholds described in §20.401(a) of this title (relating to Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee).

(b) After a general-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded $980 [~~$920~~] in political contributions or expenditures.

(c) With the exception of the campaign treasurer appointment, the individual named as a committee's campaign treasurer is legally responsible for filing all reports of the general-purpose committee, including a report following the termination of his or her appointment as campaign treasurer.

§20.431. Monthly Reporting.

(a) A monthly report filed by a general-purpose committee shall include the information required by §20.433 of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures), except that the threshold reporting amount of $100 [~~$90~~] set out in §20.433(11)-(16), and (20) of this title [~~(relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures)~~] does not apply to a general-purpose committee reporting monthly. For a general-purpose committee reporting monthly, the threshold reporting amount under §20.433(11)-(16) and (20) of this title is $20, except as provided by §20.434 of this title (relating to Alternate Reporting Requirements for Certain General-Purpose Committees).

(b) A monthly report is due not later than the fifth day of the month following the end of the period covered by the report. A monthly report covering the month preceding an election in which the committee is involved must be received by the authority with whom the report is required to be filed no later than the fifth day of the month following the end of the period covered by the report.

(c) Except for the first monthly report filed, a monthly report covers a period that begins on the 26th day of one month and ends on the 25th day of the next month.

(d) The beginning day for the first monthly report filed by a general-purpose committee shall be as follows.

(1) For a general-purpose committee that has been filing on the regular schedule and chooses monthly filing between January 1 and January 15 of a particular year, the first report will cover a period that begins on January 1 of that year.

(2) For a general-purpose committee that elected to file monthly at the time it filed its campaign treasurer appointment, the period covered by the first monthly report depends on the day of the month that the campaign treasurer was appointed.

(A) If the general-purpose committee filed its campaign treasurer appointment before the 25th of the month, the first report will cover a period that begins on the day the appointment was filed and ends on the 25th day of the same month.

(B) If the general-purpose committee filed its campaign treasurer appointment on or after the 25th of the month, the first report will cover the period that begins on the day the appointment is filed and ends on the 25th day of the next month.

§20.433. Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures.

Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

(1) the full name of the general-purpose committee;

(2) the address of the general-purpose committee;

(3) the full name of the general-purpose committee's campaign treasurer;

(4) the residence or business street address of the general-purpose committee's campaign treasurer;

(5) the committee campaign treasurer's telephone number;

(6) the identity and date of the election for which the report is filed, if applicable;

(7) the full name of each identified candidate or measure or classification by party of candidates supported or opposed by the general-purpose committee and an indication of whether the general-purpose committee supports or opposes each listed candidate, measure, or classification by party of candidates;

(8) the full name of each identified officeholder or classification by party of officeholders assisted by the general-purpose committee;

(9) if the general-purpose committee supports or opposes measures exclusively, for each contribution accepted from a corporation as defined by §20.1 of this title (relating to Definitions):

(A) the date each contribution was accepted;

(B) the full name of the corporation or labor organization making the contribution;

(C) the address of the corporation or labor organization making the contribution;

(D) the amount of the contribution; and

(E) a description of any in-kind contribution;

(10) for each political expenditure by the general-purpose committee that was made as a political contribution to a candidate, officeholder, or another political committee and that was returned to the general-purpose committee during the reporting period:

(A) the amount returned;

(B) the full name of the person to whom the expenditure was originally made;

(C) the address of the person to whom the expenditure was originally made; and

(D) the date the expenditure was returned to the general-purpose committee;

(11) for each person from whom the general-purpose committee accepted a political contribution other than a pledge or a loan of more than $100 [~~$90~~] in value, or political contributions other than pledges or loans that total more than $100 [~~$90~~] in value (or more than $20 for a general-purpose committee reporting monthly):

(A) the date each contribution was accepted;

(B) the full name of the person making the contribution;

(C) the address of the person making the contribution;

(D) the principal occupation of the person making the contribution;

(E) the amount of the contribution; and

(F) a description of any in-kind contribution;

(12) for each person from whom the general-purpose committee accepted a pledge or pledges to provide more than $100 [~~$90~~] in money or to provide goods or services worth more than $100 [~~$90~~] (more than $20 for a general-purpose committee reporting monthly):

(A) the full name of the person making the pledge;

(B) the address of the person making the pledge;

(C) the principal occupation of the person making the pledge;

(D) the amount of each pledge;

(E) the date each pledge was accepted; and

(F) a description of any goods or services pledged;

(13) the total of all pledges accepted during the period for $100 [~~$90~~] and less from a person, except for those reported under paragraph (12) of this subsection;

(14) for each person making a loan or loans to the general-purpose committee for campaign purposes, if the total amount loaned by the person during the period is more than $100 [~~$90~~] (more than $20 for a general-purpose committee reporting monthly):

(A) the full name of the person or financial institution making the loan;

(B) the address of the person or financial institution making the loan;

(C) the amount of the loan;

(D) the date of the loan;

(E) the interest rate;

(F) the maturity date;

(G) the collateral for the loan, if any; and

(H) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(15) the total amount of loans accepted during the period for $100 [~~$90~~] and less from persons other than financial institutions engaged in the business of making loans for more than one year, except for those reported under paragraph (14) of this section;

(16) for political expenditures made during the reporting period that total more than $200 [~~$190~~] (more than $20 for a general-purpose committee reporting monthly) to a single payee:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure;

(E) the amount of the expenditure; and

(F) indication for an expenditure paid in full or in part from corporations or labor organizations that it was paid from such sources.

(17) for each non-political expenditure made from political contributions:

(A) the date of each expenditure;

(B) the full name of the person to whom the expenditure was made;

(C) the address of the person to whom the expenditure was made;

(D) the purpose of the expenditure;

(E) the amount of the expenditure; and

(F) indication for an expenditure paid in full or in part from corporations or labor organizations that it was paid from such sources.

(18) for each candidate or officeholder who benefits from a direct campaign expenditure made by the committee:

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder;

(19) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(20) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds $130 [~~$120~~];

(21) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds $130 [~~$120~~];

(22) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds $130 [~~$120~~];

(23) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds $130 [~~$120~~];

(24) the full name and address of each person from whom an amount described by paragraph (20), (21), (22), or (23) of this section is received, the date the amount is received, and the purpose for which the amount is received;

(25) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of $100 [~~$90~~] and less ($20 and less for a general-purpose committee reporting monthly);

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of $200 [~~$190~~] and less ($20 and less for a general-purpose committee reporting monthly); and

(E) the total amount of all political expenditures; and

(26) an affidavit, executed by the campaign treasurer, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.434. Alternate Reporting Requirements for General-Purpose Committees.

(a) This section and Election Code §254.1541 apply only to a general-purpose committee with less than $29,300 [~~$27,380~~] in one or more accounts maintained by the committee in which political contributions are deposited, as of the last day of the preceding reporting period for which the committee was required to file a report.

(b) The alternative reporting requirement in Election Code §254.1541 applies only to contributions.

(c) A report by a campaign treasurer of a general-purpose committee to which this section and Election Code §254.1541 [~~§254.154~~] apply shall include the information required by §20.433 of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures), except that the campaign treasurer may choose a threshold reporting amount for political contributions of $200 [~~$190~~] instead of the threshold reporting amount of $100 [~~$90~~] set out in §20.433(11) [~~§20.433(a)(11)~~] and (25)(B) [~~(a)20(B)~~] of this title.

(d) A monthly report by a campaign treasurer of a general-purpose committee to which this section and Election Code §254.1541 [~~§254.154~~] apply shall include the information required by §20.433 of this title [~~(Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures)~~], except that the campaign treasurer may choose a threshold reporting amount for political contributions of $40 instead of the threshold reporting amount of $20 set out in §20.433(11) [~~§20.433(a)(11)~~] and (25)(B) [~~(a)20(B)~~] of this title.

§20.435. Special Pre-Election Reports by Certain General-Purpose Committees.

(a) In addition to other reports required by this chapter, a general-purpose committee must file a special pre-election report if the committee is involved in an election and if it:

(1) makes direct campaign expenditures supporting or opposing a single candidate that in the aggregate exceed $2,020 [~~$1,890~~] or a group of candidates that in the aggregate exceed $30,330 [~~$28,330~~] during the reporting period for special pre-election reports; or

(2) accepts political contributions from a person that in the aggregate exceed $6,910 [~~$6,450~~] during the reporting period for special pre-election reports.

(b) The period for special pre-election reports begins on the ninth day before election day and ends at noon on the day before election day.

(c) Except as provided by subsection (d) of this section, a report under this section must be received by the commission no later than the first business day after the contribution is accepted or the expenditure is made.

(d) A special pre-election report that is exempt from electronic filing under §254.036(c), Election Code, must be received by the commission no later than 5 p.m. of the first business day after the contribution is accepted or the expenditure is made.

(e) Expenditures and contributions reported under this section must be reported again in the next applicable sworn report of contributions and expenditures.

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 I. RULES APPLICABLE TO A POLITICAL PARTY'S COUNTY EXECUTIVE COMMITTEE

1 TAC §20.553, §20.555

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§20.553. Campaign Treasurer Appointment Not Required for County Executive Committee Accepting Contributions or Making Expenditures under Certain Amount.

(a) A county executive committee accepting political contributions or making political expenditures totaling $36,630 [~~$34,220~~] or less in a calendar year is not required to:

(1) appoint a campaign treasurer before accepting political contributions or making political expenditures; or

(2) file the reports required by Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee).

(b) A county executive committee described in subsection (a) of this section is required to comply with §20.551 of this title (relating to Obligation To Maintain Records).

§20.555. County Executive Committee Accepting Contributions or Making Expenditures That Exceed Certain Amount.

(a) A county executive committee described by subsection (b) of this section is subject to the requirements of Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee), except where those rules conflict with this subchapter. In the case of conflict, this subchapter prevails over Subchapter F of this chapter.

(b) A county executive committee that accepts political contributions or that makes political expenditures that, in the aggregate, exceed $36,630 [~~$34,220~~] in a calendar year shall file:

(1) a campaign treasurer appointment with the commission no later than the 15th day after the date that amount is exceeded; and

(2) the reports required by Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee). The first report filed must include all political contributions accepted and all political expenditures made before the county executive committee filed its campaign treasurer appointment.

(c) Contributions accepted from corporations and labor organizations under section 253.104 of the Election Code and reported under Subchapter H of this chapter (relating to Accepting and Reporting Contributions from Corporations and Labor Organizations) do not count against the $36,630 [~~$34,220~~] thresholds described in subsection (b) of this section.

(d) A county executive committee that filed a campaign treasurer appointment may file a final report, which will notify the commission that the county executive committee does not intend to file future reports unless it exceeds one of the $36,630 [~~$34,220~~] thresholds. The final report may be filed:

(1) beginning on January 1 and by the January 15 filing deadline if the committee has exceeded one of the $36,630 [~~$34,220~~] thresholds in the previous calendar year; or

(2) at any time if the committee has not exceeded one of the $36,630 [~~$34,220~~] thresholds in the calendar year.

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 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §§22.1, 22.6, 22.7

The Texas Ethics Commission (the Commission) proposes an amendment to Texas Ethics Commission rules in Chapter 22. Specifically, the Commission proposes amendments to §22.1, regarding Certain Campaign Treasurer Appointments Required before Political Activity Begins, §22.6, regarding Reporting Direct Campaign Expenditures, and §22.7, regarding Contribution from Out-of-State Committee.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of $10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These

new adjustments, if adopted, will be effective on January 1, 2023, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

J.R. Johnson, General Counsel, has determined that for the first five-year period the rule amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

The General Counsel has also determined that for each year of the first five years the proposed amended rules are in effect, the public benefit will be consistency and clarity in the Commission's rules that set out reporting thresholds. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rules.

The General Counsel has determined that during the first five years that the proposed amended rules are in effect, they will: not create or eliminate a government program; not require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; not increase or decrease the number of individuals subject to the rules' applicability; or not positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rules may do so at any Commission meeting during the agenda item relating to the proposed amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§22.1. Certain Campaign Treasurer Appointments Required before Political Activity Begins.

(a) An individual must file a campaign treasurer appointment with the proper authority before accepting a campaign contribution or making or authorizing a campaign expenditure.

(1) An officeholder may accept an officeholder contribution and make or authorize an officeholder expenditure without a campaign treasurer appointment on file.

(2) An officeholder who does not have a campaign treasurer appointment on file may not accept a campaign contribution or make or authorize a campaign expenditure.

(b) A political committee may not accept political contributions exceeding $980 [~~$920~~] and may not make or authorize political expenditures exceeding $980 [~~$920~~] without filing a campaign treasurer appointment with the appropriate filing authority.

(c) Unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day, a political committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding $980 [~~$920~~] to support or oppose a candidate in a primary or general election for the following:

(1) a statewide office;

(2) a seat in the state legislature;

(3) a seat on the State Board of Education;

(4) a multi-county district office; or

(5) a judicial district office filled by voters of only one county.

(d) This section does not apply to the county executive committee of a political party except as provided in Chapter 20, Subchapter I of this title (relating to Rules Applicable to a Political Party's County Executive Committee).

§22.6. Reporting Direct Campaign Expenditures.

Section 254.261 of the Election Code applies to a person who, not acting in concert with another person, makes one or more direct campaign expenditures that exceed $150 [~~$140~~] in an election from the person's own property.

§22.7. Contribution from Out-of-State Committee.

(a) For each reporting period during which a candidate, officeholder, or political committee accepts a contribution or contributions from an out-of-state political committee totaling more than $1,010 [~~$940~~], the candidate, officeholder, or political committee must comply with subsections (b) and (c) of this section.

(b) The candidate, officeholder, or political committee covered by subsection (a) of this section must first obtain from the out-of-state committee one of the following documents before accepting the contribution that causes the total received from the out-of-state committee to exceed $1,010 [~~$940~~] during the reporting period:

(1) a written statement, certified by an officer of the out-of-state political committee, listing the full name and address of each person who contributed more than $200 [~~$190~~] to the out-of-state political committee during the 12 months immediately preceding the date of the contribution; or

(2) a copy of the out-of-state political committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee.

(c) The document obtained pursuant to subsection (b) of this section shall be included as part of the report that covers the reporting period in which the candidate, officeholder, or political committee accepted the contribution that caused the total accepted from the out-of-state committee to exceed $1,010 [~~$940~~].

(d) A candidate, officeholder, or political committee that:

(1) receives contributions covered by subsection (a) of this section from the same out-of-state committee in successive reporting periods; and

(2) complies with subsection (b)(2) of this section before accepting the first contribution triggering subsection (a) of this section, may comply with subsection (c) of this section in successive reporting periods by submitting a copy of the certified document obtained before

accepting the first contribution triggering subsection (a) of this section, rather than by obtaining and submitting an original certified document for each reporting period, provided the document has not been amended since the last submission.

(e) A candidate, officeholder, or political committee that accepts a contribution or contributions totaling $1,010 [~~$940~~] or less from an out-of-state political committee shall include as part of the report covering the reporting period in which the contribution or contributions are accepted either:

(1) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee; or

(2) the following information:

(A) the full name of the committee, and, if the name is an acronym, the words the acronym represents;

(B) the address of the committee;

(C) the telephone number of the committee;

(D) the name of the person appointing the campaign treasurer; and

(E) the following information for the individual appointed campaign treasurer and assistant campaign treasurer:

(i) the individual's full name;

(ii) the individual's residence or business street address; and

(iii) the individual's telephone number.

(f) This section does not apply to a contribution from an out-of-state political committee if the committee filed a campaign treasurer appointment with the commission before making the contribution.

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 34. REGULATION OF LOBBYISTS
SUBCHAPTER B. REGISTRATION REQUIRED

1 TAC §34.41, §34.43

The Texas Ethics Commission (the Commission) proposes an amendment to Texas Ethics Commission rules in Chapter 34. Specifically, the Commission proposes amendments to §34.41, regarding Expenditure Threshold, and §34.43, regarding Compensation and Reimbursement Threshold.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of $10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2023, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

J.R. Johnson, General Counsel, has determined that for the first five-year period the rule amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

The General Counsel has also determined that for each year of the first five years the proposed amended rules are in effect, the public benefit will be consistency and clarity in the Commission's rules that set out reporting thresholds. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rules.

The General Counsel has determined that during the first five years that the proposed amended rules are in effect, they will: not create or eliminate a government program; not require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; not increase or decrease the number of individuals subject to the rules' applicability; or not positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rules may do so at any Commission meeting during the agenda item relating to the proposed amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amendments are proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 305 of the Election Code; Texas Government Code §305.003, which authorizes the Commission to determine by rule the amount of expenditures made or compensation received over which a person is required to register as a lobbyist; and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Chapter 305 of the Government Code.

§34.41. Expenditure Threshold.

(a) A person must register under Government Code, §305.003(a)(1), if the person makes total expenditures of more than $880 [~~$820~~] in a calendar quarter, not including expenditures for the person's own travel, food, lodging, or membership dues, on activities described in Government Code §305.006(b) to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action.

(b) An expenditure made by a member of the judicial, legislative, or executive branch of state government or an officer or employee of a political subdivision of the state acting in his or her official capacity is not included for purposes of determining whether a person is required to register under Government Code, §305.003(a)(1).

(c) An expenditure made in connection with an event to promote the interests of a designated geographic area or political subdivision is not included for purposes of determining whether a person has crossed the registration threshold in Government Code, §305.003(a)(1), if the expenditure is made by a group that exists for the limited purpose of sponsoring the event or by a person acting on behalf of such a group.

§34.43. Compensation and Reimbursement Threshold.

(a) A person must register under Government Code, §305.003(a)(2), if the person receives, or is entitled to receive under an agreement under which the person is retained or employed, more than $1,760 [~~$1,640~~] in a calendar quarter in compensation and reimbursement, not including reimbursement for the person's own travel, food, lodging, or membership dues, from one or more other persons to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

(b) For purposes of Government Code, §305.003(a)(2), and this chapter, a person is not required to register if the person spends not more than 40 hours for which the person is compensated or reimbursed during a calendar quarter engaging in lobby activity, including preparatory activity as described by §34.3 of this title (relating to Compensation for Preparation Time).

(c) For purposes of Government Code, §305.003(a)(2), and this chapter, a person shall make a reasonable allocation of compensation between compensation for lobby activity and compensation for other activities.

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 August 10, 2022.

TRD-202202983
J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-5800

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.20, §20.22

The Texas Department of Agriculture (the Department) proposes amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 20, Subchapter C, §20.20, concerning Pest Management Zones, and §20.22, concerning Stalk Destruction Requirements.

These proposed amendments are in response to a request from Texas cotton producers to the Texas Boll Weevil Eradication Foundation's (Foundation) Board of Directors to consolidate and renumber certain pest management areas within pest management zones.

The Board forwarded this request to its Technical Advisory Committee (Committee) for further review. The Committee indicated these zones are currently in functionally eradicated or eradicated areas of Texas, and do not have a boll weevil presence. Accordingly, they no longer face pest control demands requiring destruction and planting dates specific to their areas, as currently reflected. The Committee also determined that, with the advent of new cotton varieties, combined with a decrease in the number of producers, consolidation of the areas within these zones would facilitate production more efficiently for those producers who operate across multiple zones.

The consolidation of areas necessitates changes to stalk destruction dates to achieve uniformity in the reorganized pest management zones. Dates were selected to reflect the latest stalk destruction dates in the areas being consolidated. In its review, the Committee also aligned the earliest planting date and end date for destruction requirements to reflect these changes.

Following the Committee's review, its Chairman, Dr. Tom Fuchs, presented the recommendations to the Board at its meeting on November 17, 2021. The Board agreed that these recommendations reflect industry demands and aim at aiding cotton producers in increasing the effectiveness of their efforts at producing pest-free cotton. The Board discussed these recommendations with the Department throughout the review process. The Department concluded that implementing these changes would not only aid producers but also increase the Department's efficiency at managing its hostable cotton program. The Department agreed to propose these changes following a formal request from the Board.

The proposed amendments to §20.20 combine the areas of Pest Management Zone 2 into a single Zone 2, renumber Pest Management Zone 6 to become Zone 5, combine the areas of Pest Management Zone 7 and renumber it to become Zone 6, combine the areas of Pest Management Zone 8 and renumber it to become Zone 7, renumber Pest Management Zone 9 to become Zone 8, and renumber Pest Management Zone 10 to become Zone 9.

The proposed amendments to §20.22 change references to Pest Management Zones 9 and 10 to Zones 8 and 9, respectively, to account for the proposed amendments to §20.20. The amendments also revise the table in §20.22(a)(3) to reflect the proposed amendments to the pest management zones in §20.20, and change earliest planting dates, destruction deadlines, and end dates for destruction requirements for particular zones.

Dr. Awinash Bhatkar, Coordinator for Biosecurity and Agriculture Resource Management, has determined that for the first five-

year period the proposed amendments are in effect, there will be no fiscal impact on state or local government as a result of the proposal.

Dr. Bhatkar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the proposed amendments will be greater uniformity an increase in the effectiveness of boll weevil and pink bollworm eradication efforts throughout the State.

Dr. Bhatkar has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.021. As a result of implementing the proposal, for the first five years the proposed rules are in effect:

(1) no government programs will be created or eliminated;

(2) no employee positions will be created or eliminated;

(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) no new regulations will be created by the proposal;

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

(7) there will be no increase or decrease in the number of individuals subject to the rules; and

(8) there will be a positive effect on the Texas economy, as the increase in the effectiveness of boll weevil and pink bollworm eradication efforts will be favorable to cotton production.

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.

Comments on the proposed amendments may be submitted to Morris Karam, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to Morris.Karam@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under §74.006 of the Texas Agriculture Code, which provides the Department with the authority to adopt rules as necessary for the effective enforcement and administration of the cotton pest control program, and §74.004, which provides the Department with the authority to establish regulated areas, dates, and appropriate methods of destruction of cotton stalks, other cotton parts, and products of host plants for cotton pests.

Chapter 74 of the Texas Agriculture Code is affected by the proposal.

§20.20. Pest Management Zones.

(a) (No change.)

(b) Zones. Established zones include the following counties:

(1) (No change.)

(2) Zone 2[~~, Area (1)~~]. Aransas, Bee, Calhoun, Duval, Goliad, Jim Wells, Kleberg, LaSalle, Live Oak, McMullen, Nueces, Refugio, San Patricio, Victoria, [~~and~~] Webb, and the northern portion of Kenedy County encompassing the area above an east-west line through Katherine and Armstrong, Texas.

[~~(3) Zone 2, Area (2). Jim Wells, Kleberg, Nueces, and the northern portion of Kenedy County encompassing the area above an east-west line through Katherine and Armstrong, Texas.~~]

[~~(4) Zone 2, Area (3). Aransas except for that part north of Copano Bay (including but not limited to Lamar and Blackjack peninsulas), San Patricio and south and east of U.S. Highway 59 in Bee and Live Oak.~~]

[~~(5) Zone 2, Area (4). Aransas north of Copano Bay (including but not limited to Lamar and Blackjack peninsulas), Calhoun, Goliad, LaSalle, McMullen, Refugio, Victoria and north and west of U.S. Highway 59 in Bee and Live Oak.~~]

(3) [~~(6)~~] Zone 3. Austin, Brazoria, Chambers, Colorado, Fayette, Fort Bend, Galveston, Gonzales, Harris, Jackson, Jefferson, Lavaca, Liberty, Matagorda, Orange, Waller, and Wharton.

(4) [~~(7)~~] Zone 4. Atascosa, Bexar, DeWitt, Dimmit, Frio, Karnes, Kinney, Maverick, Medina, Uvalde, Val Verde, Wilson, and Zavala.

(5) [~~(8)~~] Zone 5 [~~6~~]. Bastrop, Burnet, Caldwell, Comal, Guadalupe, Hays, Lee, Milam, Travis, and Williamson.

(6) [~~(9)~~] Zone 6 [~~7, Area (1)~~]. Anderson, Angelina, Brazos, Burleson, Cherokee, Grimes, Hardin, Houston, Jasper, Leon, Madison, Montgomery, Nacogdoches, Newton, Panola, Polk, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, [~~and~~] Smith, Trinity, Tyler, Walker, and Washington.

[~~(10) Zone 7, Area (2). Brazos, Burleson, Grimes, Hardin, Jasper, Madison, Montgomery, Newton, Polk, Robertson, San Jacinto, Trinity, Tyler, Walker and Washington.~~]

(7) [~~(11)~~] Zone 7 [~~8 Area (1)~~]. Bell, Bosque, Coryell, Ellis, Falls, Freestone, Hamilton, Henderson, Hill, Hood, Johnson, Lampasas, Limestone, [~~and~~] McLennan, Navarro, and Somervell.

[~~(12) Zone 8 Area (2). Ellis, Henderson, Hood, Johnson, Navarro and Somervell.~~]

(8) [~~(13)~~] Zone 8 [~~9~~]. Pecos, Reeves, and Ward.

(9) [~~(14)~~] Zone 9 [~~10~~]. El Paso County and that portion of Hudspeth County bounded by Interstate Highway 10 on the north, the El Paso County line on the west, the Rio Grande River on the south, and a line from old Fort Quitman, north along Highway 34 to Interstate 10 on the east.

§20.22. Stalk Destruction Requirements.

(a) Deadline and methods. From the destruction deadline until the end date for destruction requirements, all cotton plants in a Pest Management Zone shall be non-hostable. Enforcement of destruction requirements begins on the day immediately following the destruction deadline date. Additional requirements for stalk destruction are as follows:

(1) Zone 8 [~~9~~]--All cotton plants shall be shredded.

(2) Zone 9 [~~10~~]--All cotton plants shall be shredded; also, the field shall be:

(A) - (B) (No change.)

(3) The destruction deadlines and end date for destruction requirements for cotton plants in each Pest Management Zone are prescribed as follows:
Figure: 4 TAC §20.22(a)(3)
[~~Figure: 4 TAC §20.22(a)(3)~~]

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

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

Filed with the Office of the Secretary of State on August 12, 2022.

TRD-202203031
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 936-9360

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TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §363.9

The Texas State Board of Plumbing Examiners (Board or TSBPE) proposes an amendment to the existing rule at 22 Texas Administrative Code (TAC), Chapter 363, §363.9, concerning examination and registration. The proposed change is referred to as the "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The proposed rule implements a Board recommendation to allow the nationally known and recognized certification in medical gas piping installation from the American Society of Sanitation Engineering (ASSE) to expand educational opportunities to potential medical gas piping installation endorsees and lower unnecessary regulatory barriers. The certification in medical gas piping installation offered by ASSE has more rigorous training standards than TSBPE for medical gas piping installation training and is commonly recognized as the "gold standard" for national medical gas piping installation training. The rule allows the Board to recognize this training as an additional path to qualification for holding a medical gas piping installation endorsement.

SECTION BY SECTION SUMMARY

Section 363.9 allows the recognition of the eligibility credential of certification in medical gas piping installation by the ASSE for a Texas medical gas piping endorsement.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lisa G. Hill, Executive Director for the Board (Executive Director), has determined that for the first five-year period the amended rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rule. The Executive Director has further determined that for the first five-year period the amended rule is 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 rule.

PUBLIC BENEFITS

The Executive Director has determined that for each of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing or administering the amended rule will be to have fewer regulatory barriers to licensure and greater opportunity to expand the population of medical gas piping endorsees by allowing licensees to obtain a medical gas piping installation training by an additional training provider.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE RULE

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

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

Given that the amended rule does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, proposal and adoption of the rule is not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the amended rule is in effect, the Board has determined the following: (1) the amended rule does not create or eliminate a government program; (2) implementation of the amended rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the amended rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the amended rule does not require an increase or decrease in fees paid to the agency; (5) the amended rule does not create a new regulation; (6) the amended rule does not expand, limit, or repeal an existing regulation; (7) the amended rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the amended rule does not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

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

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Written comments regarding the amended rule may be submitted by mail to Patricia Latombe at P.O. Box 4200, Austin, Texas 78765-4200, or by email to rule.comment@tsbpe.texas.gov with

the subject line "Rule Amendment." All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of §1301.251(2) of the Texas Occupations Code, which authorizes the Texas State Board of Plumbing Examiners to adopt rules as necessary to implement the Chapter.

No other statutes or rules are affected by the proposal.

§363.9. Medical Gas Piping Endorsement.

(a) To be eligible for a Medical Gas Piping Installation Endorsement an applicant must:

(1) hold a current Journeyman Plumber, Master Plumber or Plumbing Inspector License; and

(2) have successfully completed an [~~a Board~~-]approved training program in medical gas piping installation, which is based on the standards contained in the latest edition of the National Fire Protection Association 99 Health Care Facilities Code (NFPA 99), or demonstrate the successful completion of a national certification in medical gas piping installation by the American Society of Sanitation Engineering (ASSE).

(b) At a minimum, the training program required by subsection (a)(2) of this section shall:

(1) consist of at least twenty-four (24) hours dedicated to classroom presentation, shop demonstration and testing of the enrollee's comprehension of the course material;

(2) address the responsibilities of an endorsement-holder as outlined in the current edition of the NFPA 99, Plumbing License Law and Board Rules;

(3) address the proper installation and testing requirements for medical gas and vacuum piping systems, as outlined in the current edition of the NFPA 99; and

(4) include at least four (4) hours of shop demonstration covering the proper assembly, purging and brazing procedures for horizontal and vertical joints.

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 August 11, 2022.

TRD-202202996
Patricia Latombe
General Counsel
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 936-5216

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20, 537.28, 537.30 - 537.33, 537.37, 537.43, 537.46 - 537.48, 537.51, 537.58, 537.59, 537.65

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §537.20, Standard Contract Form TREC No. 9-15; §537.28, Standard Contract Form TREC No. 20-16; §537.30, Standard Contract Form TREC No. 23-17; §537.31, Standard Contract Form TREC No. 24-17; §537.32, Standard Contract Form TREC No. 25-14; §537.33, Standard Contract Form TREC No. 26-7; §537.37, Standard Contract Form TREC No. 30-15; §537.43, Standard Contract Form TREC No. 36-9; §537.46, Standard Contract Form TREC No. 39-8; §537.47, Standard Contract Form TREC No. 40-9; §537.48, Standard Contract Form TREC No. 41-2; §537.51, Standard Contract Form TREC No. 44-2; §537.58, Standard Contract Form TREC No. 51-0; §537.59, Standard Contract Form TREC No. 52-0; and new rule §537.65, Standard Contract Form TREC No. 57-0, Notice to Prospective Buyer in Chapter 537, Professional Agreements and Standard Contracts.

The proposed amendments and new rules to Chapter 537 are made as a result of the Commission's quadrennial rule review. The proposed changes to the existing rules add the title of the form adopted by reference in each rule to the rule title and add clarifying language to specify which forms are for mandatory versus voluntary use by license holders. The new rules pair previously existing forms that were available for voluntary use by license holders with a rule to provide greater clarity about each form's purpose and use.

Each of the rules also include corresponding contract forms adopted by reference. Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Texas Real Estate Broker-Lawyer Committee recommended revisions to the contract forms adopted by reference under the proposed amendments and new rule. The changes listed below apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the *One to Four Family Residential Contract (Resale).*

The term "Escrow Agent" is capitalized throughout the contract to reflect its status as a defined term.

Paragraph 3 is amended to add a definition of "cash portion of the sales price."

A new "required notices" section is added to Paragraph 6, which provides one location where MUD, PID, or other similar notices that have been given or are attached to the contract can be listed. The corresponding reference to the Commission's form "Addendum containing Notice of Obligation to Pay Improvement District Assessment" is removed from Paragraph 22.

Paragraph 7.F is revised to require that the seller: (i) provide the buyer with copies of documentation from the repair person that shows both the scope of work and payment for the work completed; and (ii) transfer, at seller's expense, any transferable warranties at closing.

Paragraph 7.H is amended to replace the term "residential service company" with the terminology used by the Texas Department of Licensing and Regulation, which as of September 1, 2021, regulates residential service companies.

Paragraph 9.B(3) is amended to add the transfer of any warranties to correspond with the change in Paragraph 7F. New paragraph 9.B(5) provides that private transfer fees will be the obligation of the seller, unless otherwise provided in this contract.

Paragraph 11 is amended to further clarify the intent of the paragraph by replacing the terms "factual statements" and "business details" with "informational items," which is now defined, and adding that real estate brokers cannot practice law and are prohibited from adding to, deleting, or modifying the contract unless drafted by a party to the contract or a party's attorney. Lines have also been inserted into the blank.

Paragraph 13 is amended to clarify what amounts will be prorated through the closing date.

Paragraph 18.B is amended to add that if no closing occurs, the escrow agent may require a written release of liability *before* releasing the earnest money.

Paragraph 21 is amended to add a line for a courtesy copy to another individual, like an agent.

In the Unimproved Property Contract, the Farm and Ranch Contract, the New Home Contract (Incomplete Construction), and the New Home Contract (Complete Construction), the Seller's Disclosures paragraph has been amended to: (i) add checkboxes to each disclosure item to indicate whether the seller is or is not aware; and (ii) add two additional disclosures relating to whether the property is located in a floodplain or if any tree located on the property has oak wilt.

The Farm and Ranch Contract contains the following additional proposed changes:

A notice is added that states the form is designed for use in sales of existing farms or ranches of any size, and that it's not for use in complex transactions.

Paragraph 2.A adds the term "Counties" to reflect the fact that farm and ranch properties could be located across two or more counties. Additionally, the phrase "including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships" is deleted from the paragraph.

Paragraph 2.B is amended to make the terms "house" and "garage" plural.

Paragraph 3.D is amended to alter the calculation of the sales price adjustment should the survey reveal a difference in acreage.

New paragraph 4.D is added to address surface leases and includes options regarding whether the seller has delivered copies of written leases or provided notice of oral leases to the buyer, similar to the existing natural resource lease paragraph. The corresponding language in Paragraph 6.F is also amended.

On page 10 of the Contract, the statement "Do not sign if there is a separate written agreement for payment of Brokers' fees" is being modified to make it more conspicuous.

The Residential Condominium Contract contains the following additional proposed changes:

Paragraph 2.A(1) is amended to add a reference to an exhibit.

Paragraph 2.B(2) and 2.C(2) are amended to clarify the timing related to termination and to add a reference to the applicable Property Code provision.

Paragraph 12.A(3) is amended to except prepaid regular periodic maintenance fees, assessments, or dues from the buyer's obligation to pay any and fees associated with the transfer of the property not to exceed a certain amount, and the seller pays the excess.

The Amendment to Contract is amended to add a notice to consult an attorney and to add a reference to Paragraph 7 of the contracts in Paragraph 2 of the Amendment dealing with repairs. The form is also amended to replace the parenthetical following Paragraph 9, Other Modifications, with a statement that real estate brokers and sales agents are prohibited from practicing law. Lines have also been inserted into the blank.

The Seller Financing Addendum contains the following amendments:

A notice encouraging consultation with an attorney and a financial professional and informing parties of the complicated nature of these transactions is added to the top of the form.

Paragraph B is amended to modify the time period within which the seller may terminate.

A new instructional parenthetical is added in Paragraph C. Additionally, the interest in modified to reflect a per annum interest rate.

Paragraph D.2(a) and (b) are amended to clarify the casualty insurance requirements and new paragraph D.2 is added to address casualty insurance.

Paragraph D.2(b) is further amended to add a requirement that the seller provide the buyer with an annual accounting of the escrow account, use escrow deposits to pay taxes and insurance premiums in a timely manner in certain circumstances, and hold the escrow deposit in a separate account. Language is also added to specify whether the escrow account will or will not be serviced by a third-party servicer at either the buyer's or seller's expense.

The Addendum for Property Subject to Mandatory Membership in a Property Owners Association is amended to except prepaid regular periodic maintenance fees, assessments, or dues from the buyer's obligation to pay any and fees associated with the transfer of the property not to exceed a certain amount, and the seller pays the excess. Language is also added to clarify that these fees should be prorated pursuant to Paragraph 13 of the Contract. Finally, the amended language adds that the paragraph does not apply to a fee that is not imposed by the Association, even if it is collected by the Association for the benefit of a third party.

The Third Party Financing Addendum is amended to add an "other financing" box in Paragraph 1. Paragraph 3 is amended to add that a note must be secured by vendor's and deed of trust liens only if required by the buyer's lender. Finally, the phrase "provided in relation to the closing of this sale" is struck from Paragraph 5.B to streamline the paragraph.

Both the Addendum Regarding Residential Leases and the Addendum Regarding Fixture Leases are amended to add a checkbox in Paragraph B.1 related to notice of oral leases. Additionally, the Addendum for Disclosure of Fixture Leases is amended to modify Paragraph A.1 to include checkboxes, in lieu of a blank line, so that the parties can specifically indicate what types of fixture leases will be assumed and assigned.

The Notice to Prospective Buyer form (which currently exists, but has not had a corresponding rule which adopts the form by refer-

ence) is amended to add a reference to the notice requirements regarding public improvement districts.

The Loan Assumption Addendum contains the following amendments:

-"Effective Date" and "Title Company" are capitalized throughout.

-Paragraph A is amended to add that the noteholder of the loan being assumed is authorized to receive a copy of the buyer's credit reports.

-Paragraph B is amended to modify the time period within which the seller may terminate.

-Paragraph C is amended to clarify that the buyer will assume in writing the following notes at closing, to remove the reference to $500 and instead insert a blank, and to add the following sentence: "Within 7 days after the Effective Date, Seller will deliver to Buyer copies of the note(s) to be assumed, the deed(s) of trust, and the most recent loan statement(s) from the lender."

-New paragraph H is added related to authorization to release information.

-A new due on sale notice is added.

The Addendum for Reservation of Oil, Gas, and Other Minerals is amended to replace the phrase "reserve and retain implied" with "waive" in Paragraph C. The term "current" is added to "contact information" in Paragraph D.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of adopting the sections as proposed will be improved clarity and greater transparency for members of the public and license holders.

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

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit, or repeal an existing regulation;

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

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments and new rule are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these amendments and new rules is Texas Occupations Code, Chapter 1101. No other statute, code, or article is affected by the amendments and new rules.

§537.20. Standard Contract Form TREC No. 9-16[~~9-15~~], Unimproved Property Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 9-16[~~9-15~~] approved by the Commission in 2021 for mandatory use in the sale of unimproved property where the intended use is for one to four family residences.

§537.28. Standard Contract Form TREC No. 20-17[~~20-16~~], One to Four Family Residential Contract (Resale).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 20-17[~~20-16~~] approved by the Commission in 2021 for mandatory use in the resale of residential real estate.

§537.30. Standard Contract Form TREC No. 23-18[~~23-17~~], New Home Contract (Incomplete Construction).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 23-18[~~23-17~~] approved by the Commission in 2021 for mandatory use in the sale of a new home where construction is incomplete.

§537.31. Standard Contract Form TREC No. 24-18[~~24-17~~], New Home Contract (Completed Construction).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 24-18[~~24-17~~] approved by the Commission in 2021 for mandatory use in the sale of a new home where construction is completed.

§537.32. Standard Contract Form TREC No. 25-15[~~25-14~~], Farm and Ranch Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 25-15[~~25-14~~] approved by the Commission in 2021 for mandatory use in the sale of a farm or ranch.

§537.33. Standard Contract Form TREC No. 26-8[~~26-7~~], Seller Financing Addendum.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 26-8[~~26-7~~] approved by the Commission in 2015 for mandatory use as an addendum concerning seller financing.

§537.37. Standard Contract Form TREC No. 30-16[~~30-15~~], Residential Condominium Contract (Resale).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 30-16[~~30-15~~] approved by the Commission in 2021 for mandatory use in the resale of a residential condominium unit.

§537.43. Standard Contract Form TREC No. 36-10[~~36-9~~], Addendum for Property Subject to Mandatory Membership in a Property Owners Association.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 36-10[~~36-9~~] approved by the Commission in 2020 for mandatory use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association.

§537.46. Standard Contract Form TREC No. 39-9[~~39-8~~], Amendment to Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 39-9[~~39-8~~] approved by the Commission in 2015 for mandatory use as an amendment to promulgated forms of contracts.

§537.47. Standard Contract Form TREC No. 40-10[~~40-9~~], Third Party Financing Addendum.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form, TREC No. 40-10[~~40-9~~] approved by the Commission in 2019 for mandatory use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing.

§537.48. Standard Contract Form TREC No. 41-3[~~41-2~~], Loan Assumption Addendum.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 41-3[~~41-2~~] approved by the Commission in 2012 for mandatory use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan.

§537.51. Standard Contract Form TREC No. 44-3[~~44-2~~], Addendum for Reservation of Oil, Gas, and Other Minerals.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 44-3[~~44-2~~] approved by the Commission in 2014 for mandatory use as an addendum to be added to promulgated forms of contracts for the reservation of oil, gas, and other minerals.

§537.58. Standard Contract Form TREC No. 51-1[~~51-0~~], Addendum Regarding Residential Leases.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 51-1[~~51-0~~] approved by the Commission in 2020 for mandatory use as an addendum to be added to promulgated forms of contracts as related to lease agreements.

§537.59. Standard Contract Form TREC No. 52-1[~~52-0~~], Addendum Regarding Fixture Leases.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 52-1[~~52-0~~] approved by the Commission in 2020 for mandatory use as an addendum to be added to promulgated forms as related to fixture leases.

§537.65. Standard Contract Form TREC No. 57-0, Notice to Prospective Buyer.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 57-0 approved by the Commission in 2022 for voluntary use when the parties use a contract of sale that has not been approved for mandatory use by the Commission.

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

Filed with the Office of the Secretary of State on August 10, 2022.

TRD-202202989
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3057

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 110. HEARINGS UNDER THE ADMINSTRATIVE PROCEDURE ACT

26 TAC §§110.1, 110.3, 110.5, 110.7, 110.9, 110.11, 110.13, 110.15

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Texas Administrative Code (TAC), Part 1, and will be repealed or administratively transferred to 26 TAC, Health and Human Services, as appropriate. Until such action is taken, the rules in 40 TAC, Part 1, govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in 40 TAC, Part 1. Therefore, the Executive Commissioner of HHSC proposes new 26 TAC, Part 1, Chapter 110, concerning Hearings Under the Administrative Procedure Act, comprised of §§110.1, 110.3, 110.5, 110.7, 110.9, 110,11, 110.13, and 110.15.

BACKGROUND AND PURPOSE

The purpose of the proposal is to move appeals for Home and Community-based Services (HCS) and Texas Home Living (TxHmL) administrative penalties, contract terminations, vendor holds, recoupments, and denial of payment appeal cases from the HHSC Appeals Division to the Texas State Office of Administrative Hearings (SOAH). The proposal makes HCS and TxHmL consistent with other long-term care regulation programs that are heard by SOAH. The project will also update outdated rule references, change references to DADS to HHSC, and improve readability.

SECTION-BY-SECTION SUMMARY

The proposed new rules relocate content from the proposed repeal of 40 TAC, Chapter 91, to 26 TAC, Chapter 110, as well as change references to DADS to HHSC, change references to Commissioner to Executive Commissioner, update outdated rule references, and improve readability.

Proposed new §110.5(a)(5) and (6) adds the HCS and TxHmL programs to the list of contested cases heard by SOAH.

Proposed new §110.5(a)(21) clarifies that both long-term care regulation and provider investigations employee misconduct registry cases will be heard by SOAH.

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 does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the 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 new rules;

(6) the proposed rules will not repeal existing rules;

(7) the proposed rules will not change 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 will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rules do not require a change to current business practices.

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 do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from all long-term care regulation appeal cases being handled consistently.

Trey Wood has also determined that for the first five years the rule repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the new rules do not require any change in current business practices or impose any additional fees or costs on those required 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

Written comments on the proposal may be submitted to Josie Esparza, Program Specialist, Mail Code E-370, 701 W. 51st Street, Austin, Texas 78751; or by email to hhscltcrrules@hhs.texas.gov.

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) or 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 21R045" in the subject line.

STATUTORY AUTHORITY

The new rules 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 Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new rules implement Texas Government Code §531.0055, §531.021, and Chapter 531, Subchapter A-1; and Texas Human Resources Code §32.021.

§110.1. Purpose.

The purpose of this chapter is to describe procedures for hearings under the Administrative Procedure Act, Texas Government Code, Chapter 2001 (relating to Administrative Procedure).

§110.3. Definitions.

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

(1) Administrative law judge (ALJ)--Unless otherwise specified, ALJ means both a SOAH ALJ and an HHSC ALJ.

(2) Commissioner--The Executive Commissioner of HHSC.

(3) Contested case--A contested case, as defined in Texas Government Code, §2001.003, to which HHSC is a party.

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

(5) Party--HHSC or another person named or admitted to participate in a contested case.

(6) PFD--Proposal for decision.

(7) SOAH--The State Office of Administrative Hearings.

(8) TAC--Texas Administrative Code.

§110.5. Contested Case Heard by SOAH.

(a) The State Office of Administrative Hearings (SOAH) hears a contested case arising from the following Texas Health and Human Services Commission (HHSC) programs, services, or activities:

(1) primary home care services;

(2) community attendant services;

(3) day activity and health services;

(4) the Community Living Assistance and Support Services Program;

(5) the Home and Community-based Services Program;

(6) the Texas Home Living Program;

(7) the Deaf-Blind Multiple Disabilities Program;

(8) the Medically Dependent Children Program;

(9) social services authorized by Title XX of the Social Security Act (42 United States Code §§1397 - 1397f);

(10) In-Home and Family Support services for a person without a diagnosis of an intellectual disability;

(11) the Program of All-Inclusive Care for the Elderly;

(12) licensure, certification, or contracting of a nursing facility, including a determination related to the Resource Utilization Group Classification System or other utilization review;

(13) hospice services;

(14) licensure or certification of an intermediate care facility for persons with an intellectual disability or related condition;

(15) licensure of a nursing facility administrator;

(16) licensure of an assisted living facility;

(17) licensure of a day activity and health services facility;

(18) licensure of a home and community support services agency;

(19) the nurse aide registry;

(20) the nurse aide training and competency evaluation program;

(21) the long-term care regulation and provider investigation employee misconduct registry; and

(22) the medication aide program.

(b) Before a contested case described in subsection (a) of this section is transferred to SOAH:

(1) the HHSC Appeals Division has exclusive jurisdiction over the case;

(2) Texas Administrative Code (TAC), Title 1, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and this chapter govern the case; and

(3) the parties may conduct discovery in accordance with 1 TAC Chapter 357, Subchapter I.

(c) The director of the HHSC Appeals Division transfers a contested case described in subsection (a) of this section to SOAH upon request for a hearing date by either party.

(d) SOAH conducts hearings in accordance with 1 TAC Chapter 155 (relating to Rules of Procedure) and this chapter.

(e) A SOAH administrative law judge issues a proposal for decision (PFD) in accordance with 1 TAC Chapter 155.

(f) If a party files PFD exceptions, or a reply to exceptions, the party must comply with 1 TAC Chapter 155.

§110.7. Contested Case Heard by HHSC.

(a) The Texas Health and Human Services Commission (HHSC) Appeals Division hears a contested case other than one described in §110.5(a) of this chapter (relating to Contested Case Heard by SOAH).

(b) The HHSC Appeals Division conducts a hearing in accordance with Texas Administrative Code (TAC), Title 1, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and this chapter.

(c) An HHSC administrative law judge (ALJ) schedules a hearing upon request for a hearing date by either party.

(d) An HHSC ALJ issues a proposal for decision (PFD) in accordance with 1 TAC §357.497 (relating to Proposals for Decision, Exceptions, and Replies) within 60 days after the hearing record is closed.

(e) If a party files PFD exceptions, or a reply to exceptions, the party must comply with 1 TAC §357.497.

§110.9. Review of Proposal for Decision.

(a) The Texas Health and Human Services Commission (HHSC) Executive Commissioner, or the Executive Commissioner's designee, reviews a proposal for decision (PFD) issued by an administrative law judge (ALJ), exceptions to the PFD, and a reply to the exceptions. The HHSC executive commissioner or designee may change a finding of fact or conclusion of law, or may vacate or modify an order issued by the ALJ only if the executive commissioner or designee determines:

(1) that the ALJ did not properly apply or interpret applicable law, rule, policy provided to the ALJ, or prior administrative decision;

(2) that the ALJ relied on a prior administrative decision that is incorrect and should not be relied upon; or

(3) that a technical error in a finding of fact should be corrected.

(b) The HHSC Executive Commissioner or designee states in writing the specific reason and legal basis for a change made in accordance with this section.

§110.11. Issuance and Finality of Decision.

(a) After reviewing a proposal for decision (PFD), the Texas Health and Human Services Commission (HHSC) Executive Commissioner or the Executive Commissioner's designee issues a signed decision in a contested case. The decision either:

(1) adopts the findings of fact and conclusions of law contained in the PFD; or

(2) makes changes in accordance with §110.9 of this chapter (relating to Review of Proposal for Decision).

(b) The HHSC Executive Commissioner or designee mails the decision by first class mail and by certified mail, return receipt requested, to the parties or their representatives to their last known addresses. A party or representative is presumed to have been notified of the decision on the third day after the date on which the decision is mailed.

(c) In accordance with Texas Government Code §2001.144, a decision in a contested case is final:

(1) if a motion for rehearing is not filed in accordance with §110.13 of this chapter (relating to Motion for Rehearing), on the last date a motion for rehearing can be filed in accordance with §110.13 of this chapter;

(2) if a motion for rehearing is filed in accordance with §110.13 of this chapter, on the date:

(A) an order overruling the motion for rehearing is signed; or

(B) the motion for rehearing is overruled by operation of law;

(3) if HHSC finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision, on the date the decision is signed; or

(4) on the date specified in the decision, if all parties agree to the specified date in writing or on the record and the specified date is not before the date the decision is signed or later than the 20th day after the date the decision is signed.

(d) If a decision is final under subsection (c)(3) of this section, the HHSC Executive Commissioner or designee recites in the decision the finding made under subsection (c)(3) of this section and the fact that the decision is final and effective on the date signed.

§110.13. Motion for Rehearing.

A motion for rehearing is governed by Texas Government Code §2001.146, as follows.

(1) A party may file a motion for rehearing. A motion for rehearing must be in writing and must be received by the Texas Health and Human Services Commission (HHSC) Executive Commissioner or the Executive Commissioner's designee within 20 days after the date the party or party's representative is notified of a decision in accordance with §110.11(b) of this chapter (relating to Issuance and Finality of Decision).

(2) A party may file a reply to a motion for rehearing. A reply must be in writing and be filed with the HHSC Executive Commissioner or designee not later than the 30th day after the date on which the party or party's representative is notified of a decision in accordance with §110.11(b) of this chapter.

(3) The HHSC Executive Commissioner or designee acts on a motion for rehearing not later than the 45th day after the date on which the party or party's representative is notified of a decision in accordance with §110.11(b) of this chapter, or the motion for rehearing is overruled by operation of law.

(4) The Executive Commissioner or designee may by written order extend the time for filing a motion for rehearing or a reply, or for acting on a motion for rehearing under this section, except an extension may not extend the period for acting on a motion for rehearing beyond the 90th day after the date on which the party or the party's representative is notified of a decision in accordance with §110.11(b) of this chapter.

(5) If the HHSC Executive Commissioner or designee issues an order extending the time for filing a motion for rehearing or a reply, or for acting on a motion for rehearing under this section, the motion for rehearing is overruled by operation of law on the date specified in the order. If the order does not specify a date, the motion for rehearing is overruled by operation of law 90 days after the date on which the party or party's representative is notified of a decision in accordance with §110.11(b) of this chapter.

§110.15. Judicial Review.

(a) In accordance with Texas Government Code §2001.145, a decision that is final under §110.11(c)(2) - (4) of this chapter (relating to Issuance and Finality of Decision) is appealable; however, a timely motion for rehearing is a prerequisite to appeal a decision that is final under §110.11(c)(2) of this chapter.

(b) In accordance with Texas Government Code §2001.171, a person who has exhausted all administrative remedies at the Texas Health and Human Services Commission and who is aggrieved by a final decision in a contested case is entitled to judicial review under Texas Government Code, Chapter 2001.

(c) In accordance with Texas Government Code §2001.176(b)(3), filing a petition to initiate judicial review of a contested case does not affect the enforcement of a final decision for which the manner of review authorized by law is other than trial de novo.

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 August 10, 2022.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 438-3161

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER G. CIGARETTE TAX

34 TAC §3.101

The Comptroller of Public Accounts proposes amendments to §3.101, concerning cigarette tax and stamping activities. The comptroller proposes amendments to implement Senate Bill 248, 87th Legislature, 2021. Senate Bill 248 allows a person in this state who receives unstamped cigarettes from a manufacturer, bonded agent, distributor, or importer to store the cigarettes exclusively in an interstate warehouse.

The comptroller adds subsection (a)(2) to the define "cigar." The comptroller takes this definition from Tax Code, §155.001 (Definitions). The comptroller renumbers all relevant paragraphs in this subsection after each new definition. The comptroller amends the definition of "first sale" in renumbered paragraph (6) to specify that sales to an interstate warehouse and interstate warehouse transactions do not constitute a first sale. The comptroller adds new paragraphs (8) and (9), defining the terms interstate warehouse and interstate warehouse transaction. The comptroller takes these definitions from Tax Code §154.001 (Definitions).

The comptroller also amends renumbered paragraph (13) to specifically state that an "interstate warehouse" is not a wholesaler.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by conforming the rule to current statute. This rule is proposed under Tax Code, Title 2, and does

not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic cost to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller) which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Tax Code, §154.001 (Definitions).

§3.101. Cigarette Tax and Stamping Activities.

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

(1) Bonded agent--A person in this state who is a third-party agent of a manufacturer outside this state and who receives cigarettes in interstate commerce and stores the cigarettes for distribution or delivery to distributors under orders from the manufacturer.

(2) Cigar--A roll of fermented tobacco that is wrapped in tobacco and the main stream of smoke from which produces an alkaline reaction to litmus paper.

(3) [~~(2)~~] Cigarette--A roll for smoking:

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) that is not a cigar.

(4) [~~(3)~~] Distributor--A person who:

(A) is authorized to purchase for the purpose of making a first sale in this state, cigarettes in unstamped packages from manufacturers who distribute cigarettes in this state and to stamp cigarette packages;

(B) ships, transports, imports into this state, acquires, or possesses cigarettes and makes a first sale of the cigarettes in this state;

(C) manufactures or produces cigarettes; or

(D) is an importer.

(5) [~~(4)~~] Export warehouse--A person in this state who receives cigarettes in unstamped packages from manufacturers and stores the cigarettes for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.

(6) [~~(5)~~] First sale--Except as otherwise provided in this section;

(A) the first transfer of possession in connection with a purchase, sale, or any exchange for value of cigarettes in or into this state, which:

(i) includes the sale of cigarettes by:

(I) a distributor in or outside this state to a distributor, wholesaler, or retailer in this state; and [~~includes the sale of cigarettes by~~]

(II) a manufacturer in this state who transfers the cigarettes in this state; and

(ii) does not include:

(I) the sale of cigarettes by a manufacturer outside this state to a distributor in this state; [~~and does not include~~]

(II) the transfer of cigarettes from a manufacturer outside this state to a bonded agent in this state;

(III) the sale of cigarettes by a manufacturer, bonded agent, distributor, or importer to an interstate warehouse in this state; or

(IV) the transfer of cigarettes by an interstate warehouse in an interstate warehouse transaction;

(B) the first use or consumption of cigarettes in this state; or

(C) the loss of cigarettes in this state whether through negligence, theft, or other unaccountable loss.

(7) [~~(6)~~] Individual package of cigarettes--A package that contains at least 20 cigarettes.

(8) Interstate warehouse--A person in this state who receives unstamped cigarettes from a manufacturer, bonded agent, distributor, or importer and stores the cigarettes exclusively for an interstate warehouse transaction.

(9) Interstate warehouse transaction--The sale or delivery of cigarettes from an interstate warehouse to a person located in another state who is licensed or permitted by the other state to affix that state's cigarette stamps or otherwise pay the state's excise tax on cigarettes as required.

(10) [~~(7)~~] Manufacturer--A person who manufactures, fabricates, or assembles cigarettes, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes, for sale or distribution.

(11) [~~(8)~~] Retailer--A person who engages in the business of selling cigarettes to consumers and includes the owner of a cigarette vending machine.

(12) [~~(9)~~] Stamp--Includes only a stamp that:

(A) is printed, manufactured, or made by authority of the comptroller;

(B) shows payment of the tax imposed by this chapter;

(C) is consecutively numbered and uniquely identifiable as a Texas tax stamp; and

(D) is not damaged beyond recognition as a valid Texas tax stamp.

(13) [~~(10)~~] Wholesaler--A person, including a manufacturer's representative, who sells or distributes cigarettes in this state for resale but who is not a distributor or interstate warehouse.

(b) Imposition of tax.

(1) A tax is imposed on a person who uses or disposes of cigarettes in this state. The tax rate is $70.50 per thousand on cigarettes weighing three pounds or less per thousand plus $2.10 per thousand on cigarettes weighing more than three pounds per thousand. The tax becomes due and payable when a person receives cigarettes to make a first sale. A person who pays the tax shall securely affix a stamp to

each individual package of cigarettes to show payment of the tax. The ultimate consumer or user of cigarettes in this state bears the impact of the tax; and, if another person pays the tax, the amount of the tax is added to the price to the ultimate consumer or user. Absence of a stamp on an individual package of cigarettes is notice that the tax has not been paid.

(2) Cigarettes are exempt from the imposition of tax and the stamping requirements described in this section if the cigarettes are:

(A) contained in a package labeled with "Experimental Use Only," "Reference Cigarettes," or other similar wording indicating that the manufacturer intends for the product to be used exclusively for experimental purposes in compliance with Experimental Purposes, 27 C.F.R. §40.232 (2002);

(B) sold directly by a manufacturer to a research facility in this state, including:

(i) a laboratory, hospital, medical center, college, or university; or

(ii) a facility designated as a Tobacco Center of Regulatory Science by the National Institutes of Health;

(C) used by the research facility exclusively for experimental purposes; and

(D) not resold by the research facility.

(c) Liability of a permitted distributor. A permitted distributor who makes a first sale to a permitted distributor in this state is liable for and shall pay the tax.

(d) Cigarette tax stamp meters. Cigarette distributors cannot use stamp metering machines as evidence of payment of the cigarette tax.

(e) Cigarette tax stamp credits.

(1) Allowance of credit for cigarette tax stamps. The comptroller may authorize credit for:

(A) stamps that are affixed to cigarette packages that have been damaged or are unfit for sale and have been returned to the manufacturer in accordance with Tax Code, §154.306 (Exchange of Stamps);

(B) stamps that have been destroyed by vandalism, fire, flood, or other natural disasters. The distributor must present evidence that such stamps were purchased by the distributor and were subsequently destroyed by such natural disaster;

(C) stamps that have been erroneously affixed to cigarette carton flaps rather than the cigarette packages. The distributor must submit the stamped carton flaps to the comptroller in order to obtain credit. The comptroller will issue an authorization for refund of the tax with disallowance of the stamping discount;

(D) stamps used to restamp cigarette packages provided that the original tax stamps were of an illegible quality and the restamping is required by the comptroller's office. There is no stamping allowance for restamped cigarettes; or

(E) stamps that have been torn or otherwise damaged by a stamping machine. The distributor must submit the damaged stamps to the comptroller in order to obtain credit. The comptroller will notify the distributor of the amount of stamp credit authorized.

(2) Disallowance of credit for cigarette tax stamps. The comptroller will not authorize credit for stamps lost due to theft, negligence, or any unaccountable loss or for stamps that have been affixed two or more times to the same package of cigarettes resulting in double stamping.

(f) Cigarette tax stamp payments. All persons who purchase cigarette tax stamps from the comptroller shall transfer payments by electronic funds transfer.

(g) Evidence of return of cigarettes unfit for use. A distributor who requests replacement of cigarette tax stamps affixed to cigarettes that have been returned to the manufacturer must submit the following documentation to the comptroller:

(1) a credit memorandum from the manufacturer to whom the cigarettes were returned, verifying the number of cigarettes returned for credit;

(2) an affidavit from the manufacturer confirming that the tax stamps affixed to the cigarettes listed in the memorandum have been destroyed and listing the number, denomination, and the value of such stamps; and

(3) an affidavit from the distributor stating that the distributor returned the number of cigarettes listed in the manufacturer's credit memorandum and that the number, denomination, and the value of state cigarette tax stamps shown in the manufacturer's affidavit were affixed to the cigarettes returned.

(h) Delivery of unstamped cigarettes to instrumentalities of the United States government.

(1) Distributors may use their own vehicles to deliver previously invoiced quantities of unstamped cigarettes to instrumentalities of the United States government. These tax-free cigarettes must be packaged in a manner that prevents the unstamped cigarettes from commingling with any other cigarettes in the distributor's vehicle.

(2) Each sale of unstamped cigarettes by a distributor to an instrumentality of the United States government shall be supported by a separate sales invoice and a properly completed federal exemption certificate. Sales invoices must be numbered and dated and must show the name of the seller, name of the purchaser, and the destination.

(i) Generation and affixing of cigarette tax stamps by the Texas Alcoholic Beverage Commission (TABC).

(1) The comptroller, by interagency cooperation contract, may authorize the TABC to generate a cigarette tax stamp using the TABC's Port of Entry Tax Collection System and to affix the cigarette tax stamp to cigarette packages for the purpose of collecting the cigarette tax at ports of entry into the state.

(2) The TABC imposes a rate of $1.50 per pack for a conventional package of 20 cigarettes.

(3) Payment for the cigarette tax stamps sold will be made by that agency according to the terms and conditions stipulated in the interagency cooperation contract between the comptroller and the TABC.

(j) Affixing of cigarette tax stamps by TABC agents. Cigarette tax stamps affixed by agents of the TABC must be affixed to the cellophane wrapper on the bottom of each individual package of cigarettes.

(k) Disposition of cigarettes seized by TABC agents.

(1) TABC agents shall seize all cigarettes for which the holder refuses to pay the tax imposed by Tax Code, §154.021 (Imposition and Rate of Tax).

(2) Cigarettes seized shall be released to agents of the comptroller for ultimate disposition.

(l) Importation of cigarettes for personal use.

(1) Only a person 21 years of age or older, a person who is at least 18 and in the United States military or State military forces, or a person who was born on or before August 31, 2001, may import and personally transport cigarettes into this state.

(2) A person who imports and personally transports 200 or fewer cigarettes into this state from another state or an Indian reservation under the jurisdiction of the U.S. government, for personal use and not for sale, is not required to pay the tax imposed by Tax Code, §154.021.

(3) TABC employees shall collect the tax imposed by Tax Code, §154.021, at ports of entry from each person who imports and personally transports more than 200 cigarettes into this state from another country.

(4) TABC employees shall seize at ports of entry all cigarettes in the possession of a person younger than 21 years of age, unless the person is at least 18 and in the United States military or State military forces, or was born on or before August 31, 2001.

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 August 15, 2022.

TRD-202203034
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 475-2220

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34 TAC §3.102

The Comptroller of Public Accounts proposes amendments to §3.102, concerning applications, definitions, permits, and reports. The comptroller proposes amendments to implement Senate Bill 248, 87th Legislature, 2021. Senate Bill 248 requires a person in this state who receives unstamped cigarettes from a manufacturer, bonded agent, distributor, or importer to store the cigarettes exclusively in an interstate warehouse. The comptroller proposes amendments to add a definition of cigar, to remove language regarding sales made by a permitted bonded agent from a vehicle, and to address that a permitted importer is required to be a permitted distributor.

The comptroller adds three new definitions to subsection (a) and renumbers all relevant paragraphs after each new definition. The comptroller adds new subsection (a)(3) to define "cigar." The comptroller takes this definition from Tax Code, §155.001 (Definitions). The comptroller amends the definition of "first sale" in renumbered paragraph (10) to identify that interstate warehouse transactions and sales to an interstate warehouse do not constitute a first sale. The comptroller adds new paragraphs (12) and (13), defining the terms interstate warehouse and interstate warehouse transaction. The comptroller takes these definitions from Tax Code, §154.001 (Definitions).

The comptroller also amends renumbered paragraph (17) to include "interstate warehouse" as a permit holder and amends renumbered paragraph (21) to specifically state that an interstate warehouse is not a wholesaler.

The comptroller amends subsection (b)(1) to include that an interstate warehouse must have a valid permit to engage in business in Texas and that failure to obtain the permit subjects the person to a penalty of not more than $2,000 for each violation. The comptroller amends paragraph (2) to include that each interstate warehouse shall obtain a permit for each place of business owned or operated by an interstate warehouse.

The comptroller removes "bonded agent" from paragraph (4) concerning selling cigarettes from a vehicle. A bonded agent delivers or distributes cigarettes on behalf of the manufacturer and cannot sell cigarettes from a vehicle. A bonded agent may still deliver invoiced product from a vehicle, which does not require obtaining a permit.

The comptroller amends paragraphs (5) and (7) for readability. Additionally, the comptroller adds paragraph (9) to state that the comptroller may not issue a combination permit to a person who is an interstate warehouse.

The comptroller adds new paragraph (10) to specify that a permitted importer is required to be a permitted distributor.

The comptroller amends subsection (c)(1) to include that a manufacturer outside this state who is not a permitted distributor may sell cigarettes to an interstate warehouse in addition to another permitted distributor. The comptroller amends paragraph (2) to state when a permitted distributor may sell cigarettes to an interstate warehouse. The comptroller amends paragraph (3) to add an interstate warehouse to the list of entities to whom a permitted importer may sell cigarettes.

The comptroller adds new paragraph (8) to clarify that an interstate warehouse may sell cigarettes only in an interstate warehouse transaction. Intrastate sales are only allowed with written authorization by the comptroller.

The comptroller amends subsection (d)(1) to include that an interstate warehouse permit expires on the last day of February of each year.

The comptroller amends subsection (e) to include that an application for an interstate warehouse permit must be accompanied by the appropriate fee and to add the methods by which payment can be made. The comptroller amends paragraph (2) to add the $300 permit fee for an interstate warehouse and renumbers the following paragraphs. The comptroller amends renumbered paragraph (8) to remove language that conflicts with the definition of "engage in business" and clarifies that a manufacturer who is located out of state with no representation in Texas is not required to register with the comptroller. The comptroller takes this definition from Tax Code, §155.001 (Definitions).

The comptroller amends subsection (f)(1) to include that the comptroller shall issue a permit to an interstate warehouse if the comptroller receives an application, the applicable fee, and believes the issuance will not jeopardize enforcement of Tax Code, Chapter 154 (Cigarette Tax).

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by conforming the rule to current

statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic cost to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528 or to the email address: tp.rule.comments@cpa.texas.gov.

The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The comptroller proposes the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller) which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Tax Code, §154.001 (Definitions) and §154.101 (Permits).

§3.102. Applications, Definitions, Permits, and Reports.

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

(1) Agency--The Comptroller of Public Accounts of the State of Texas or the comptroller's duly authorized agents and employees.

(2) Bonded agent--A person in this state who is a third-party agent of a manufacturer outside this state and who receives cigarettes in interstate commerce and stores the cigarettes for distribution or delivery to distributors under orders from the manufacturer.

(3) Cigar--A roll of fermented tobacco that is wrapped in tobacco and the main stream of smoke from which produces an alkaline reaction to litmus paper.

(4) [~~(3)~~] Cigarette--A roll for smoking:

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) that is not a cigar.

(5) [~~(4)~~] Commercial business location--The entire premises occupied by a permit applicant or a person required to hold a permit under Tax Code, Chapter 154 (Cigarette Tax). A commercial business location cannot include a residence or a unit in a public storage facility.

(6) [~~(5)~~] Consumer--A person who possesses cigarettes for personal consumption.

(7) [~~(6)~~] Distributor--A person who:

(A) is authorized to purchase, for the purpose of making a first sale in this state, cigarettes in unstamped packages from manufacturers who distribute cigarettes in this state and to stamp cigarette packages;

(B) ships, transports, imports into this state, acquires, or possesses cigarettes and makes a first sale of the cigarettes in this state;

(C) manufactures or produces cigarettes; or

(D) is an importer.

(8) [~~(7)~~] Engage in business--A person engaging either directly or through a representative, in any of the following activities:

(A) selling cigarettes in or into this state;

(B) using a warehouse or another location to store cigarettes; or

(C) otherwise conducting through a physical presence cigarette-related business in this state.

(9) [~~(8)~~] Export warehouse--A person in this state who receives cigarettes in unstamped packages from manufacturers and stores the cigarettes for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.

(10) [~~(9)~~] First sale--Except as otherwise provided in this section; [~~,~~]

(A) the first [~~sale means the first~~] transfer of possession in connection with a purchase, sale, or any exchange for value of cigarettes in or into this state, which includes:

(i) [~~(A)~~] the sale of cigarettes [~~tobacco products~~] by:

(ii) a distributor in or outside this state to a distributor, wholesaler, or retailer in this state; and

(iii) a manufacturer in this state who transfers the tobacco products in this state; and

(B) the first use or consumption of cigarettes in this state; or

(C) the loss of cigarettes in this state whether through negligence, theft, or other unaccountable loss. First sale also includes giving away cigarettes as promotional items.

(11) [~~(10)~~] Importer--A person who ships, transports, or imports into this state cigarettes manufactured or produced outside the United States for the purpose of making a first sale in this state.

(12) Interstate warehouse--A person in this state who receives unstamped cigarettes from a manufacturer, bonded agent, distributor, or importer and stores the cigarettes exclusively for an interstate warehouse transaction.

(13) Interstate warehouse transaction--The sale or delivery of cigarettes from an interstate warehouse to a person located in another state who is licensed or permitted by the other state to affix that state's cigarette stamps or otherwise pay the state's excise tax on cigarettes as required.

(14) [~~(11)~~] Manufacturer--A person who manufactures, fabricates, or assembles cigarettes, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes, for sale or distribution.

(15) [~~(12)~~] Manufacturer's representative--A person employed by a manufacturer to sell or distribute the manufacturer's stamped cigarette packages.

(16) [~~(13)~~] Permit--Any agency license, certificate, approval, registration, or similar form of permission required by law to buy, sell, stamp, store, transport, or distribute cigarettes. A permit includes a vending machine decal.

(17) [~~(14)~~] Permit holder--A person who has been issued a bonded agent, interstate warehouse, distributor, importer, export warehouse, manufacturer, wholesaler, or retailer permit under Tax Code, §154.101 (Permits).

(18) [~~(15)~~] Place of business--

(A) a commercial business location where cigarettes are sold;

(B) a commercial business location where cigarettes are kept for sale or consumption or otherwise stored;

(C) a vehicle from which cigarettes are sold; or

(D) a vending machine from which cigarettes are sold.

(19) [~~(16)~~] Retailer--A person who engages in the business of selling cigarettes to consumers. The owner of a cigarette vending machine is a retailer.

(20) [~~(17)~~] Stamp--Includes only a stamp that:

(A) is printed, manufactured, or made by authority of the comptroller;

(B) shows payment of the tax imposed by Tax Code, §154.021 (Imposition and Rate of Tax);

(C) is consecutively numbered and uniquely identifiable as a Texas cigarette tax stamp; and

(D) is not damaged beyond recognition as a valid Texas tax stamp.

(21) [~~(18)~~] Wholesaler--A person, including a manufacturer's representative, who sells or distributes cigarettes in this state for resale. A wholesaler is not a distributor or interstate warehouse.

(b) Permits required.

(1) To engage in business as a distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, interstate warehouse, or retailer, a person must apply for and receive the applicable permit from the comptroller. The permits are not transferable. A new application is required if a change in ownership occurs (sole ownership to partnership, sole ownership to corporation, partnership to limited liability company, etc.). Each legal entity must apply for its own permit(s). All permits issued to a legal entity will have the same taxpayer number. Tax Code, §154.501(a)(2) (Penalties), provides that a person who engages in the business of a bonded agent, interstate warehouse, distributor, importer, manufacturer, export warehouse, wholesaler, or retailer without a valid permit is subject to a penalty of not more than $2,000 for each violation. Tax Code, §154.501(c), provides that a separate offense is committed each day on which a violation occurs.

(2) Each distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, interstate warehouse, or retailer shall obtain a permit for each place of business owned or operated by the distributor, importer, manufacturer, wholesaler, bonded agent, interstate warehouse, or retailer. A new permit shall be required for each physical change in the location of the place of business. Correction or change of street listing by a city, state, or U.S. Post Office shall not require a new permit so long as the physical location remains unchanged.

(3) Permits are valid for one place of business at the location shown on the permit. If the location houses more than one place of business under common ownership, an additional permit is required for each separate place of business. For example, each retailer who operates a cigarette vending machine shall place a retailer's permit on the machine.

(4) A vehicle from which cigarettes are sold is considered to be a place of business and requires a permit. A motor vehicle permit is issued to a [~~bonded agent,~~] distributor[~~,~~] or wholesaler holding a current permit. Vehicle permits are issued bearing a specific motor vehicle identification number and are valid only when physically carried in the vehicle having the corresponding motor vehicle identification number. Vehicle permits may not be moved from one vehicle to another. No cigarette permit is required for a vehicle used only to deliver invoiced cigarettes.

(5) The comptroller may issue a combination permit for [~~cigarettes, tobacco products, or~~] cigarettes and tobacco products to a person who is a distributor, importer, manufacturer, wholesaler, bonded agent, interstate warehouse, or retailer as defined by Tax Code, Chapter 154 and Chapter 155 (Cigars and Tobacco Products Tax). A person who receives a combination permit pays only the higher of the two permit fees.

(6) The comptroller will not issue a permit for a residence or a unit in a public storage facility because cigarettes may not be stored at such places.

(7) A permit is not required for a [~~This section does not apply to a~~] research facility that possesses and only uses cigarettes for experimental purposes.

(8) A person who engages in the business of selling cigarettes for commercial purposes who provides a roll-your-own machine that is available for use by consumers must obtain a manufacturer's, distributor's and a retailer's permit.

(9) A person may not hold any other permits required by this section in conjunction with an interstate warehouse permit for the same location.

(10) A person who engages in the business of importing cigarettes from a foreign country into Texas is required to be permitted as a cigarette distributor.

(c) Sales and purchase requirements for permit holders. Except for retail sales to consumers, cigarettes may only be sold or distributed by and between permit holders as provided by this section. A permit holder may engage in the following business activities:

(1) A manufacturer outside this state who is not a permitted distributor may sell cigarettes only to a permitted distributor or interstate warehouse.

(2) A permitted distributor may sell cigarettes only to a permitted distributor, wholesaler, or retailer. A permitted distributor who manufactures or produces cigarettes in this state may sell those cigarettes to a permitted interstate warehouse.

(3) A permitted importer may sell cigarettes only to a permitted interstate warehouse, distributor, wholesaler, or retailer.

(4) A permitted wholesaler may sell cigarettes only to a permitted distributor, wholesaler, or retailer.

(5) A permitted retailer may sell cigarettes only to the consumer and may purchase cigarettes only from a permitted distributor or wholesaler.

(6) A permitted export warehouse may sell cigarettes only to persons authorized to sell or consume unstamped cigarettes outside the United States.

(7) A manufacturer's representative may sell cigarettes only to a permitted distributor, wholesaler, or retailer.

(8) A permitted interstate warehouse may sell cigarettes only in an interstate warehouse transaction. An interstate warehouse

may not make an intrastate sale of cigarettes without written authorization by the comptroller.

(d) Permit period.

(1) Bonded agent, interstate warehouse, distributor, importer, manufacturer, wholesaler, and motor vehicle permits expire on the last day of February of each year.

(2) Retailer permits expire on the last day of May of each even-numbered year.

(e) Permit fees. An application for a bonded agent, interstate warehouse, distributor, manufacturer, wholesaler, motor vehicle, or retailer permit must be accompanied by the appropriate fee. The permit fee payment must be made in cash, by money order, check, or credit card.

(1) The permit fee for a bonded agent is $300.

(2) The permit fee for an interstate warehouse is $300.

(3) [~~(2)~~] The permit fee for a distributor is $300.

(4) [~~(3)~~] The permit fee for a manufacturer with representation in Texas is $300.

(5) [~~(4)~~] The permit fee for a wholesaler is $200.

(6) [~~(5)~~] The permit fee for a motor vehicle is $15.

(7) [~~(6)~~] The permit fee for a retailer permit is $180.

(8) [~~(7)~~] No permit fee is required to obtain an importer or an export warehouse permit [~~or to register a manufacturer if the manufacturer is located out of state with no representation in Texas~~].

(9) [~~(8)~~] A $50 fee is assessed for failure to obtain a permit in a timely manner.

(10) [~~(9)~~] The comptroller prorates the permit fee for new permits according to the number of months remaining in the permit period. If a permit will expire within three months of the date of issuance, the comptroller may collect the prorated permit fee for the current permit period and the total permit fee for the next permit period.

(11) [~~(10)~~] A person issued a permit for a place of business that permanently closes before the permit expiration date is not entitled to a refund of the permit fee.

(f) Permit issuance, denial, suspension, or revocation.

(1) The comptroller shall issue a permit to a distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, interstate warehouse or retailer if the comptroller receives an application and any applicable fee, believes that the applicant has complied with Tax Code, §154.101, and determines that issuing the permit will not jeopardize the administration and enforcement of Tax Code, Chapter 154.

(2) If the comptroller determines that an existing permit should be suspended or revoked or a permit should be denied because of the applicant's prior conviction of a crime and the relationship of the crime to the license, the comptroller will notify the applicant or permittee in writing by personal service or by mail of the reasons for the denial, suspension, revocation, or disqualification, the review procedure provided by Occupations Code, §53.052 (Judicial Review), and the earliest date that the permit holder or applicant may appeal the denial, suspension, revocation, or disqualification.

(g) Reports.

(1) Manufacturer reports must be filed on or before the 25th day of each month for transactions that occurred during the preceding month.

(2) All cigarette distributor and wholesaler reports and payments must be filed on or before the 25th day of each month for transactions that occurred during the preceding month.

(3) All wholesaler and distributor reports of sales to retailers required by the comptroller under Tax Code, §154.212 (Reports by Wholesalers and Distributors of Cigarettes), shall be filed in accordance with §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

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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Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 475-2220

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4011

The Comptroller of Public Accounts proposes amendments to §9.4011, concerning appraisal of timberlands. These amendments reflect updates and revisions to the manual for the appraisal of timberland. The proposed updated manual may be viewed at https://comptroller.texas.gov/taxes/property-tax/rules/index.php.

The amendments update and revise the October 2020 manual for the appraisal of timberland. The manual sets forth the methods to apply and the procedures to use in qualifying and appraising timberland and restricted-use timberland under Tax Code, Chapter 23, Subchapters E and H.

Generally, the substantive changes to the manual reflect statutory changes. The manual is updated throughout to reflect the elimination of the annual interest rate component from the calculation of the rollback tax in response to House Bill 3833, 87th Legislature, R.S. (2021). In addition, the updated manual adds interest to the rollback tax if it becomes delinquent. The manual is also updated throughout to reflect the changes to the application process and the added deadlines to implement Senate Bill 63, 87th Legislature, R.S. (2021).

Pursuant to Tax Code, §23.73(b), these rules have been approved by the Comptroller with the review and counsel of the Texas A&M Forest Service.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative ap-

propriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

These amendments are proposed under Tax Code, §§5.05 (Appraisal Manuals and Other Materials); 23.73 (Appraisal of Qualified Timber Land); and 23.9803 (Appraisal of Qualified Restricted-Use Timber Land), which authorize the comptroller to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying the methods to apply and the procedures to use in appraising timberland and restricted-use timberland for ad valorem tax purposes.

These amendments implement Tax Code, Chapter 23, Subchapters E and H.

§9.4011. Appraisal of Timberlands.

Adoption of the Manual for the Appraisal of Timberland. This manual sets out both the eligibility requirements for timberland to qualify for productivity appraisal and the methodology for appraising qualified timberland and restricted use timberland. Appraisal districts are required by law to follow the procedures and methodology set out in this manual. The Comptroller of Public Accounts adopts by reference the Manual for the Appraisal of Timberland dated March 2022. Copies of this manual can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528 or from the Property Tax Assistance Division website. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621. This manual and those that have been superseded are available from the Comptroller's office as well as the State Archives.

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 August 12, 2022.

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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 91. HEARINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

40 TAC §§91.1 - 91.8

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation of and provision of services by the health and human services system, including rules in Texas Administrative Code (TAC), Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes the repeal of 40 TAC, Part 1, Chapter 91, Hearings Under the Administrative Procedure Act, comprised of §§91.1 - 91.8.

BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal 40 TAC, Chapter 91.

SECTION-BY-SECTION SUMMARY

The proposed repeal of 40 TAC, Chapter 91 deletes the rules as no longer needed, because the content of the rules has been added to proposed new 26 TAC, Chapter 110.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed repeals will repeal existing rules;

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

(8) the proposed repeals 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 because the proposed repeals do not require a change to current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from the repeal of 40 TAC, Chapter 91 because it will be easier to find the new rules in 26 TAC, Chapter 110.

Trey Wood has also determined that for the first five years the rules are repealed, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the repeals do not impose any additional costs on those required 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

Written comments on the proposal may be submitted to Josie Esparza, Program Specialist, Mail Code E-370, 701 W. 51st Street, Austin, Texas 78751; or by email to hhscltcr-rules@hhs.texas.gov.

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 21R045" in the subject line.

STATUTORY AUTHORITY

The repeals 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 Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals implement Texas Government Code §531.0055, §531.021, and Chapter 531, Subchapter A-1; and Texas Human Resources Code §32.021.

§91.1. Purpose.
§91.2. Definitions.
§91.3. Contested Case Heard by SOAH.
§91.4. Contested Case Heard by HHSC.
§91.5. Review of Proposal for Decision.
§91.6. Issuance and Finality of Decision.
§91.7. Motion for Rehearing.
§91.8. Judicial Review.

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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Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 438-3161

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PART 15. TEXAS VETERANS COMMISSION

CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §452.2

The Texas Veterans Commission (commission) proposes amendment to Chapter 452, Advisory Committees.

PART I. PURPOSE AND BACKGROUND

The proposed amendment is made to change eligibility requirements for the Veterans County Service Officer Advisory Committee Membership. The change will ensure that current Veterans County Service Officers provide their ongoing challenges and best practices to the Committee for consideration and action.

PART II. EXPLANATION OF SECTIONS

Section 452.2

Subsection (d) (2) deletes "majority of members" to read "members" and changes eligibility requirements to include only current Veteran County Service Officers.

PART III. IMPACT STATEMENTS

FISCAL NOTE

Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

COSTS TO REGULATED PERSONS

Ms. Nall, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

LOCAL EMPLOYMENT IMPACT

Anna Baker, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Megan Tamez, Director of the Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule amendments are in effect, the public benefit anticipated as a result of administering the amended rule will reduce the need for formal disputes and settle disputes at the lowest level possible.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

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

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

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

(4) No fees will be created by the proposed rule amendments.

(5) The proposed rule amendments will not require new regulations.

(6) The proposed rule amendments have no effect on existing regulations.

(7) The proposed rule amendments have no effect on the number of individuals subject to the rule's applicability.

(8) The proposed rule amendments have no effect on this state's economy.

PART IV. COMMENTS

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 452 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

PART V. STATUTORY AUTHORITY

The rule amendment is proposed under Texas Government Code §434.010, which authorizes the commission to establish rules it considers necessary for its administration, and Texas Government Code §434.0101, granting the commission authority to establish rules governing the agency's advisory committees.

No other statutes, rules, or regulations are affected.

§452.2. Advisory Committees.

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

(d) Veterans County Service Officer Advisory Committee.

(1) Purpose. The purpose of the Veterans County Service Officer Advisory Committee is to develop recommendations to improve the support and training of Veterans County Service Officers and to increase coordination between Veterans County Service Officers and the Texas Veterans Commission related to the statewide network of services being provided to veterans.

(2) Committee member qualifications. The [~~majority of~~] members shall be current Veteran [~~, former, or retired Veterans~~] County Service Officers, but may also include representatives from veterans' organizations or other individuals with the experience and knowledge to assist the committee with achievement of its purpose.

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 August 12, 2022.

TRD-202203023
Cory Scanlon
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-3288

40 TAC §452.4

The Texas Veterans Commission (commission) proposes amendment to Chapter 452, §452.4, Alternative Dispute Resolution.

PART I. PURPOSE AND BACKGROUND

The proposed amendment is made to eliminate language that is no longer applicable.

PART II. EXPLANATION OF SECTIONS

Section 452.4 Alternative Dispute Resolution.

Subsection (b) deletes the title "Chief Administrative Officer" and adds "Director of Resource Management."

PART III. IMPACT STATEMENTS

FISCAL NOTE

Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

COSTS TO REGULATED PERSONS

Ms. Nall, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

LOCAL EMPLOYMENT IMPACT

Anna Baker, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Megan Tamez, Director of the Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule are in effect, the public benefit anticipated as a result of administering the amended rule will reduce the need for formal disputes and settle disputes at the lowest level possible.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

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

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

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

(4) No fees will be created by the proposed rule amendments.

(5) The proposed rule amendments will not require new regulations.

(6) The proposed rule amendments have no effect on existing regulations.

(7) The proposed rule amendments have no effect on the number of individuals subject to the rule's applicability.

(8) The proposed rule amendments have no effect on this state's economy.

PART IV. COMMENTS

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 452 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

PART V. STATUTORY AUTHORITY

The rule amendment is proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration; and Texas Government Code §434.0101, granting the commission authority to establish rules governing the agency's advisory committees.

No other statutes, rules, or regulations are affected.

§452.4. Alternative Dispute Resolution.

(a) (No change.)

(b) The commission's Director of Resource Management [~~Chief Administrative Officer~~] or designee shall be the commission's dispute resolution coordinator (DRC). The DRC shall perform the following functions, as required:

(1) coordinate the implementation of the policy set out in subsection (a) of this section;

(2) serve as a resource for any staff training or education needed to implement the ADR procedures; and

(3) collect data to evaluate the effectiveness of ADR procedures implemented by the commission.

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

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

Filed with the Office of the Secretary of State on August 12, 2022.

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Cory Scanlon
General Counsel
Texas Veterans Commission
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For further information, please call: (512) 463-3288

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION SUBCHAPTER M. TAX REFUND FOR WAGES PAID TO EMPLOYEE RECEIVING FINANCIAL ASSISTANCE

40 TAC §§800.550 - 800.557

The Texas Workforce Commission (TWC) proposes the following new subchapter to Chapter 800, relating to General Administration:

Subchapter M. Tax Refund for Wages Paid to Employee Receiving Financial Assistance, §§800.550 - 800.557

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of proposed new Chapter 800, Subchapter M is to establish administrative rules to clarify the requirements and eligibility determination applicable under Texas Labor Code, Chapter 301, Subchapter H, relating to Tax Refund for Wages Paid to Employee Receiving Financial Assistance.

Senate Bill (SB) 82, enacted by the 73rd Texas Legislature, Regular Session (1993), amended Texas Human Resources Code, Chapter 31 by adding Subchapter D, Tax Refund for Wages Paid to Employee Receiving Financial Assistance (Tax Refund Program). The Tax Refund Program required the Texas Department

of Human Services (DHS) to provide tax vouchers to persons upon application and certification of eligibility.

In 1997, the 75th Texas Legislature enacted SB 1113, which transferred the Tax Refund Program from the Texas Human Resources Code, Chapter 31, Subchapter D to Texas Labor Code, Chapter 301, Subchapter H, effectively moving the application eligibility and certification procedures from DHS to TWC. SB 1113 also implemented new rulemaking authority, allowing TWC to "adopt rules as necessary to carry out its powers and duties under this subchapter" and required DHS to provide information to TWC that is required to determine eligibility for persons applying for the Tax Refund.

The Comptroller of Public Accounts' rule under 34 Texas Administrative Code (TAC) §3.4, implemented in 1995, was not amended when the program transitioned from DHS to TWC. TWC did not establish rule to operate the Tax Refund Program. The application and eligibility certification procedures related to the Tax Refund Program have been operated by TWC staff since 1997 through publicly available information and a tax refund application form, currently maintained on TWC's Work Opportunity Tax Credit Program Overview webpage.

The Comptroller's office is reviewing possible amendments to 34 TAC §3.4 that would eliminate reference to eligibility determinations in its rule. TWC determined that the establishment of an administrative rule to clarify the requirements and eligibility determination applicable under Texas Labor Code, §301.107 is now needed.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER M. TAX REFUND FOR WAGES PAID TO EMPLOYEE RECEIVING FINANCIAL ASSISTANCE

TWC proposes new Subchapter M, as follows:

§800.550. Purpose

New §800.550 states the purpose and goal for Chapter 800, Subchapter M.

§800.551. Definitions

New §800.551 defines terms used in Chapter 800, Subchapter M.

§800.552. Tax Refund Voucher

New §800.552(a) states that TWC shall issue tax refund vouchers in the amounts allowed by and subject to restrictions in Chapter 800, Subchapter M. New §800.552(b) states that a person issued a tax refund voucher may apply for the tax refund.

§800.553. Amount of Refund: Limitation

New §800.553(a) states the maximum amount of the potential tax refund allowed per employee that is certified under new §800.554 and §800.555. New §800.553(b) states that the refund amount cannot exceed the amount of net tax paid by the person to the State of Texas after any other applicable tax credits for the calendar year.

§800.554. Eligibility

New §800.554 describes the eligibility required for the tax refund. New §800.554(1) describes the eligibility requirements regarding wages incurred by a person for service of an employee. New §800.554(2) refers to the certification requirements in new §800.555, and new §800.554(3) describes the options for a person to provide and pay a part of the cost for health care coverage.

§800.555. Certification

New §800.555 describes the time parameters for an employee to be receiving financial or medical assistance prior to employment.

§800.556. Application for Refund: Issuance

New §800.556 identifies the time period, on or after January 1 and before April 1, for persons to submit applications for the previous calendar year. New §800.556(b) gives TWC the authority to promulgate the application for the tax refund voucher. New §800.556(c) limits the use of the tax refund voucher to the year for which the voucher is issued.

§800.557. Limitations.

New §800.557(a) reinforces the requirement of health care coverage for the employee under new §800.554(3). New §800.557(b) identifies rules of conveyance, assignment, or transfer of a refund under Chapter 800, Subchapter M.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, 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 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, Article I, §17 or §19, 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. TWC 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 dis-

cussed elsewhere in this preamble, is to establish administrative rules to clarify the requirements and eligibility determination applicable under Texas Labor Code, Chapter 301, Subchapter H.

The proposed rulemaking action will not create any additional burden on private real property or 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 determined that during the first five years the rules will be in effect, they will not:

--create or eliminate a government program;

--require the creation or elimination of employee positions;

--require an increase or decrease in future legislative appropriations to TWC;

--require an increase or decrease in fees paid to TWC;

--create a new regulation;

--expand, limit, or eliminate an existing regulation;

--change the number of individuals subject to the rules; and

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

Economic Impact Statement and Regulatory Flexibility Analysis

TWC determined that the 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, Labor Market Information, determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, 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 tax refund incentive for persons to hire employees on Medicaid or receiving Temporary Assistance for Needy Families benefits.

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 policy concept for the new rules to the Boards for consideration and review on April 19, 2022. TWC also conducted a conference call with Board executive directors and Board staff on April 22, 2022, to discuss the policy concept. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than September 26, 2022.

PART VI. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.107(a), which stipulates that TWC shall adopt rules as necessary to carry out its powers and duties under Chapter 301, Subchapter H.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapter 301.

§800.550. Purpose.

The purpose of this subchapter is to establish rules for the Tax Refund for Wages Paid to Employee Receiving Financial Assistance in accordance with Texas Labor Code, Chapter 301, Subchapter H.

§800.551. Definitions.

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

(1) Comptroller--The comptroller of public accounts of the State of Texas, as defined under Texas Government Code, Chapter 403.

(2) Person--A "person" is:

(A) a business entity located in this state;

(B) a governmental subdivision located in this state; or

(C) a public or private organization located in this state that is not a state agency.

§800.552. Tax Refund Voucher.

(a) The Agency shall issue a tax refund voucher in the amount allowed by this subchapter and subject to the restrictions imposed by this subchapter to a person that meets the eligibility requirements under this subchapter.

(b) A person issued a tax refund voucher may, subject to the provisions of this subchapter, apply to the comptroller's office for a refund of taxes in accordance with Texas Labor Code, §301.106.

§800.553. Amount of Refund: Limitation.

(a) The amount of the refund allowed under this subchapter shall be equal to 20 percent of the total wages, up to a maximum of $10,000 in wages for each employee, paid or incurred by a person for services rendered by an employee of the person during the period beginning with the date the employee begins work for the person and ending on the first anniversary of that date.

(b) The refund claimed for a calendar year shall not exceed the amount of the net tax paid by the person to the State of Texas, after any other applicable tax credits in that calendar year.

§800.554. Eligibility.

A person is eligible for the refund for wages paid or incurred by the person, during each calendar year for which the refund is claimed, only in the following circumstances:

(1) The wages paid or incurred by the person are for services of an employee who is a:

(A) resident of this state; and

(B) recipient of:

(i) financial assistance or services in accordance with Texas Human Resources Code, Chapter 31; or

(ii) medical assistance in accordance with Texas Human Resources Code, Chapter 32;

(2) The person satisfies the certification requirements under §800.555 of this subchapter; and

(3) The person, under an arrangement under Texas Human Resources Code, §32.0422, provides and pays for the benefit of the employee a part of the cost of coverage under:

(A) a health plan provided by a health maintenance organization established under Texas Insurance Code, Chapter 843;

(B) a health benefit plan approved by the commissioner of insurance;

(C) a self-funded or self-insured employee welfare benefit plan that provides health benefits and is established in accordance with the Employee Retirement Income Security Act of 1974 (29 United States Code §§1001 et seq.); or

(D) a medical savings account or other health reimbursement arrangement authorized by law.

§800.555. Certification.

A person is not eligible for the refund of wages paid or incurred by the person unless the person has received a written certification from the Agency that the person's employee is a recipient of:

(1) financial assistance within the six months prior to his or her start date; or

(2) medical assistance within the six months prior to his or her start date.

§800.556. Application for Refund: Issuance.

(a) A person may apply for a tax refund voucher for wages paid an employee in a calendar year only on or after January 1 and before April 1 of the following calendar year.

(b) A person must submit an application for the tax refund voucher on a form promulgated by the Agency.

(c) On issuance of the tax refund voucher to the person by the Agency, the person may apply the voucher against a tax paid by the person to this state only for the calendar year for which the voucher is issued.

§800.557. Limitations.

(a) A person may only apply for a tax refund related to wages paid while the person's employee was covered by health care coverage in accordance with §800.554(3) of this subchapter and the cost of coverage was paid in full or in part by the person.

(b) A person may convey, assign, or transfer a refund under this subchapter to another person only if:

(1) the employing unit is sold, conveyed, assigned, or transferred, in the same transaction or in a related transaction, to the person to whom the refund is conveyed assigned, or transferred; or

(2) the person to whom the refund is conveyed, assigned, or transferred:

(A) is subject to a tax administered by the comptroller and deposited to the credit of the state General Revenue Fund without dedication; and

(B) directly or indirectly owns, controls, or otherwise directs, in whole or in part, an interest in the person from whom the refund is conveyed, assigned, or transferred.

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 August 9, 2022.

TRD-202202950
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 689-9855

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CHAPTER 819. [~~TEXAS WORKFORCE COMMISSION~~] CIVIL RIGHTS DIVISION

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division:

Subchapter B. Equal Employment Opportunity Provisions, §819.11 and §819.12

Subchapter D. Equal Employment Opportunity Complaints and Appeals Process, §819.41

Subchapter E. Equal Employment Opportunity Deferrals, §819.73

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed amendments to Chapter 819 is to implement House Bill (HB) 21 and Senate Bill (SB) 45, 87th Texas Legislature, Regular Session (2021), relating to sexual harassment complaints filed against employers. HB 21 expanded the statute of limitations for filing sexual harassment discrimination complaints and SB 45 broadened the definition of "Employer" as it relates to the filing of a sexual harassment discrimination complaint.

HB 21 amended Texas Labor Code, §21.202 to include a deadline for filing complaints alleging sexual harassment. Under new Texas Labor Code, §21.202(a-1), complaints must be filed with TWC within 300 days after the alleged sexual harassment occurred.

SB 45 amended Texas Labor Code, Chapter 21 by adding Subchapter C-1, §21.141 and §21.142, relating to Sexual Harassment. New Texas Labor Code, §21.141 defines "Employer" and "Sexual harassment" and new Texas Labor Code, §21.142 includes sexual harassment as an unlawful employment practice.

Texas Government Code, §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC conducted a rule review of Chapter 819 and any changes are described in Part II of this preamble.

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.)

CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

TWC proposes the following amendment to the title of Chapter 819:

The Chapter 819 title is amended to remove "Texas Workforce Commission" for consistency with the titles of other chapters.

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

TWC proposes the following amendments to Subchapter B:

§819.11. Definitions

Section 819.11 is amended to expand the definition of "Employer" to include provisions relating to sexual harassment, modify the definition of "Complaint" to include the statute of limitations to file a complaint for sexual harassment to within 300 days of the alleged unlawful employment practice, and add the definition of "Sexual Harassment."

§819.12. Unlawful Employment Practices

Section 819.12 is amended to add new subsection (k) to include sexual harassment as an unlawful employment practice.

SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

TWC proposes the following amendments to Subchapter D:

§819.41. Filing a Complaint

Section 819.41(e) is amended to include that a complaint alleging sexual harassment must be filed within 300 days of the alleged unlawful employment practice. Section 819.41(h) is amended to include if a perfected complaint alleging sexual harassment is not received within 300 days of the alleged unlawful employment practice, the respondent shall be notified that a complaint has been filed and the process of perfecting the complaint is in progress.

SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

TWC proposes the following amendments to Subchapter F:

§819.73. Deferral to Local Commission

Section 819.73(b)(2) is amended to expand jurisdiction over sexual harassment complaint allegations.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, 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 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, Article I, §17 or §19, 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. TWC 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 implement HB 21 and SB 45, relating to sexual harassment complaints filed against employers.

The proposed rulemaking action will not create any additional burden on private real property or 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 determined that during the first five years the rules will be in effect, they will not:

--create or eliminate a government program;

--require the creation or elimination of employee positions;

--require an increase or decrease in future legislative appropriations to TWC;

--require an increase or decrease in fees paid to TWC;

--create a new regulation;

--expand, limit, or eliminate an existing regulation;

--change the number of individuals subject to the rules; and

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

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the 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, Labor Market Information, determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Bryan Snoddy, Director, Civil Rights 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 pro-

posed rules will be to implement HB 21, which expanded the statute of limitations for filing sexual harassment discrimination complaints, and SB 45, which broadened the definition of "Employer" as it relates to filing a sexual harassment discrimination complaint.

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 policy concept regarding these rule amendments to the Boards for consideration and review on February 11, 2022, and during the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

PART IV. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than September 26, 2022.

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

40 TAC §819.11, §819.12

STATUTORY AUTHORITY

The 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 rules implement HB 21 and SB 45, relating to sexual harassment complaints filed against employers.

§819.11. Definitions.

The following words and terms, when used in Subchapter B, Equal Employment Opportunity Provisions; Subchapter C, Equal Employment Opportunity Reports, Training, and Reviews; Subchapter D, Equal Employment Opportunity Complaints and Appeals Process; Subchapter E, Equal Employment Opportunity Deferrals; and Subchapter F, Equal Employment Opportunity Records and Recordkeeping shall have the following meanings, unless the context clearly indicates otherwise.

(1) Bona fide occupational qualification--A qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a factual basis for believing that no members of the excluded group would be able to satisfactorily perform the duties of the job with safety and efficiency.

(2) Civil Rights Act--The Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 and the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1976, as amended; the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; and Texas Labor Code, Chapter 21, regarding Employment Discrimination.

(3) Complaint--A written statement made under oath stating that an unlawful employment practice has been committed, setting forth the facts on which the complaint is based, and received within 180 days or, for a complaint alleging sexual harassment, within 300 days of the alleged unlawful employment practice.

(4) Conciliation--The settlement of a dispute by mutual written agreement in order to avoid litigation where a determination has been made that there is reasonable cause to believe an unlawful employment practice has occurred.

(5) Disability--A mental or physical impairment that substantially limits at least one major life activity of an individual, a record of such mental or physical impairment, or being regarded as having such an impairment as set forth in §3(2) of the Americans with Disabilities Act of 1990, as amended, and Texas Labor Code, §21.002(6).

(6) Employer--A person who is engaged in an industry affecting commerce and who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of that person. The term includes an individual elected to public office in Texas or a political subdivision of Texas, or a political subdivision and any state agency or instrumentality, including public institutions of higher education, regardless of the number of individuals employed. The term excludes a franchisor from being considered an employer of a franchisee or a franchisee's employees. The term also exempts the Texas Military Forces from being an employer, as claims of discrimination against the Texas Military Forces by service members on state active duty shall be processed in accordance with military regulations and procedures as authorized by Texas Government Code, §437.212. Exclusively regarding allegations of sexual harassment, the term "Employer" includes a person who employs one or more employees or acts directly in the interests of an employer in relation to an employee.

(7) Local commission--Created by one or more political subdivisions acting jointly, pursuant to Texas Labor Code, §21.152, and recognized as a Fair Employment Practices Agency by EEOC pursuant to Title VII of the [~~U.S.~~] Civil Rights Act of 1964, [~~Title VII,~~] §706, as amended by the Equal Employment Opportunity Act of 1972, the Civil Rights Act of 1991, and the Americans With Disabilities Act of 1990, as amended.

(8) Mediation--An alternative dispute resolution process to resolve a dispute by mutual written agreement among the complainant, respondent, and CRD.

(9) Perfected complaint--An employment discrimination complaint that CRD has determined meets all of the requirements of Texas Labor Code, Chapter 21, and for which CRD will initiate an investigation.

(10) Sexual Harassment--An unwelcome sexual advance, a request for a sexual favor, or any other verbal or physical conduct of a sexual nature if:

(A) submission to the advance, request, or conduct is made a term or condition of an individual's employment either explicitly or implicitly;

(B) submission to or rejection of the advance, request, or conduct by an individual is used as the basis for a decision affecting the individual's employment;

(C) the advance, request, or conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or

(D) the advance, request, or conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

§819.12. Unlawful Employment Practices.

(a) Discrimination by Employer. An employer commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that deprives or tends to deprive an individual of an employment opportunity or adversely affects in any other manner the status of an employee.

(b) Discrimination by Employment Agency. An employment agency commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:

(1) fails or refuses to refer for employment or discriminates in any other manner against an individual; or

(2) classifies or refers an individual for employment on that basis.

(c) Discrimination by Labor Organization. A labor organization commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:

(1) excludes or expels from membership or discriminates in any other manner against an individual; or

(2) limits, segregates, or classifies a member or an applicant for membership, or classifies or fails or refuses to refer for employment an individual in a manner that:

(A) deprives or tends to deprive an individual of any employment opportunity;

(B) limits an employment opportunity or adversely affects in any other manner the status of an employee or of an applicant for employment; or

(C) causes or attempts to cause an employer to violate this subchapter.

(d) Admission or Participation in Training Program. An employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it discriminates against an individual in admission to or participation in the program, unless a training or retraining opportunity or program is provided under an affirmative action plan approved by federal or state law, rule, or court order. The prohibition against discrimination based on age applies only to individuals who are at least 40 years of age.

(e) Retaliation. An employer, employment agency, or labor organization[,] commits an unlawful employment practice based on race, color, disability, religion, sex, national origin, or age if the employer, employment agency, or labor organization retaliates or discriminates against an individual who:

(1) opposes a discriminatory practice;

(2) makes or files a charge;

(3) files a complaint; or

(4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

(f) Aiding or Abetting Discrimination. An employer, employment agency, or labor organization commits an unlawful employment practice if it aids, abets, incites, or coerces an individual to engage in an unlawful discriminatory practice based on race, color, disability, religion, sex, national origin, or age.

(g) Interference with the Agency or CRD. An employer, employment agency, or labor organization commits an unlawful employment practice if it willfully interferes with the performance of a duty or the exercise of a power by CRD or by the Agency in relation to CRD.

(h) Prevention of Compliance. An employer, employment agency, or labor organization commits an unlawful employment practice if it willfully obstructs or prevents an individual from complying with Texas Labor Code, Chapter 21, or a rule adopted or order issued under Texas Labor Code, Chapter 21.

(i) Discriminatory Notice or Advertisement. An employer, employment agency, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if it prints or publishes or causes to be printed or published a notice or advertisement relating to employment that:

(1) indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and

(2) concerns an employee's status, employment, or admission to or membership or participation in a labor organization or training or retraining program.

(j) Bona Fide Occupational Qualification. A bona fide occupational qualification is an affirmative defense to discrimination.

(k) Sexual Harassment. An employer commits an unlawful employment practice if sexual harassment of an employee occurs and the employer or the employer's agents or supervisors:

(1) knows or should have known that the conduct constituting sexual harassment was occurring; and

(2) fails to take immediate and appropriate corrective action.

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

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Les Trobman
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For further information, please call: (512) 689-9855

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SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

40 TAC §819.41

The 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 rules implement HB 21 and SB 45, relating to sexual harassment complaints filed against employers.

§819.41. Filing a Complaint.

(a) A person may telephone, write, visit, e-mail, fax, or otherwise contact CRD or a local commission office recognized by EEOC as a Fair Employment Practices Agency to obtain information on filing a complaint with CRD.

(b) At the complainant's request, CRD:

(1) shall confer with the complainant about the facts and circumstances that may constitute the alleged unlawful employment practice;

(2) shall assist the complainant in perfecting the complaint if the facts and circumstances appear to constitute an alleged unlawful employment practice; or

(3) may advise the complainant if the facts and circumstances presented to CRD do not appear to constitute an unlawful employment practice.

(c) The complaint shall be filed in writing and either signed under oath or subscribed by the person making the declaration as true under penalty of perjury and in substantially the form prescribed by Texas Civil Practice and Remedies Code, Chapter 132, or its successor statute. It may be filed with CRD by mail, electronic communication, fax, or in person with:

(1) the CRD office on a CRD-provided form;

(2) an EEOC office; or

(3) a local commission office recognized by EEOC as a Fair Employment Practices Agency.

(d) The complaint shall set forth the following information:

(1) Harm experienced by the complainant as a result of the alleged unlawful employment practice;

(2) Explanation, if any, given by the employer to the complainant for the alleged unlawful employment practice;

(3) A declaration of unlawful discrimination under federal or state law;

(4) Facts upon which the complaint is based, including the date, place, and circumstances of the alleged unlawful employment practice; and

(5) Sufficient information to enable CRD to identify the employer, e.g., employer ID, business address, and business phone.

(e) A complaint shall be filed within 180 days or, for a complaint alleging sexual harassment, within 300 days, after the date on which the alleged unlawful employment practice occurred.

(f) A complaint may be withdrawn by a complainant only with the consent of the CRD director.

(g) A perfected complaint may be amended by the complainant to cure technical defects or omissions, or to clarify and amplify allegations made therein. Such amendment or amendments alleging additional acts that constitute unlawful employment practices related to or growing out of the subject matter of the original complaint shall relate back to the date the complaint was first filed. CRD shall provide a copy of the perfected complaint to the respondent. An amended perfected complaint shall be subject to the procedures set forth in applicable law.

(h) A respondent shall be mailed a copy of the perfected complaint within 10 days after CRD receives the perfected complaint. If CRD receives a complaint that is not perfected within 180 days or, for a complaint alleging sexual harassment, within 300 days, of the alleged unlawful employment practice, CRD shall notify the respondent that a complaint has been filed and the process of perfecting the complaint is in progress.

(i) The complainant and respondent shall be advised upon request by CRD of the status of their perfected complaint, unless doing so would jeopardize an undercover investigation by another state, federal, or local government.

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

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SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

40 TAC §819.73

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 implements HB 21 and SB 45, relating to sexual harassment complaints filed against employers.

§819.73. Deferral to Local Commission.

(a) Texas Labor Code, §21.155 grants to a local commission the exclusive right to take appropriate action within the scope of its power and jurisdiction to process a complaint deferred by CRD pursuant to the requirements of Texas Labor Code, §21.155, and this chapter.

(b) CRD shall not assume jurisdiction over a complaint deferred to a local commission, pursuant to Texas Labor Code, §21.155, except:

(1) where the local commission defers a complaint under its jurisdiction to CRD;

(2) where the complaint is received by CRD within 180 days of the alleged violation or, for a complaint alleging sexual harassment, within 300 days of the alleged unlawful employment practice, but beyond the period of limitation of the appropriate local commission; and

(3) where the local commission has not acted on the complaint pursuant to the requirements of Texas Labor Code, §21.155(c), 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.

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 TAC §§217.54, 217.55, and 217.184 concerning the registration of vehicles as part of certain county fleets. The amendments are necessary to implement new Transportation Code §502.0025 and amendments to §502.453, which authorize registration of an exempt county fleet for an extended period, under Senate Bill 1064 (SB 1064), 87th Legislature, Regular Session (2021). The amendments also update §217.54 and §217.55 to remove obsolete terms and conform the rules to current practices.

EXPLANATION. SB 1064 added new Transportation Code §502.0025 and amended §502.453 to allow exempt county fleets to be registered for an extended period of not less than one year or more than eight years. Section 502.0025 defines an "exempt county fleet" as a group of two or more nonapportioned motor vehicles, semitrailers, or trailers that is owned by and used exclusively in the service of a county with a population of 3.3 million or more. Currently only Harris County is eligible to register vehicles under an exempt county fleet as defined by §502.0025. Proposed amendments in §§217.54, 217.55, and 217.184 incorporate the newly defined exempt county fleets into existing commercial fleet and exempt registration to implement processes for the extended registration requirements in SB 1064.

SB 1064 directs the department to establish rules regarding the suspension of the county fleet's registration if the owner fails to comply with Transportation Code §502.0025 or rules adopted under that section and to enforce inspection requirements. Proposed amendments to §217.55(e) establish the penalty associated with failing to maintain compliance with Transportation Code §502.0025, the rules adopted under that section, and inspection requirements.

The proposed amendments to §217.54 include changes that provide increased clarity and readability regarding the department's existing practices.

The following paragraphs address the amendments in this proposal.

The amendments to §217.54(e), (f), and (i)(6)(B) replace the term "insignia" with "metal fleet license plate" and "registration receipt" to conform with current department operations. Fleet license plates and registration receipts are issued to commercial fleet registrants rather than registration insignia, under Transportation Code §502.0023. The amendments remove §217.54(e)(2) and (e)(3) as those requirements apply only to insignia, making them unnecessary when insignia are not used. The amendments also renumber existing §217.54(e)(4) and (e)(5) accordingly.

The amendments to §217.54(f)(2) and (3) and (i)(6)(B) add the option of providing the department with acceptable proof that the metal fleet license plates have been destroyed when the registered vehicle has been removed from the fleet or when the registration has been canceled.

The amendments to §217.55(a)(2)(A)(iii) change the manner in which an application for exempt registration provides the required statement "that the vehicle is owned or under the control of and will be operated by the exempt agency." The amendment requires the statement to be a certification instead of the currently required affidavit. The change conforms the rule to the department's current practices.

The amendments to §217.55(a)(3)(D) remove the reference to an exempt plate being marked with a replacement date because license plates no longer have an assigned replacement interval.

New §217.55(e) establishes rules necessary to implement the extended registration allowed under Transportation Code §502.0025, including (i) rules regarding the suspension of an exempt county fleet's registration for failure to comply with the law or adopted rules and (ii) establishing a method to enforce the inspection requirements under Chapter 548 for motor vehicles, semitrailers, and trailers registered under the section. Because the exempt county fleet statute (Transportation Code §502.0025) largely mirrors the commercial fleet statute (Transportation Code §502.0023), new §217.55(e) also largely mirrors the existing commercial fleet rule (§217.54).

New §217.55(e) allows an exempt county fleet to be registered for annual increments of up to eight years; and requires that a registered vehicle be titled, unless exempt by statute from titling. New §217.55(e)(1) - (e)(4) establish application requirements and requirements related to registration receipts and exempt fleet license plates. New §217.55(e)(5) establishes requirements related to adding or removing a vehicle from an exempt county fleet. New §217.55(e)(6) establishes procedures for paying the state's portion of the vehicle inspection fee. New §217.55(e)(7) allows for the cancellation of a registration for noncompliance with the exempt fleet statutes and rules or with inspection requirements under Transportation Code Chapter 548 and prohibits a vehicle with canceled registration from operating on a public highway. New §217.55(e)(8) and §217.55(e)(9) establish procedures for reinstating a canceled registration and for requesting a replacement license plate.

The amendment to §217.184(3) specifies that exempt county fleets are excluded from the processing and handling fee requirements under §217.183. The amendment to §217.184(3) is necessary to implement SB 1064's amendments to Transportation Code §502.453.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that in the first five years the proposed amendments will be in effect, there will be a one-time technology implementation cost of $250,000 in the first year to implement programming for the department's automated systems. This amount is appropriated to the department in Section 48 of House Bill 2, 87th Legislature, Regular Session (2021). Vehicles in an exempt county fleet will be registered directly through a department system which could result in minor reductions in workloads for county tax assessor-collector offices but any effect from this is expected to be negligible. Therefore, there is no fiscal impact to the state or lo-

cal governments as a result of the enforcement or administration of the proposal.

Jimmy Archer, Director of the Motor Carrier Division, and Roland D. Luna, Sr., Deputy Executive Director, have determined that there will be no measurable effect on local employment or the local economy as a result of the proposal, because the overall number of registrations will not be affected.

PUBLIC BENEFIT AND COST NOTE. Mr. Archer and Mr. Luna have also determined that for each year of the first five years the proposed amendments are in effect, the public benefits include establishing rules to implement SB 1064 and the option it creates for owners of an exempt county fleet to register vehicles for an extended period. Other amendments remove obsolete text that may be confusing to readers and conform the rules to current practices.

Mr. Archer and Mr. Luna anticipate that there will be no additional costs on a regulated person to comply with these amendments because the amendments do not establish any additional requirements on a regulated person beyond the requirements under statute. There will be a small reduction in costs on a regulated person because the amendments will no longer require the application to include a notarized affidavit regarding the control and operation of the vehicle, and instead will require only a certification.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002, the department has determined that the proposed amendments will not have an adverse economic or financial effect on small businesses, micro-businesses, or rural communities because the amendments to implement SB 1064 apply only to a local government with a population of more than 3.3 million. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments are in effect, the proposed amendments:

-- will not create or eliminate a government program;

-- will not require the creation of new employee positions or the elimination of existing employee positions;

-- will not require an increase or decrease in future legislative appropriations to the department;

-- will not require an increase or decrease in fees paid to the department;

-- will create new regulation;

-- will not expand existing regulations;

-- will not increase or decrease the number of individuals subject to the rule's applicability; and

-- will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on September 26, 2022. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.54, §217.55

STATUTORY AUTHORITY. The department proposes amendments to §§217.54, 217.55, and 217.184 under Transportation Code §§502.0021, 502.0023, 502.0025, and 1002.001.

-- Transportation Code §502.0021 authorizes the department to adopt rules to administer Transportation Code Chapter 502.

-- Transportation Code §502.0023 requires the department to adopt rules to implement extended registration of commercial fleet vehicles.

-- Transportation Code §502.0025 requires the department to adopt rules to implement extended registration of certain county fleet vehicles.

-- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§502.0023, 502.0025, and 502.453.

§217.54. Registration of Fleet Vehicles.

(a) Scope. A registrant may consolidate the registration of multiple motor vehicles[~~, including trailers and semitrailers,~~] in a fleet instead of registering each vehicle separately. A fleet may include trailers and semitrailers. Except as provided by §217.55 of this title (relating to Exempt and Alias Vehicle Registration), to consolidate registration, a registration must meet the requirements of this section. [~~This section prescribes the policies and procedures for fleet registration.~~]

(b) Eligibility. A fleet must meet the following requirements to be eligible for fleet registration.

(1) No fewer than 25 vehicles will be registered as a fleet;

(2) Vehicles may be registered in annual increments for up to eight years;

(3) All vehicles in a fleet must be owned by or leased to the same business entity;

(4) All vehicles must be vehicles that are not registered under the International Registration Plan; and

(5) Each vehicle must currently be titled in Texas or be issued a registration receipt, or the registrant must submit an application for a title or registration for each vehicle.

(c) Application.

(1) Application for fleet registration must be in a form prescribed by the department. At a minimum the form will require:

(A) the full name and complete address of the registrant;

(B) a description of each vehicle in the fleet, which may include the vehicle's model year, make, model, vehicle identification number, document number, body style, gross weight, empty weight, and for a commercial vehicle, manufacturer's rated carrying capacity in tons;

(C) the existing license plate number, if any, assigned to each vehicle; and

(D) any other information that the department may require.

(2) The application must be accompanied by the following items:

(A) in the case of a leased vehicle, a certification that the vehicle is currently leased to the person to whom the fleet registration will be issued;

(B) registration fees prescribed by law for the entire registration period selected by the registrant;

(C) local fees or other fees prescribed by law and collected in conjunction with registering a vehicle for the entire registration period selected by the registrant;

(D) evidence of financial responsibility for each vehicle as required by Transportation Code, §502.046, unless otherwise exempted by law;

(E) annual proof of payment of Heavy Vehicle Use Tax;

(F) the state's portion of the vehicle inspection fee; and

(G) any other documents or fees required by law.

(d) Registration period.

(1) The fleet owner will designate a single registration period for a fleet so the registration period for each vehicle will expire on the same date.

(2) The fleet registration period will begin on the first day of a calendar month and end on the last day of a calendar month.

(e) Registration receipt and fleet license plates [~~Insignia~~].

(1) As evidence of registration, the department will issue a registration receipt and one or two metal fleet license plates [~~distinguishing insignia~~] for each vehicle in a fleet.

[~~(2) The insignia shall be included on the license plate and affixed to the vehicle.~~]

[~~(3) The insignia shall be attached to the rear license plate if the vehicle has no windshield.~~]

(2) [~~(4)~~] The registration receipt for each vehicle shall at all times be carried in that vehicle and be available to law enforcement personnel upon request.

(3) [~~(5)~~] A registration receipt or fleet license plate [~~Insignia~~] may not be transferred between vehicles, owners, or registrants.

(f) Fleet composition.

(1) A registrant may add a vehicle to a fleet at any time during the registration period. An added vehicle will be given the same registration period as the fleet and will be issued one or two metal fleet license plates and a registration receipt [~~insignia~~].

(2) A registrant may remove a vehicle from a fleet at any time during the registration period. After a vehicle is removed from the fleet, the [~~The~~] fleet registrant shall either return the metal fleet license plates [~~registration insignia~~] for that vehicle to the department or provide the department with acceptable proof that the metal fleet license plates for that vehicle have been destroyed. [~~at the time the vehicle is removed from the fleet.~~] Credit for any vehicle removed from the fleet for the remaining full year increments can be applied to any vehicle added to the fleet or at the time of renewal. No refunds will be given if credit is not used or the account is closed.

(3) If the number of vehicles in an account falls below 25 during the registration period, fleet registration will remain in effect. If the number of vehicles in an account is below 25 at the end of the registration period, fleet registration will be canceled. In the event of cancellation, each vehicle shall be registered separately. The registrant shall immediately either return all metal fleet license plates to the department or provide the department with acceptable proof that the metal fleet license plates have been destroyed. [~~registration insignia to the department.~~]

(g) Fees.

(1) When a fleet is first established, the department will charge a registration fee for each vehicle for the entire registration period selected. A currently registered vehicle, however, will be given credit for any remaining time on its separate registration.

(2) When a vehicle is added to an existing fleet, the department will charge a registration fee that is prorated based on the number of months of fleet registration remaining. If the vehicle is currently registered, this fee will be adjusted to provide credit for the number of months of separate registration remaining.

(3) When a vehicle is removed from fleet registration, it will be considered to be registered separately. The vehicle's separate registration will expire on the date that the fleet registration would have expired. The registrant must pay the statutory replacement fee to obtain regular registration insignia before the vehicle may be operated on a public highway.

(4) In addition to the registration fees prescribed by Transportation Code, Chapter 502, an owner registering a fleet under this section must pay a one-time fee of $10 per motor vehicle, semitrailer, or trailer in the fleet. This fee is also due as follows:

(A) for each vehicle added to the owner's existing fleet; and

(B) for each vehicle that a buyer registers as a fleet, even though the seller previously registered some or all of the vehicles as a fleet under this section.

(h) Payment. Payment will be made in the manner prescribed by the department.

(i) Cancellation.

(1) The department will cancel registration for non-payment and lack of proof of annual payment of the Heavy Vehicle Use Tax.

(2) The department may cancel registration on any fleet vehicle on the anniversary date of the registration if the fleet vehicle [~~that~~] is not in compliance with the inspection requirements under Transportation Code, Chapter 548 or the inspection requirements in the rules of [~~and~~] the Texas Department of Public Safety [~~rules regarding inspection requirements on the anniversary date(s) of the registration~~].

(3) A vehicle with a canceled [~~cancelled~~] registration may not be operated on a public highway.

(4) If the department cancels the registration of a vehicle under this subsection, the registrant can request the department to reinstate the registration by doing the following:

(A) complying with the requirements for which the department canceled [~~cancelled~~] the registration;

(B) providing the department with notice of compliance on a form prescribed by the department; and

(C) for a registration canceled [~~cancelled~~] under paragraph (2) of this subsection, paying an administrative fee in the amount of $10.

(5) A registrant is [~~only~~] eligible for reinstatement of the registration only within 90 calendar days of the department's notice of cancellation.

(6) If a registrant fails to timely reinstate the registration of a canceled [~~cancelled~~] vehicle registration under this section, the registrant:

(A) is not entitled to a credit or refund of any registration fees for the vehicle; and

(B) must immediately either return the metal fleet license plates to the department or provide the department with acceptable proof that the metal fleet license plates have been destroyed. [~~registration insignia to the department.~~]

(j) Inspection fee. The registrant must pay the department by the deadline listed in the department's invoice for the state's portion of the vehicle inspection fee.

§217.55. Exempt and Alias Vehicle Registration.

(a) Exempt plate registration.

(1) Issuance. Pursuant to Transportation Code, §502.453 or §502.456, certain vehicles owned by and used exclusively in the service of a governmental agency, owned by a commercial transportation company and used exclusively for public school transportation services, designed and used for fire-fighting or owned by a volunteer fire department and used in the conduct of department business, privately owned and used in volunteer county marine law enforcement activities, used by law enforcement under an alias for covert criminal investigations, owned by units of the United States Coast Guard Auxiliary headquartered in Texas and used exclusively for conduct of United States Coast Guard or Coast Guard Auxiliary business and operations, or owned or leased by a non-profit emergency medical service provider are [~~is~~] exempt from payment of a registration fee and are [~~is~~] eligible for exempt plates.

(2) Application for exempt registration.

(A) Application. An application for exempt plates shall be made to the county tax assessor-collector, shall be made on a form prescribed by the department, and shall contain the following information:

(i) vehicle description;

(ii) name of the exempt agency;

(iii) a certification [~~an affidavit executed~~] by an authorized person stating that the vehicle is owned or under the control of and will be operated by the exempt agency; and

(iv) a certification that each vehicle listed on the application has the name of the exempt agency printed on each side of the vehicle in letters that are at least two inches high or in an emblem that is at least 100 square inches in size and of a color sufficiently different from the body of the vehicle as to be clearly legible from a distance of 100 feet, unless the applicant complies with the requirements under this section for each vehicle that is exempt by law from the inscription requirements.

(B) Emergency medical service vehicle.

(i) The application for exempt registration must contain the vehicle description, the name of the emergency medical service provider, and a statement signed by an officer of the emergency medical service provider stating that the vehicle is used exclusively as an emergency response vehicle and qualifies for registration under Transportation Code, §502.456.

(ii) A copy of an emergency medical service provider license issued by the Department of State Health Services must accompany the application.

(C) Fire-fighting vehicle. The application for exempt registration of a fire-fighting vehicle or vehicle owned privately by a volunteer fire department and used exclusively in the conduct of department business must contain the vehicle description, including a description of any fire-fighting equipment mounted on the vehicle if the vehicle is a fire-fighting vehicle. The certification [~~affidavit~~] must be executed by the person who has the proper authority and shall state either:

(i) the vehicle is designed and used exclusively for fire-fighting; or

(ii) the vehicle is owned by a volunteer fire department and is used exclusively in the conduct of its business.

(D) County marine law enforcement vehicle. The application for exempt registration of a privately-owned vehicle used by a volunteer exclusively in county marine law enforcement activities, including rescue operations, under the direction of the sheriff's department must include a statement signed by a person having the authority to act for a sheriff's department verifying that fact.

(E) United States Coast Guard Auxiliary vehicle. The application for exempt registration of a vehicle owned by units of the United States Coast Guard Auxiliary headquartered in Texas and used exclusively for conduct of United States Coast Guard or Coast Guard Auxiliary business and operation, including search and rescue, emergency communications, and disaster operations, must include a statement by a person having authority to act for the United States Coast Guard Auxiliary that the vehicle or trailer is used exclusively in fulfillment of an authorized mission of the United States Coast Guard or Coast Guard Auxiliary, including search and rescue, emergency communications, or disaster operations.

(F) Motor vehicles owned and used by state-supported institutions. If the applicant is exempt from the inscription requirements under Education Code §51.932, the applicant must present a certification that each vehicle listed on the application is exempt from the inscription requirements under Education Code §51.932.

(3) Exception. A vehicle may be exempt from payment of a registration fee, but display license plates other than exempt plates if the vehicle is not registered under subsection (b) of this section.

(A) If the applicant is a law enforcement office, the applicant must present a certification that each vehicle listed on the application will be dedicated to law enforcement activities.

(B) If the applicant is exempt from the inscription requirements under Transportation Code, §721.003, the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code,

§721.003. The applicant must also provide a citation to the section that exempts the vehicle.

(C) If the applicant is exempt from the inscription requirements under Transportation Code, §721.005 the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.005. The applicant must also provide a copy of the order or ordinance that exempts the vehicle.

~~[(D) If the applicant is exempt from the inscription requirements under Education Code, §51.932, the applicant must present a certification that each vehicle listed on the application is exempt from the inscription requirements under Education Code, §51.932. Exempt plates will be marked with the replacement year.]~~

(b) Affidavit for issuance of exempt registration under an alias.

(1) On receipt of an affidavit for alias exempt registration, approved by the executive administrator of an exempt law enforcement agency, the department will issue alias exempt license plates for a vehicle and register the vehicle under an alias for the law enforcement agency's use in covert criminal investigations.

(2) The affidavit for alias exempt registration must be in a form prescribed by the director and must include the vehicle description, a sworn statement that the vehicle will be used in covert criminal investigations, and the signature of the executive administrator or the executive administrator's designee as provided in paragraph (3) of this subsection. The vehicle registration insignia of any vehicles no longer used in covert criminal investigations shall be surrendered immediately to the department.

(3) The executive administrator, by annually filing an authorization with the director, may appoint a staff designee to execute the affidavit. A new authorization must be filed when a new executive administrator takes office.

(4) The letter of authorization must contain a sworn statement delegating the authority to sign the affidavit to a designee, the name of the designee, and the name and the signature of the executive administrator.

(5) The affidavit for alias exempt registration must be accompanied by a title application under §217.103 of this title (relating to Restitution Liens). The application must contain the information required by the department to create the alias record of vehicle registration and title.

(c) Replacement of exempt registration.

(1) If a metal exempt [~~an exempt metal~~] license plate is lost, stolen, or mutilated, a properly executed application for metal exempt [~~metal~~] license plates must be submitted to the county tax assessor-collector.

(2) An application for replacement metal exempt [~~metal~~] license plates must contain the vehicle description, original license number, and the sworn statement that the license plates furnished for the vehicle have been lost, stolen, or mutilated and will not be used on any other vehicle.

(d) Title requirements. Unless exempted by statute, a vehicle must be titled at the time the exempt registration is issued.

(e) Extended Registration of County Fleet Vehicles.

(1) Subsections (a)(2), (a)(3)(B), and (c) of this section do not apply under this subsection.

(2) The owner of the exempt county fleet must file a completed application for exempt county fleet registration on a form prescribed by the department, and shall contain the following information:

(A) vehicle description;

(B) name of the exempt agency;

(C) a certification by an authorized person stating that the vehicle is owned by and used exclusively in the service of the county;

(D) a certification that each vehicle listed on the application has the name of the exempt agency printed on each side of the vehicle in letters that are at least two inches high or in an emblem that is at least 100 square inches in size and of a color sufficiently different from the body of the vehicle as to be clearly legible from a distance of 100 feet, unless the applicant complies with the requirements under this section for each vehicle that is exempt by law from the inscription requirements; and

(E) designation of a single registration period for the fleet to ensure that the registration period for each vehicle will expire on the same last day of a calendar month.

(3) The application for exempt county fleet registration must be accompanied by the state's portion of the vehicle inspection fees.

(4) As evidence of registration, the department will issue a registration receipt and one or two metal exempt fleet license plates for each vehicle in the exempt county fleet. The registration receipt for each vehicle must be carried in that vehicle at all times and be made available to law enforcement personnel upon request. The registration receipt and exempt fleet license plates may not be transferred between vehicles, owners, or registrants.

(5) An owner may add or remove a vehicle from an exempt county fleet at any time during the registration period. An added vehicle will be given the same registration period as the other vehicles in the exempt county fleet and will be issued a registration receipt and one or two metal exempt fleet license plates. Upon the removal of a vehicle from the exempt county fleet, the owner of the vehicle shall dispose of the registration receipt and shall either return the metal exempt fleet license plates to the department or provide the department with acceptable proof that the metal exempt fleet license plates have been destroyed.

(6) An owner must pay the department by the deadline listed in the department's invoice for the state's portion of the vehicle inspection fee. Payment shall be made in the manner prescribed by the department.

(7) The department may cancel registration on an exempt county fleet or any vehicle in an exempt county fleet on the anniversary date of the registration if the vehicle is not in compliance with Transportation Code §502.0025, this subsection, the inspection requirements under Transportation Code Chapter 548, or the inspection requirements in the rules of the Texas Department of Public Safety. A vehicle with a canceled registration may not be operated on a public highway.

(8) If the department cancels the registration of a vehicle in an exempt county fleet under paragraph (7) of this subsection, the owner may request that the department reinstate the registration. To request reinstatement, the owner must comply with the requirements that led the department to cancel the registration and must provide the department with notice of compliance on a form prescribed by the department. An owner is eligible for reinstatement of the registration of a vehicle in an exempt county fleet if the department receives the owner's request for reinstatement and proof of compliance no later than 90 cal-

endar days after the date of the department's notice of cancellation. If the department does not timely receive an owner's request to reinstate the registration, the owner must immediately do the following:

(A) either return all metal exempt county fleet license plates to the department or provide the department with acceptable proof that the metal exempt county fleet license plates have been destroyed; and

(B) dispose of the registration receipt in a manner prescribed by the department.

(9) If a metal exempt county fleet license plate is lost, stolen, or mutilated, the owner may request a new metal exempt county fleet license plate from the department. The request must include the following:

(A) a certification that the previously issued metal exempt county fleet license plate furnished for the vehicle has been lost, stolen, or mutilated and that the new metal exempt county fleet license plate will not be used on any other vehicle;

(B) the vehicle description; and

(C) the original license plate number, if applicable.

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 August 11, 2022.

TRD-202203001
Elizabeth Brown Fore
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 465-4160

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SUBCHAPTER I. FEES

43 TAC §217.184

STATUTORY AUTHORITY. The department proposes amendments to §§217.54, 217.55, and 217.184 under Transportation Code §§502.0021, 502.0023, 502.0025, and 1002.001.

-- Transportation Code §502.0021 authorizes the department to adopt rules to administer Transportation Code Chapter 502.

-- Transportation Code §502.0023 requires the department to adopt rules to implement extended registration of commercial fleet vehicles.

-- Transportation Code §502.0025 requires the department to adopt rules to implement extended registration of certain county fleet vehicles.

-- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§502.0023, 502.0025, and 502.453.

§217.184. Exclusions.

The following transactions are exempt from the processing and handling fee established by §217.183 of this title (relating to Fee Amount), but are subject to any applicable service charge set pursuant to Government Code, §2054.2591, Fees. The processing and handling fee may not be assessed or collected on the following transactions:

(1) a replacement registration sticker under Transportation Code, §502.060;

(2) a registration transfer under Transportation Code, §502.192;

(3) an exempt registration under Transportation Code, §502.451 or §502.0025;

(4) a vehicle transit permit under Transportation Code, §502.492;

(5) a replacement license plate under Transportation Code, §504.007;

(6) a registration correction receipt, duplicate receipt, or inquiry receipt;

(7) an inspection fee receipt; or

(8) an exchange of license plate for which no registration fees are collected.

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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Elizabeth Brown Fore
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §22.37

The Texas Ethics Commission withdraws proposed new §22.37, which appeared in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1551).

Filed with the Office of the Secretary of State on August 10, 2022.

TRD-202202984
J.R. Johnson
General Counsel
Texas Ethics Commission
Effective date: August 10, 2022
For further information, please call: (512) 463-5800

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TITLE 22. EXAMINING BOARD

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20, 537.28, 537.30 - 537.33, 537.37, 537.43, 537.46 - 537.48, 537.51, 537.58, 537.59, 537.65

The Texas Real Estate Commission withdraws proposed amended §§537.20, 537.28, 537.30 - 537.33, 537.37, 537.43, 537.46 - 537.48, 537.51, 537.58, 537.59, and 537.65, which appeared in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3010).

Filed with the Office of the Secretary of State on August 10, 2022.

TRD-202202987
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Effective date: August 10, 2022
For further information, please call: (512) 936-3057

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 30. COMMUNITY DEVELOPMENT

The Texas Department of Agriculture (Department) adopts the repeal of Title 4, Part 1, Chapter 30, Subchapter A in its entirety. Specifically, the Department adopts the repeal of Subchapter A, Texas Community Development Block Grant Program, Division 1, §§30.1 - 30.8, relating to General Provisions; Division 2, §§30.20 - 30.31, relating to Application Information; Division 3, §§30.50 - 30.60 and 30.62 - 30.67, relating to Administration of Program Funds; Division 4, §§30.80 - 30.84, relating to Awards and Contract Administration; and Division 5, §§30.100, 30.102, and 30.103, relating to Reallocation of Program Funds. In conjunction with this adopted repeal, the Department adopts new subchapter A, relating to the Texas Community Development Block Grant Program, consisting of §§30.1 - 30.13. The repeal of existing Subchapter A is adopted and new Subchapter A is adopted without changes to the proposed text as published in the June 24, 2022 issue of the *Texas Register* (47 TexReg 3601) and will not be republished.

The Department determined that due to the extensive changes to program rules, repeal of the entire subchapter and replacement with new rules was more efficient than proposing numerous amendments to make the required changes. The changes are necessary in order to simplify the rules, focusing on the most generally applicable program requirements and removing details more efficiently addressed in the Application Guides. The repealed rules contained separate requirements for each program category. The new rules focus on program-wide requirements of general applicability. The new rules will allow the Department flexibility to develop program procedures and guidelines in a more timely and efficient manner to ensure compliance with all statutory and applicable regulatory requirements.

New §30.1 describes the Department's authority to implement and administer the Texas Community Development Block Grant Program (TxCDBG) program.

New §30.2 provides definitions for terms and abbreviations applicable to this subchapter.

New §30.3 provides the method of allocation of grant funds.

New §30.4 describes who is eligible to apply for TxCDBG grants.

New §30.5 outlines the application process and provides that the specific application procedures, requirements, and evaluation criteria will be stated in a Request for Applications.

New §30.6 describes application threshold requirements.

New §30.7 explains the citizen participation process.

New §30.8 provides the appeal process for denial or disqualification of applications.

New §30.9 describes project implementation requirements.

New §30.10 sets out the requirement for grant training.

New §30.11 prescribes the conflict of interest standards for grant recipients.

New §30.12 describes the process for requesting amendments to a grant agreement.

New §30.13 concerns the range of sanctions the Department may impose on grant recipients.

The Department did not receive any comments regarding the repeal of existing rules or the proposed new rules.

SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

DIVISION 1. GENERAL PROVISIONS

4 TAC §§30.1 - 30.8

The repeal of Subchapter A, Division 1, §§30.1-30.8 is adopted under Texas Government Code, §487.051, which designates the Department as the agency to administer the federal community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

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 August 8, 2022.

TRD-202202942
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: August 28, 2022
Proposal publication date: June 24, 2022
For further information, please call: (512) 936-9360

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DIVISION 2. APPLICATION INFORMATION

4 TAC §§30.20 - 30.31

The repeal of Subchapter A, Division 2, §§30.20 - 30.31 is adopted under Texas Government Code §487.051, which designates the Department as the agency to administer the federal community development block grant non-entitlement program,

and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Skyler Shafer
Assistant General Counsel
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For further information, please call: (512) 936-9360

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DIVISION 3. ADMINISTRATION OF PROGRAM FUNDS

4 TAC §§30.50 - 30.60, 30.62 - 30.67

The repeal of Subchapter A, Division 3, §§30.50-30.60 and 30.62-30.67 is adopted under Texas Government Code §487.051, which provides the Department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Skyler Shafer
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For further information, please call: (512) 936-9360

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DIVISION 4. AWARDS AND CONTRACT ADMINISTRATION

4 TAC §§30.80 - 30.84

The repeal of Subchapter A, Division 4, §§30.80 - 30.84 is adopted under Texas Government Code §487.051, which provides the Department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 936-9360

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DIVISION 5. REALLOCATION OF PROGRAM FUNDS

4 TAC §§30.100, 30.102, 30.103

The repeal of Subchapter A, Division 5, §§30.100, 30.102, and 30.103 is adopted under Texas Government Code §487.051, which provides the Department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 936-9360

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SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

4 TAC §§30.1 - 30.13

The new rules are adopted pursuant to Texas Government Code §487.051, which provides the Department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 90. OFFENDER EDUCATION PROGRAMS FOR ALCOHOL AND DRUG-RELATED OFFENSES

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 90, Subchapter A, §90.1; Subchapter B, §90.21; Subchapter D, §90.40; Subchapter E, §§90.51 - 90.54; Subchapter F, §90.80; and Subchapter G, §§90.91 - 90.94; new rules at Subchapter A, §90.10; Subchapter B, §§90.20, 90.22 - 90.28; Subchapter C, §§90.30 - 90.34; Subchapter D, §§90.41 - 90.49; Subchapter E, §90.50; and Subchapter G, §90.95; and the repeal of existing rules at Subchapter A, §90.10; Subchapter B, §§90.20, 90.22 - 90.27; Subchapter C, §§90.30 - 90.34; Subchapter D, §§90.41 - 90.49; and Subchapter E, §90.50 regarding the Court-Ordered Education program, without changes to the proposed text as published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3375). These rules will not be republished.

The Commission also adopts amendments to existing rules at 16 TAC Chapter 90, Subchapter A, §90.1, and Subchapter G, §90.91 and §90.92, regarding the Court-Ordered Education program, with changes to the proposed text as published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3375). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 90 implement new Texas Government Code, Chapter 171, relating to the Court-Ordered Education Programs, formerly known as the Offender Education Programs. The rules also implement Texas Transportation Code, Chapter 521, §§521.374 - 521.376, regarding the Drug Offender Education Program.

Senate Bill 1480

Senate Bill (SB) 1480, 87th Legislature, Regular Session (2021) changed the landscape of the Court-Ordered Education Programs by consolidating the requirements found in separate statutes previously governing the court-ordered programs into one statutory chapter for easier reference and organization.

This bill represents a significant change in the provision of instruction and the Department's regulatory framework for instructors and program providers associated with delivering court-ordered programs. The court-ordered programs available for persons subject to court orders involving community supervision for drug or alcohol-related offenses under new Texas Government Code, Chapter 171 are: the Alcohol Education Program for Minors (AEPM); the Drug Offender Education Program (DOEP); the DWI Education Program (DWIE) and the DWI Intervention Program (DWII). These programs are referenced under Texas Alcoholic Beverage Code §106.115; Texas Transportation Code §§521.374 - 721.376; Texas Code of Criminal Procedure, Chapter 42A, Articles 42A.403 and 42A.406; and Texas Code of Criminal Procedure, Chapter 42A, Articles 42A.404 and 42A.406, respectively.

Instructors and program providers will experience significant changes as a result of this bill, which is intended to benefit program participants and the general public, including: (A) online provision of course materials and curriculum by program providers, thus allowing court-ordered program instruction to reach participants throughout the state, and increasing business flexibility and cost savings for instructors and providers; (B) creation of a unified program provider license with one program fee for providers with multiple locations creating efficiencies for Department administration resulting in lower costs; (C) repeal of the requirement for program provider branch locations and program headquarters organizational structure; and (D) introduction of new program fees for program providers and instructors related to licensing and court-ordered program endorsement fees.

The adopted rules implement SB 1480 for the Court-Ordered Education Programs by: (1) amending program definitions within the chapter; (2) prescribing eligibility requirements and minimum qualifications for license applicants; (3) setting the minimum requirements and responsibilities for licensed providers and instructors; (4) establishing program provider and instructor endorsement requirements; (5) mandating minimum standards for online and in-person program provider delivery of court-ordered program curriculum; (6) amending and adding program fees for program providers and instructors as provided by the new statute; (7) updating rule terminology to include new license types, program provider structure changes, and court-ordered program endorsements; (8) imposing criminal penalties for violations involving the misuse of certificates of program completion; and (9) updating rule language to recognize repealed statutory references.

The adopted rules in this rulemaking represent the first phase of the implementation of SB 1480. A subsequent rulemaking completing the implementation of SB 1480 shall occur later and include rule changes on court-ordered program curriculum, program provider reporting, audits and inspections, and continuing education.

Senate Bill 181

The adopted rules also implement Senate Bill (SB) 181, 87th Legislature, Regular Session (2021). SB 181 overlaps with SB 1480, and both bills amend Transportation Code §§521.374, 521.375, and 521.376. The changes, in part, affect the Drug Offender Education Program approved and administered by the Department. Texas Transportation Code §521.374(a)(1), as amended, provides that a person may successfully complete an in-person or online drug offender educational program approved by the Department under Texas Government Code, Chapter 171. Texas Transportation Code §521.375(a) and (b), as amended, requires the Department to work with the Texas Department of Public Safety (DPS) to jointly adopt rules for the qualification and approval of providers of in-person and online drug offender educational programs approved by the Department. Texas Transportation Code §521.376(a), as amended, assigns certain duties to the Department regarding the in-person and online drug offender educational programs approved by the Department. The adopted rules implement SB 181 and SB 1480 related to the Drug Offender Education Program approved and administered by the Department.

As a result of the legislative changes, the adopted rules include extensive amendments and subsequent repeals and renumbering of rule sections within 16 TAC Chapter 90. Moreover, the adopted rules introduce new rule sections in Subchapters A - E and G to provide greater clarity, interpretation, and implementation of the provisions of SB 1480 and SB 181 relating to the Court-Ordered Education Program.

SECTION-BY-SECTION SUMMARY

Subchapter A, General Provisions.

The adopted rules amend §90.1, Authority, by deleting repealed statutory references and including a reference to Texas Government Code, Chapter 171 for court-ordered programs for alcohol and drug-related offenses; and, post-publication, added the word "and" just before the citation to the Code of Criminal Procedure related to the DWI Intervention Program to correct rule language.

The adopted rules add new §90.10, Definitions, which establishes the meaning of the words and terms employed throughout the rule chapter. The new rule replaces existing §90.10 to: (1) include definitions for words and terms introduced by SB 1480; (2) added a definition for "module", (3) delete definitions for "Administrator", "Branch Office/Site", "Course Size", "Drug Offender", and "Program/Provider Headquarters"; (4) modify terminology for existing definitions consistent with SB 1480; (5) renumber the provisions as needed; and (6) correct rule language.

The adopted rules repeal existing §90.10, Definitions.

Subchapter B, Instructor Requirements.

The adopted rules add new §90.20, Instructor License Required, which introduce changes to instructor licensing structure and the addition of court-ordered endorsements to the instructor license from SB 1480. The new rule replaces existing rule §90.20 to: (1) amend the section header changing the term "certification" to "license"; (2) update rule language to include use of the term "endorsement" to refer to the court-ordered programs consistent with SB 1480; and (3) include requirements for instructors to hold appropriate license endorsements to teach participants at program provider locations.

The adopted rules repeal existing §90.20, Instructor Certification Required.

The adopted rules amend §90.21, Instructor License - Eligibility Requirements, by updating the section header and rule terms consistent with SB 1480, and correct rule language.

The adopted rules add new §90.22, Instructor License - Application for License and First Endorsement, which describes the Department procedure by which an instructor applicant may apply and obtain for a license and an endorsement to instruct a court-ordered program. The new rule will: (1) update the section header and rule terms consistent with SB 1480; (2) identify the new instructor licensing fee; and (3) update terminology in the section header and rule consistent with SB 1480. This rule replaces existing §90.23 and is relocated to more accurately reflect the Department's current licensing process.

The adopted rules add new §90.23, Instructor License - Instructor Training Course and Examination, which identifies the Department's training course and examination process that instructor applicants must successfully complete prior to licensure. The new rule will update the section header consistent with SB 1480. This rule replaces existing §90.22 and is relocated to more accurately reflect the Department's current licensing process.

The adopted rules add new §90.24, Instructor License - Additional Endorsements, to describe the new procedure introduced by SB 1480 by which an instructor may obtain license endorsements to instruct other court-ordered programs, and the endorsement disposition at time of renewal.

The adopted rules add new §90.25, Instructor License Term; Renewals, which describes the license renewal process for the program. The new rule will: (1) specify the two-year term of the license and the concurrent endorsement; (2) describe the Department procedure for license renewal and late renewal; (3) mandate an instructor hold a current license to instruct a specific court-ordered program(s); and (4) update the section header and rule language. This rule replaces existing §90.24.

The adopted rules add new §90.26, Instructor Continuing Education Requirements, which identifies the continuing education requirements by court-ordered program for instructors to meet prior to license renewal. The new rule will: (1) remove the previous minimum teaching requirement of courses during the instructor licensing period to obtain license renewal; (2) replaces the word "attend" with "complete" to recognize the online provision of court-ordered programs as authorized by SB 1480; and (3) updates the rule language and section header. This rule replaces existing §90.25.

The adopted rules add new §90.27, Instructor Continuing Education Audits - All Programs, which describes the Department auditing system and the responsibilities of the instructor to maintain continuing education records, and details the process for instructor reporting of continuing education hours necessary for license renewal. This rule replaces existing §90.26.

The adopted rules add new §90.28, Instructor Responsibilities, which: (1) requires instructors to report their own criminal convictions or those of other instructors; (2) sets notice requirements for changes in instructor name, mailing address, telephone number or email address; (3) shifts instructor course and provider certification requirements for teaching court-ordered programs to new §90.20 and §90.50; and (4) removes the requirement that an instructor provide his/her certification number and Department complaint information to participants. This rule replaces existing §90.27.

The adopted rules repeal existing §90.22, Instructor Certification - Instructor Training Course and Examination.

The adopted rules repeal existing §90.23, Instructor Certification - Application.

The adopted rules repeal existing §90.24, Instructor Certification Term; Renewals.

The adopted rules repeal existing §90.25, Instructor Teaching and Continuing Education Requirements.

The adopted rules repeal existing §90.26, Instructor Continuing Education Audits - All Programs.

The adopted rules repeal existing §90.27, Instructor Responsibilities.

Subchapter C, Program Provider License Requirements.

The existing rules in this subchapter are being repealed to accommodate adopted new rule sections to reflect the licensing changes for program providers in implementing SB 1480.

The adopted rules add new §90.30, Program Provider License Required, which introduce changes to program provider licensing structure and the addition of court-ordered endorsements to the program provider license from SB 1480. The adopted rules allow a program provider to have but one license with up to four court-ordered endorsements to operate. Providers are no longer required to license each location owned. Branch locations have been eliminated by SB 1480. Moreover, providers will now be

able to offer or provider instruction statewide with the ability to deliver online service. The new rule replaces existing rule §90.30 to: (1) require program providers have a current license with the applicable endorsement for each court-ordered program offered or provided to participants; (2) ensure each court-ordered program is taught by licensed instructors with the proper endorsement for the program(s) instructed; (3) require that program providers conduct instruction using the Department-approved instructor manuals and curriculum; (4) delete references to "Program/Provider"; (5) allow a program provider to offer or provide a court-ordered program in-person, online, or both, in accordance with SB 1480; and (6) update the rule language and section heading.

The adopted rules add new §90.31, Program Provider License - Application for License and Endorsements, which describes the Department procedure by which a program provider applicant may obtain for a license and an endorsement to offer or provide a court-ordered program. The new rule replaces existing rule §90.31 to: (1) require program providers be licensed and possess applicable endorsement(s) for each court-ordered program offered or provided; (2) describe the Department procedure for an applicant to obtain a program provider license; (3) delete references to "headquarters", "administrator", "program/provider" and "branch sites" from license requirements; (4) include new standards for a program provider applicant that intends to offer or provider online instruction to participants; and (5) update the rule language and section heading.

The adopted rules add new §90.32, Program Provider License - Additional Endorsements, which describes the new procedure introduced by SB 1480 by which a program provider may obtain additional license endorsements to offer or provide more than one court-ordered program, and the endorsement disposition at time of renewal. The new rule replaces existing rule §90.32 to: (1) implement SB 1480 by requiring a program provider who offers or provides additional court-ordered program types to hold the appropriate endorsement for each program offered or provided to participants; (2) describe the Department procedure for an applicant to obtain additional endorsements; (3) delete licensing requirements associated with branch sites and headquarters; (4) clarify that endorsements renew with the program provider license renewal; and (5) update the rule language and section headers.

The adopted rules add new §90.33, Program Provider License Term; Renewal, which describes the program provider license renewal process. The new rule replaces existing rule §90.33 to: (1) specify the two-year term of the license and the concurrent endorsement; (2) identify the Department procedure for program provider license renewal and late renewal; (3) delete references to "program/provider"; (4) mandate a program provider hold a current license to offer or provide a court-ordered program; (5) clarify that endorsements renew with the program provider license renewal; and (6) update the rule language and section headers.

The adopted rules add new §90.34, Program Provider License - Change of Address, Ownership and Other Information, which describes the program provider's responsibilities to report to the Department when there is a change in specific information affecting business operations. The new rule replaces existing rule §90.34 to: (1) require a licensee to notify the Department within 30 days of any change in program provider information as noted in the rule; (2) define what conditions will constitute a change in ownership of the program provider; (3) delete references to "program/provider"; (4) require that a program provider maintain a registered agent within the state for service of process; and (5) update the rule language and section header.

The adopted rules repeal existing §90.30, Program/Provider Certification Requirement.

The adopted rules repeal existing §90.31, Program/Provider Certification Application - Headquarters.

The adopted rules repeal existing §90.32, Program/Provider Certification Application - Branch Sites and Other Locations.

The adopted rules repeal existing §90.33, Program/Provider Certification Term; Renewal.

The adopted rules repeal existing §90.34, Program/Provider Certification - Change of Address and Providing Information.

Subchapter D, Program Requirements - Curriculum, Courses, Classrooms, Certificates.

This subchapter is being revised to add new rules and to make amendments to existing rules. Many of the adopted new rules are like to the existing rules in substance, but the rules are being reorganized and renumbered. The rules in this subchapter will also be part of a subsequent rulemaking regarding court-ordered program curriculum.

The adopted rules amend §90.40, Program Curriculum and Materials - All Programs, to: (1) identify the course curriculum approved for each online and in-person court-ordered program; (2) update rule terms consistent with SB 1480; and (3) correct language.

The adopted rules add new §90.41, Program Rules - Drug Offender Education Program, which addresses the joint rulemaking authority between the Department and the Texas Department of Public Safety (DPS) for the adoption of rules related to the qualification and approval of providers for the Drug Offender Education Program, as required under Transportation Code, Chapter 521, and as amended by SB 1480 and SB 181. This rule replaces existing §90.42.

The adopted rules add new §90.42, General Program and Course Requirements - All Programs, which define the responsibilities for program providers and instructors when presenting instruction to participants for in-person and online court-ordered programs, and updated rule language consistent with SB 1480. This rule replaces existing §90.43.

The adopted rules add new §90.43, Additional Course Requirements for the Drug Offender Education Program, which: (1) renames "class sessions" to "modules"; (2) details the course minimums for class instruction hours, duration and number of daily class modules, and administration of course examinations; and (3) sets the maximum number of participants for the specific court-ordered program. This rule replaces existing §90.44.

The adopted rules add new §90.44, Additional Course Requirements for the Alcohol Education Program for Minors, which: (1) renames "class sessions" to "modules"; (2) details the course minimums for class instruction hours, duration and number of daily class modules, and administration of course examinations; and (3) sets the maximum number of participants for the specific court-ordered program. This rule replaces existing §90.45.

The adopted rules add new §90.45, Additional Course Requirements for the DWI Education Program (DWIE), which: (1) details the course minimums for class instruction hours, (2) prescribes the number of daily hours of instruction and administra-

tion of course examinations; (3) increases the maximum number of participants to 30 for the specific court-ordered program; and (4) addresses the disposition of the certificate of completion to the appropriate court officials and the Texas Department of Public Safety. This rule replaces existing §90.46.

The adopted rules add new §90.46, Additional Course Requirements for the DWI Intervention Programs (DWII), which: (1) renames "class sessions" to "modules"; (2) details the course minimums for class instruction hours, duration and number of daily and weekly class modules; (3) sets the maximum number of participants for the specific court-ordered program; (4) provides for make-up class modules for excused participant absences, and individual participant sessions with exit interviews; and (5) addresses the disposition of the certificate of completion to the appropriate court officials and DPS. This rule replaces existing §90.47.

The adopted rules add new §90.47, In-Person Classroom Facilities and Equipment, which: (1) details the necessary equipment and facilities for an in-person program provider to provide court-ordered program instruction to participants; (2) prohibits licensees from offering, providing, or instructing an in-person court-ordered program out of a private residence; (3) requires instructors to be physically present when providing in-person instruction of a court-ordered program; (4) bars licensees from presenting any recorded or videotaped material as a part of the course presentation; and (5) updates the rule language and section header. This rule replaces existing §90.48.

The adopted rules add new §90.48, Online Program Requirements, which defines the requirements for a program provider when offering newly authorized online court-ordered programs to participants. This adopted new rule is added to: (1) require that online program providers possess sufficient bandwidth and working equipment to allow for instruction of court-ordered programs in real time; (2) mandate that online program providers employ Department-approved curriculum and materials under applicable laws and rules; (3) detail instructor and participant on-camera interaction requirements during instruction sessions, and empower the instructor to remove participants from class who fail to comply with those requirements; (4) prohibit the instructor from admitting a participant without fully functional equipment; and (5) impose responsibility on program providers for the administration of and security for pre-course and post-course examination of participants.

The adopted rules add new §90.49, Certificate of Program Completion for Participants, which describes the program provider's responsibilities surrounding the care, control and issuance of program completion certificates to successful participants taking court-ordered programs. This new rule: (1) details the program provider's responsibilities for delivery of a certificate of program completion of a court-ordered program to each participant; (2) prohibits delivery of the certificate by electronic means; (3) sets the responsibilities for program providers under which they maintain certificate records, and the care, custody and control of program certificates; (4) describes the process by which a provider may issue duplicate certificates and return unassigned certificates; (5) establishes requirements on a program provider to protect unissued certificates and account for missing certificates with the Department; (6) addresses additional requirements for the DWIE and DWII Programs when delivering certificates of program completion to court officials and DPS; and (7) updates and clarifies the rule language. This rule replaces existing §90.49.

The adopted rules repeal existing §90.41, Program Curriculum and Rules - DWI Education Program. The statutory provisions requiring jointly-approved curriculum and rules for the DWI Education program were repealed by SB 1480.

The adopted rules repeal existing §90.42, Program Rules - Drug Offender Education Program (DOEP).

The adopted rules repeal existing §90.43, General Program and Course Requirements - All Programs.

The adopted rules repeal existing §90.44, Additional Course Requirements for the Drug Offender Education Program.

The adopted rules repeal existing §90.45, Additional Course Requirements for the Alcohol Education Program for Minors.

The adopted rules repeal existing §90.46, Additional Course Requirements for the DWI Education Program.

The adopted rules repeal existing §90.47, Additional Course Requirements for DWI Intervention Programs.

The adopted rules repeal existing §90.48, Classroom Facilities and Equipment.

The adopted rules repeal existing §90.49, Course Completion Certificates for Participants.

Subchapter E, Program Requirements - Administration and Other Responsibilities.

The adopted rules add new §90.50, Program Administration, which define the parameters of program operation for a program provider. This new rule replaces existing §90.50 to: (1) identify the responsibilities for program providers to set course fees, create course schedules and maintain program records for Department audit; (2) set restrictions on the court-ordered program referral policy for program providers and instructors for inquiring participants; (3) require program providers to resolve participant complaints; (4) instruct program providers to provide participants with notice concerning the complaint filing process with the Department; and (5) update the rule language consistent with SB 1480.

The adopted rules repeal existing §90.50, Program Administration.

The adopted rules amend §90.51, Recordkeeping Regarding Course Participants, to: (1) update rule language consistent with SB 1480; (2) clarify the type of address information the program provider is required to collect from participants for its records; (3) correct rule language; and (4) ease record storage requirements for program providers to respond to Department inspections and audit.

The adopted rules amend §90.52, Annual Reports, to update rule language consistent with SB 1480.

The adopted rules amend §90.53, Confidentiality, to update rule language consistent with SB 1480.

The adopted rules amend §90.54, Discrimination Prohibited, to update rule language consistent with SB 1480.

Subchapter F, Fees.

The adopted rules amend §90.80, Fees, which illustrate the new program fees framework established by SB 1480. Under the new framework, (1) initial license and renewal fees are now assessed on instructors, as well as providers; (2) program headquarters and branch location provisions have been eliminated; and (3) the requirements for separate licenses for each court-ordered

program have been eliminated. The adopted rules will require a provider or an instructor to obtain one license with the option to add up to four court-ordered program endorsements, one for each program. The endorsement becomes a part of the license for the provider or instructor, and it renews at the same time with the license.

Under the adopted rules, the provider initial license and renewal fee remain unchanged. However, a provider is only required to obtain one license with the option to add up to four endorsements. A provider with multiple locations pays for one unitary license under which all the other locations will operate. The program headquarters and branch location fees have been eliminated. When the provider renews the license, there is one renewal fee that includes the license and the current endorsement(s).

Instructors, under the adopted rules, are now required to pay initial license and renewal fees, pursuant to SB 1480. However, like the provider license regime, an instructor is only required to obtain one license with the option to add up to four endorsements. When the instructor renews the license, there is one renewal fee that includes the license and the current endorsement(s). Consistent with SB 1480, the existing rule is amended to: (1) update rule language in line with SB 1480; (2) eliminate the fees associated with the headquarters and branch location framework which was repealed by SB 1480; (3) add new licensing and endorsement fees for instructors and program providers which reflect the new fee structure and which recognize one license per provider or instructor with up to four court-ordered endorsements; and (4) correct language.

Subchapter G, Enforcement.

The adopted rules amend §90.91, Complaints; Investigations, to update rule language consistent with SB 1480; and, post-publication, added the words "or instructor" to clarify the record provision obligations pursuant to a department complaint investigation for driver education instructors and program providers, and removed repetitive language to clarify and correct language.

The adopted rules amend §90.92, Administrative Penalties and Sanctions, to update statutory citations consistent with SB 1480, and, post-publication, added a period after the words "or both" to correct language.

The adopted rules amend §90.93, Enforcement Authority, to update statutory citations consistent with SB 1480.

The adopted rules amend §90.94, Additional Conduct Subject to Disciplinary Actions, to: (1) update rule language consistent with SB 1480; (2) add additional prohibited conduct for a program provider or instructor pursuant to Chapter 171, Texas Government Code; and (3) clarify rule language.

The adopted rules add new §90.95, Criminal Penalties, to affix Class A Misdemeanor criminal penalties to any unauthorized person who knowingly sells, transfers, issues, possesses or trades a certificate of program completion or certificate number. This change is pursuant to Texas Government Code, Chapter 171.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3375). The public comment period closed on July 11, 2022. The Department did not receive any comments from interested parties on the proposed rules.

COMMISSION ACTION

At its meeting on August 9, 2022, the Commission adopted the proposed rules with changes to the proposed text as published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §90.1, §90.10

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the adopted rules.

§90.1. Authority.

This chapter is promulgated under the authority of Occupations Code, Chapter 51; Government Code, Chapter 171; Alcoholic Beverage Code, §106.115 (Alcohol Education Program for Minors); Transportation Code, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403 and 42A.406 (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404 and 42A.406 (DWI Intervention Program).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 12, 2022.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879

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16 TAC §90.10

STATUTORY AUTHORITY

The adopted repeal is adopted under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted repeal is

also adopted under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the adopted repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman
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SUBCHAPTER B. INSTRUCTOR REQUIREMENTS

16 TAC §§90.20, 90.22 - 90.27

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted repeals are also adopted under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the adopted repeals.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §§90.20 - 90.28

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. PROGRAM/PROVIDER CERTIFICATION REQUIREMENTS

16 TAC §§90.30 - 90.34

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted repeals are also adopted under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51; Texas

Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the adopted repeals.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §§90.30 - 90.34

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER D. PROGRAM REQUIREMENTS - CURRICULUM, COURSES, CLASSROOMS, CERTIFICATES

16 TAC §§90.40 - 90.49

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the adopted rules.

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16 TAC §§90.41 - 90.49

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted repeals are also adopted under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the adopted repeals.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. PROGRAM REQUIREMENTS - ADMINISTRATION AND OTHER RESPONSIBILITIES

16 TAC §90.50

STATUTORY AUTHORITY

The adopted repeal is adopted under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted repeal is also adopted under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the adopted repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §§90.50 - 90.54

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. FEES

16 TAC §90.80

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER G. ENFORCEMENT

16 TAC §§90.91 - 90.95

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the adopted rules.

§90.91. Complaints; Investigations.

(a) Upon verbal or written request from the department, a program provider, instructor, or any person associated with the program, must cooperate with the department and furnish requested information concerning any department investigation of a complaint.

(b) If the department is investigating a complaint, the program provider or instructor must make available or provide to the department upon request at any reasonable time, any of its documents or records, unless otherwise prohibited by law.

§90.92. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Occupations Code Chapter 51, Texas Government Code, Chapter 171, the statutory provisions identified in §90.1, this chapter, any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both.

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 August 12, 2022.

TRD-202203014
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: September 1, 2022
Proposal publication date: June 10, 2022
For further information, please call: (512) 475-4879

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.317

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.317 ("Powerball" Draw Game Rule) without changes to the proposed text as published in the June 24, 2022 issue of the *Texas Register* (47 TexReg 3616) and will not be republished.

The amendments to §401.317 align the rule with recently amended Multi-State Lottery Association (MUSL) Powerball game rules. MUSL Powerball game rules were amended on January 6, 2022 to address changes related to the funding of Powerball Guaranteed Grand Prizes.

The Commission received no written comments on the proposed amendments during the public comment period.

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

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 August 15, 2022.

TRD-202203037
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: September 4, 2022
Proposal publication date: June 24, 2022
For further information, please call: (512) 344-5324

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1005

The Texas Education Agency (TEA) adopts an amendment to §97.1005, concerning results driven accountability (RDA). The amendment is adopted without changes to the proposed text as published in the June 3, 2022 issue of the *Texas Register* (47 TexReg 3211) and will not be republished. The adopted amendment repeals the 2021 RDA Manual currently included as Figure: 19 TAC §97.1005(b) and replaces it with the 2022 RDA Manual.

REASONED JUSTIFICATION: House Bill 3459, 78th Texas Legislature, 2003, added Texas Education Code (TEC), §7.027, which limits and redirects monitoring done by TEA to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant requirements; and data integrity for purposes of the Texas Student Data System Public Education Information Management System (PEIMS) and accountability under TEC, Chapter 39. Legislation passed in 2005 renumbered TEC, §7.027, to TEC, §7.028. To meet this monitoring requirement, TEA developed the Performance Based Monitoring Analysis System (PBMAS) Manual, renamed the RDA Manual in 2019, which is used in conjunction with other evaluation systems to monitor performance of certain populations

of students and the effectiveness of special programs in school districts and charter schools.

TEA has adopted its PBMAS Manual/RDA Manual in rule since 2005. The manual outlines a dynamic system that evolves over time, so the specific criteria and calculations for monitoring student performance and program effectiveness may differ from year to year. The intent is to update §97.1005 annually to refer to the most recently published RDA Manual.

The adopted amendment to §97.1005 updates the current rule by adopting the 2022 RDA Manual, which describes the specific criteria and calculations that will be used to assign 2022 RDA performance levels.

The 2022 RDA Manual includes several changes from the 2021 system. Revisions to the RDA Manual include the following.

Referenced dates relevant to the 2022 RDA indicator data and calculations are updated throughout. Additional explanatory text is added to the RDA Manual overview as well as exemplar data for calculation methodologies demonstration.

Bilingual Education, English as a Second Language, and Emergent Bilingual (BE/ESL/EB)

This portion includes a new report only indicator for BE/ESL/EB Indicator #3 (i-iv): Alternative Language Program (ALP) STAAR 3-8 Passing Rate to measure student outcomes in local education agencies (LEAs) who receive waivers under 19 TAC §89.1207(a) or 19 TAC §89.1207(b). It also includes new indicator names: BE/ESL/EB Indicator #1 (i-iv) BE STAAR 3-8 Passing Rate; BE/ESL/EB Indicator #2 (i-iv) ESL STAAR 3-8 Passing Rate; BE/ESL/EB Indicator #4 (i-iv) EB (Not Served in BE/ESL) STAAR 3-8 Passing Rate; BE/ESL/EB Indicator #5 EB Dyslexia STAAR 3-8 Reading Passing Rate; BE/ESL/EB Indicator #6 (i-iv) EB Years-After Reclassification (YsAR) STAAR 3-8 Passing Rate; BE/ESL/EB Indicator #7 (i-iv) EB STAAR EOC Passing Rate; BE/ESL/EB Indicator #8 TELPAS Reading Beginning Proficiency Level Rate; BE/ESL/EB Indicator #9 TELPAS Composite Rating Levels for Students in U.S. Schools Multiple Years; BE/ESL/EB Indicator #10 EB Graduation Rate; BE/ESL/EB Indicator #11 EB Annual Dropout Rate (Grades 7-12); and BE/ESL/EB Indicator #12 EB Dyslexia Representation (Ages 6-21) to parallel with programmatic terminology usage that replaces English learners with emergent bilingual students with no impact to data inclusion or exclusion, and which reflects the elimination of a separate writing assessment subject measurement in applicable indicators. In addition, it eliminates duplicative information and renumeration of data notes.

Other Special Populations (OSP)

This portion includes a new indicator name: OSP Indicator #1 (i-iv) OSP STAAR 3-8 Passing Rate, which reflects the elimination of a separate writing assessment subject measurement.

Special Education (SPED)

This portion includes new indicator names: SPED Indicator #1 (i-iv) SPED STAAR 3-8 Passing Rate; and SPED Indicator #3 (i-iv) SPED Year-After-Exit (YAE) STAAR 3-8 Passing Rate, which reflects the elimination of a separate writing assessment subject measurement; SPED Indicator #8 SPED Dyslexia Representation (school-aged); SPED Indicator #9 SPED Regular Early Childhood Program Rate (preschool-aged); SPED Indicator #10 SPED Regular Class ≥80% Rate (school-aged); SPED Indicator #11 SPED Regular Class ˂40% Rate (school-aged); and SPED Indicator #12 SPED Separate Settings Rate (school-aged), which defines student-aged inclusion in each applicable indicator.

Of Note for all RDA Program Areas

On March 16, 2020, Governor Greg Abbott waived the State of Texas Assessment of Academic Readiness (STAAR®) testing requirements for the 2019-2020 school year due to extensive school closures relating to the COVID-19 nation-wide pandemic event. As a result, indicators specific to STAAR® testing proficiency, participation, or other reliance on non-existing 2019-2020 STAAR® data were assigned an "ND" for no data availability for RDA 2020. Because application of the special analysis (SA) process uses data over the prior two years, impacted STAAR® assessment indicators does not include SA processing for RDA 2022.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 3, 2022, and ended July 5, 2022. Two virtual public hearings to solicit testimony and input on the proposed amendment were held on June 7 and 9, 2022. The public comments and agency responses are as follows.

Comment: Texans for Special Education Reform (TxSER) and Texas Parent2Parent expressed a concern with the number of LEAs excluded in assignment of performance levels within the RDA reporting system based on the minimum size requirements (MSR). TxSER requested the MSR be changed from 30 to 25 to align with the accountability rating system authorized under 19 TAC §97.1001.

Response: The agency disagrees. In implementing Guiding Principles of the RDA: Principle 3: Protects Children and Families, maximum inclusion is realized by using appropriate alternatives to analyze the performance of LEAs with small numbers of students. The MSR can be met either in the current year or through the aggregation of numerators and denominators over the most recent two years, if applicable. Furthermore, as outlined on pages 10-13 of the 2020 RDA manual, application of a special analysis for group sizes of 15-29 occurs to ensure maximum inclusion for performance level assignments. TEA recognizes the concern for MSR alignment with the accountability rating system authorized under 19 TAC §97.1001 and is working to align its systems of measurement, including looking at MSR in alignment with other accountability measures, but will continue to apply systems such as "special analysis" to ensure maximum inclusion for school sizes that do not meet the MSR in a single year.

Comment: An individual suggested relaxing the performance level for SPED Indicator #6 to allow students receiving special education and related services to graduate in more than four years.

Response: The agency disagrees. Student graduation from high school with a regular high school diploma is an important indicator of school success and one of the most significant indicators of student college and career readiness. Although students receiving special education and related services are eligible for services through age 21 and may graduate beyond 4 years, TEA includes a comparable measurement and applicable performance levels in four-year graduation rates for special populations of students. This measurement aligns with the Every Student Succeeds Act requirements to provide all children significant opportunity to receive a fair, equitable, and high-quality education and to close educational achievement gaps.

Comment: An individual suggested a change in the risk ratio threshold specific to the significant disproportionality (SD) threshold for autism from 2.5 to 3.0 to prevent incentivizing school districts to keep numbers inaccurately low for this population of students.

Response: The agency disagrees. Federal requirements for measurement and reporting SD stem from an effort to better understand the extent of racial and ethnic overrepresentation in special education and promote consistency in how states determine requirements for LEAs to provide early intervening services. Each of the 14 categories, including autism, are analyzed for over-representation in seven racial and ethnic groups. Although 34 CFR §300.647(b)(1)(ii) allows for states to set standards at different levels for each of the categories described in paragraphs (b)(3) and (4) of the relevant section, states are required to apply reasonable standards subject to monitoring and enforcement for reasonableness by the Secretary of Education consistent with Section 616 of the act. Reasonable standards for each area were based on real data models set through numerous stakeholder engagements and input resulting in the established threshold. The threshold establishes, for this particular category, that an LEA that identifies students with autism in a particular race/ethnicity group (e.g., Asian/autism) at a risk ratio of more than 2.5 times than that of all other race/ethnicities (i.e., total students for all other race/ethnicities identified with autism) would be considered disproportionate for that category of students. An LEA that exceeds the threshold in the same particular category for three consecutive years is determined significant disproportionate and is required to reserve the maximum amount of funds under Section 613(f) of the act to provide comprehensive coordinated early intervening services (CCEIS) addressing factors contributing to the significant disproportionality. CCEIS funds may be used to carry out activities that include professional development and educational and behavioral evaluations, services, and supports, described in 34 CFR §300.646(d)(1)(i). The regulation, specifically 34 CFR §300.646(f), prohibits a state or an LEA to develop or implement policies, practices, or procedures that result in actions that violate federal requirements, including requirements related to child find and ensuring that a free appropriate public education is available to all eligible children with disabilities.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.021(b)(1), which authorizes the Texas Education Agency (TEA) to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; TEC, §7.028, which authorizes TEA to monitor as necessary to ensure school district and charter school compliance with federal law and regulations, financial integrity, and data integrity and authorizes the agency to monitor school district and charter schools through its investigative process. TEC, §7.028(a), authorizes TEA to monitor special education programs for compliance with state and federal laws; TEC, §12.056, which requires that a campus or program for which a charter is granted under TEC, Chapter 12, Subchapter C, is subject to any prohibition relating to the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter C, as determined by the commissioner of education; high school graduation under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; and public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, and J, and Chapter 39A; TEC, §12.104, which states that a charter granted under TEC, Chapter 12, Subchapter D, is subject to a prohibition, restriction, or requirement, as applicable, imposed by TEC, Title 2, or a rule adopted under TEC, Title 2, relating to PEIMS to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter D, as determined by the commissioner; high school graduation requirements under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; discipline management practices or behavior management techniques under TEC, §37.0021; public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and Chapter 39A; and intensive programs of instruction under TEC, §28.0213; TEC, §29.001, which authorizes TEA to effectively monitor all local education agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.0011(b), which authorizes TEA to meet the requirements under (1) 20 U.S.C. Section 1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the: (A) Identification of children as children with disabilities, including the identification of children as children with particular impairments; (B) Placement of children with disabilities in particular educational settings; and (C) Incidence, duration, and type of disciplinary actions taken against children with disabilities including suspensions or expulsions; or (2) 20 U.S.C. Section 1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification; TEC, §29.010(a), which authorizes TEA to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes TEA to evaluate and monitor the effectiveness of LEA programs and apply sanctions concerning emergent bilingual students; TEC, §29.066, which authorizes PEIMS reporting requirements for school districts that are required to offer bilingual education or special language programs to include the following information in the district's PEIMS report: (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs; (2) the number and percentage of students enrolled in each instructional model of a bilingual education or special language program offered by the district; and (3) the number and percentage of emergent bilingual students who do not receive specialized instruction; TEC, §39.003 and §39.004, which authorize the commissioner to adopt procedures relating to special investigations. TEC, §39.003(d), allows the commissioner to take appropriate action under Chapter 39A, to lower the district's accreditation status or the district's or campus's accountability rating based on the results of the special investigation; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which authorizes the commissioner to adopt a set of indicators of the quality of learning and achievement and requires the commissioner to periodically review the indicators for consideration of appropriate revisions;

TEC, §39.054(b-1), which authorizes TEA to consider the effectiveness of district programs for special populations when determining accreditation statuses; TEC, §39.0541, which authorizes the commissioner to adopt indicators and standards under TEC, Chapter 39, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.056, which authorizes the commissioner to adopt procedures relating to monitoring reviews and special accreditation investigations; TEC, §39A.001, which authorizes the commissioner to take any of the actions authorized by TEC, Chapter 39, Subchapter A, to the extent the commissioner determines necessary if a school does not satisfy the academic performance standards under TEC, §39.053 or §39.054, or based upon a special investigation; TEC, §39A.002, which authorizes the commissioner to take certain actions if a school district becomes subject to commissioner action under TEC, §39A.001; TEC, §39A.004, which authorizes the commissioner to appoint a board of managers to exercise the powers and duties of a school district's board of trustees if the district is subject to commissioner action under TEC, §39A.001, and has a current accreditation status of accredited-warned or accredited-probation; or fails to satisfy any standard under TEC, §39.054(e); or fails to satisfy any financial accountability standard; TEC, §39A.005, which authorizes the commissioner to revoke school accreditation if the district is subject to TEC, §39A.001, and for two consecutive school years has received an accreditation status of accredited-warned or accredited-probation, failed to satisfy any standard under TEC, §39.054(e), or failed to satisfy a financial performance standard; TEC, §39A.007, which authorizes the commissioner to impose a sanction designed to improve high school completion rates if the district has failed to satisfy any standard under TEC, §39.054(e), due to high school completion rates; TEC, §39A.051, which authorizes the commissioner to take action based on campus performance that is below any standard under TEC, §39.054(e); and TEC, §39A.063, which authorizes the commissioner to accept substantially similar intervention measures as required by federal accountability measures in compliance with TEC, Chapter 39A.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.021(b)(1), 7.028, 12.056, 12.104, 29.001, 29.0011(b), 29.010(a), 29.062, 29.066, 39.003, 39.004, 39.051, 39.052, 39.053, 39.054(b-1), 39.0541, 39.056, 39A.001, 39A.002, 39A.004, 39A.005, 39A.007, 39A.051, and 39A.063.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTING GUIDELINES

19 TAC §109.5001

The Texas Education Agency (TEA) adopts an amendment to §109.5001, concerning the financial accountability system resource guide. The amendment is adopted without changes to the proposed text as published in the June 3, 2022 issue of the *Texas Register* (47 TexReg 3214) and will not be republished; however, the *Financial Accountability System Resource Guide* (FASRG) adopted by reference in the rule includes changes to Modules 1 and 5 at adoption. The amendment adopts by reference the updated FASRG, Version 18.0. The FASRG provides accounting rules for school districts, open-enrollment charter schools, and education service centers.

REASONED JUSTIFICATION: The FASRG describes the rules of financial accounting for school districts, charter schools, and education service centers. Requirements for financial accounting and reporting are derived from generally accepted accounting principles (GAAP). School districts and charter schools are required to adhere to GAAP. Legal and contractual considerations typical of the government environment are reflected in the fund structure basis of accounting.

An important function of governmental accounting systems is to enable administrators to assure and report on compliance with finance-related legal provisions. This assurance and reporting means that the accounting system and its terminology, fund structure, and procedures must be adapted to satisfy finance-related legal requirements. However, the basic financial statements of school districts and charter schools should be prepared in conformity with GAAP.

School district and charter school accounting systems shall use the accounting code structure presented in the account code section of the FASRG (Module 1). Funds shall be classified and identified on required financial statements by the same code number and terminology provided in the account code section of the FASRG (Module 1).

The FASRG, Version 18.0, contains six modules on the following topics: Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices; Module 2, Special Supplement - Charter Schools; Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts; Module 4, Auditing; Module 5, Purchasing; and Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System.

State law provides authority for both the State Board of Education (SBOE) and the commissioner of education to adopt rules on financial accounting. To accomplish this, the SBOE and the commissioner each adopt the FASRG by reference under separate rules. The SBOE adopts the FASRG by reference under 19 TAC §109.41, and the commissioner adopts the FASRG by reference under §109.5001.

During the June 2022 SBOE meeting, the SBOE approved §109.41 for second reading and final adoption. At that time, the SBOE approved changes to Modules 1 and 5 of the FASRG since published as proposed. These changes impact the FASRG adopted by reference in new §109.5001.

Module 1 aligns with current governmental accounting standards. Adopted Module 1 includes the following significant changes. School districts and charter schools are required

to maintain proper budgeting and financial accounting and reporting systems. In addition, school districts are required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the Governmental Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

In response to public comments, Module 1, FAR and FAR Appendices, were modified at adoption to implement recent changes in accounting and auditing standards, provide clearer guidance, and add clarity through grammatical edits.

Module 2 aligns with current financial and accounting reporting standards. Adopted Module 2 includes the following significant changes. The module establishes financial and accounting requirements for Texas public charter schools to ensure uniformity in accounting in conformity with GAAP. The adopted module also includes current guidance that complements the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide, State and Local Governments and supplements the Government Auditing Standards of the United States Government Accountability Office (GAO). These requirements facilitate preparation of financial statements that conform to GAAP established by the FASB.

Module 3 aligns with current governmental accounting standards. Adopted Module 3 includes the following significant changes. Charter schools are required to maintain proper budgeting and financial accounting and reporting systems that are in conformity with Texas Education Data Standards in the Texas Student Data Systems PEIMS. In addition, charter schools are required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the FASB. The adopted module also includes current auditing guidance that complements the AICPA Audit and Accounting Guide, State and Local Governments and supplements the Government Auditing Standards of the United States GAO. These requirements facilitate preparation of financial statements that conform to GAAP established by the FASB.

Module 4 aligns with current governmental auditing standards. Adopted Module 4 includes the following significant changes. The adopted module establishes auditing requirements for Texas public school districts and charter schools and include current requirements from TEC, §44.008, as well as Title 2, Code of Federal Regulations, Part 200, Subpart F, Audit Requirements, that implement the federal Single Audit Act. The adopted module also includes current auditing guidance that complements the AICPA Audit and Accounting Guide, State and Local Governments and supplements the Government Auditing Standards of the United States GAO. These requirements facilitate preparation of financial statements that conform to GAAP established by the GASB.

Module 5 aligns with current purchasing laws and standards. Adopted Module 5 includes the following significant changes. School districts and charter schools are required to establish procurement policies and procedures that align with their unique operating environment and ensure compliance with relevant statutes and policies.

To align with changes made in response to public comments submitted to the SBOE on the proposed amendment to 19 TAC §109.41, Module 5 was modified at adoption to implement recent changes in authoritative guidance, provide guidance for compliance, and add clarity through grammatical edits.

Module 6 aligns with current governmental accounting standards. Adopted Module 6 includes the following significant changes. School districts and charter schools are required to maintain proper budgeting and financial accounting and reporting systems. The module provides current information to assist local school officials' understanding of the numerous options for use of the state compensatory education allotment and provide current guidance for compliance.

The FASRG is posted on the TEA website at https://tea.texas.gov/finance-and-grants/financial-accountability/financial-accountability-system-resource-guide.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 3, 2022, and ended July 5, 2022. Following is a summary of public comments received and agency responses.

Module 1, FAR Appendices, and Module 3, Special Supplement - Nonprofit Charter School Chart of Accounts

Comment: A school district representative commented that it is unclear why prekindergarten program intent codes (PICs), except for the prekindergarten special education PIC, are being deleted because districts have historical information in the PICs.

Response: The agency agrees that there is historical data reported with the prekindergarten PICs. However, prekindergarten PICs 32 (Prekindergarten), 34 (Services to Prekindergarten Students - State Compensatory Education), and 35 (Services to Prekindergarten Students - Bilingual Education) were removed for more concise and unambiguous reporting of expenditures. The agency can continue to receive sufficient data on prekindergarten services, except for special education, by incorporating prekindergarten data into other PICs. The agency will maintain a separate prekindergarten PIC for special education to collect data necessary for state and federal reporting.

Module 1, FAR and FAR Appendices

Comment: A representative with EdMIS: Education Management Information Systems, Inc. proposed changes regarding right to use leases for Module 1, FAR and FAR Appendices, Appendix A. Specifically, the commenter stated that the GASB 87 determination of the "term" of right to use leases is left out of the presentation in section 1.2.4, Capital Assets and Right to Use Leased Assets, and suggested edits to the section to define and clarify the use of lease terms.

The commenter also stated that there is no discussion of a "capitalization" threshold that should be applied when implementing GASB 87 and suggested edits to section 1.2.4.3, Capitalization of Capital Assets and Right to Use Leased Assets, and section 1.2.5.2, Long-term Liabilities.

Additionally, the commenter suggested edits to various object codes in Module 1, FAR Appendices, Appendix A, to clarify coding for right to use leases.

Response: The agency agrees to the suggested edits for right to use leases. The language in various subsections of section 1.2.4 of Module 1, FAR, has been modified at adoption to define and clarify the lease term and capitalization threshold. Additionally, descriptions for various asset, liability, and expenditure object codes in Module 1, FAR Appendices, have been modified at adoption to clarify right to use lease classifications.

Comment: A school district representative commented that Appendix C in Module 1, FAR Appendices, discusses accounting related to GASB 87 for the lessee side only and that accounting

for the lessor side has not been updated. The school district representative also commented that "Due from Lessor" in Module 1, FAR, Section 1.2.2.2, Other Receivables, is a typo and that the term for the definition should be "Due from Lessee." The commenter also stated that it should be a "receivable" object code 1290 instead of "due from lessee" as mentioned by GASB 87 Implementation Guide.

Response: The agency agrees that the lessee side of accounting was updated to reflect GASB 87 guidance and that there was no addition of the lessor side of accounting to Appendix C of Module 1, FAR Appendices. Currently, the agency maintains language as proposed for journal entries in Appendix C of Module 1, FAR Appendices. Regarding guidance in Module 1, FAR, Section 1.2.2.2, Other Receivables, the agency agrees that the term "Due from Lessor" should be replaced. The term "Due from Lessor" has been replaced at adoption with the term "Lease Receivable."

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.055(b)(32), which requires the commissioner to perform duties in connection with the public school accountability system as prescribed by TEC, Chapters 39 and 39A; TEC, §44.001(a), which requires the commissioner to establish advisory guidelines relating to the fiscal management of a school district; TEC, §44.001(b), which requires the commissioner to report annually to the State Board of Education (SBOE) the status of school district fiscal management as reflected by the advisory guidelines and by statutory requirements; TEC, §44.007(a), which requires the board of trustees of each school district to adopt and install a standard school fiscal accounting system that conforms with generally accepted accounting principles; TEC, §44.007(b),which requires the accounting system to meet at least the minimum requirements prescribed by the commissioner, subject to review and comment by the state auditor; TEC, §44.007(c), which requires a record to be kept of all revenues realized and of all expenditures made during the fiscal year for which a budget is adopted. A report of the revenues and expenditures for the preceding fiscal year is required to be filed with the agency on or before the date set by the SBOE; TEC, §44.007(d), which requires each district, as part of the report required by TEC, §44.007, to include management, cost accounting, and financial information in a format prescribed by the SBOE in a manner sufficient to enable the board to monitor the funding process and determine educational system costs by district, campus, and program; and TEC, §44.008(b), which requires the independent audit to meet at least the minimum requirements and be in the format prescribed by the SBOE, subject to review and comment by the state auditor. The audit must include an audit of the accuracy of the fiscal information provided by the district through the Public Education Information Management System.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(32), 44.001(a) and (b), 44.007(a)-(d), and 44.008(b).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.2

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §104.2, concerning continuing education providers. The adopted amendment adds Dental Risk Solutions, LLC as a Board approved continuing education course provider to subsection (e)(22). This rule is adopted without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3868) and will not be republished.

No comments were received regarding adoption of this rule.

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 August 12, 2022.

TRD-202203030

Lauren Studdard

General Counsel

State Board of Dental Examiners

Effective date: September 1, 2022

Proposal publication date: July 8, 2022

For further information, please call: (512) 305-8910

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CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER B. SANITATION AND INFECTION CONTROL

22 TAC §108.25

The State Board of Dental Examiners (Board) adopts this repeal of 22 TAC §108.25, concerning dental health care workers. The adopted rule repeal deletes unnecessary repetitive statutory language found in Chapter 85 of the Texas Health and Safety Code. This rule is adopted with no changes to the proposed text as published in the July 8, 2022 issue of the *Texas Register* (47 TexReg 3869), and will not be republished.

No comments were received regarding adoption of this rule repeal.

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.

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Lauren Studdard
General Counsel
State Board of Dental Examiners
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For further information, please call: (512) 305-8910

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.21 - 537.23, 537.35, 537.39 - 537.41, 537.44, 537.45, 537.52, 537.54 - 537.57, 537.60, 537.62 - 537.64

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §537.21, Standard Contract Form TREC No. 10-6; §537.22, Standard Contract Form TREC No. 11-7; §537.23, Standard Contract Form TREC No. 12-3; §537.35, Standard Contract Form TREC No. 28-2; §537.39, Standard Contract Form TREC No. 32-4; §537.40, Standard Contract Form TREC No. 33-2; §537.41, Standard Contract Form TREC No. 34-4; §537.44, Standard Contract Form TREC No. 37-5; §537.45, Standard Contract Form TREC No. 38-7; §537.52, Standard Contract Form TREC No. 45-2; §537.54, Standard Contract Form TREC No. 47-0; §537.55, Standard Contract Form TREC No. 48-1; §537.56, Standard Contract Form TREC No. 49-1; §537.57, Standard Contract Form TREC No. 50-0; §537.60, Standard Contract Form TREC No. 53-0; and new §537.62, Standard Contract Form TREC No. OP-H, Seller's Disclosure Notice; §537.63, Standard Contract Form TREC No. OP-L, Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards as Required by Federal Law; and §537.64, Standard Contract Form TREC No. OP-M, Non-Realty Items Addendum in Chapter 537, Professional Agreements and Standard Contracts, without changes, as published in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3010) and will not be republished.

The amendments and new rules to Chapter 537 are made as a result of the Commission's quadrennial rule review. Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. The changes to the existing rules add the title of the form adopted by reference in each rule to the rule title and add clarifying language to specify which forms are for mandatory versus voluntary use by license holders. The new rules pair previously existing forms that were available for voluntary use by license holders with a rule to provide greater clarity about the forms purpose and use.

One comment was received from the Texas Association of Builders (TAB), who believes that the proposed addition of "mandatory" will lead to confusion regarding the right of a property owner to use non-TREC forms in certain transactions, and in turn, may delay these transactions. TAB suggested that where the term "mandatory" has been added to the rules, the statement "unless otherwise permitted under 22 TAC 537.11(a)" be appended. The Commission declines to any make changes at this time in response to TAB's comments. However, the Commission is currently reviewing 22 TAC §537.11, Use of Standard Contract Forms, and plans to present recommended changes to that rule, as well as a new definitions section that would include definitions of "mandatory use" and "voluntary use", at the November Commission meeting for proposal. The Commission believes these revisions will better address TAB's concerns.

The amendments and new rules are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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 August 10, 2022.

TRD-202202988
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: August 30, 2022
For further information, please call: (512) 936-3057

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22 TAC §§537.26, 537.27, 537.61

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §537.26, Standard Contract Form TREC No. 15-5; §537.27, Standard Contract Form TREC No. 16-5; and new §537.61, Standard Contract Form TREC No. 54-0, Landlord's Floodplain and Flood Notice in Chapter 537, Professional Agreements and Standard Contracts, and the forms adopted by reference, without changes in the rule text, but with the following non-substantive changes to the forms as published in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3013):

-The insertion of lines in the blank following Paragraph 11, Special Provisions, of the Seller's Temporary Residential Lease (TREC No. 15-5) and the Buyer's Temporary Residential Lease (TREC No. 16-5),

-The addition of "to" in the notice of the Buyer's Temporary Residential Lease so that the notice reads "…prior to the closing", and

-The replacement of the term "Property" with "a dwelling" in Paragraph C(2) of the Landlord's Floodplain and Flood Notice.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the

sale of real property. These forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Texas Real Estate Broker-Lawyer Committee recommended revisions to the contract forms adopted by reference under the amendments and new rule to Chapter 537 to comply with statutory changes enacted by the 87th Legislature in HB 531.

HB 531 requires a landlord to disclose, in certain situations, whether the landlord is aware that the dwelling is located in a 100-year floodplain or that the dwelling has flooded within the last five years. Because landlords of temporary residential leases are not exempted, the changes create a new flood disclosure notice form and add a new paragraph referencing the notice in the Seller's Temporary Residential Lease (TREC No. 15-5) and the Buyer's Temporary Residential Lease (TREC No. 16-5).

Additionally, the amendments §535.26, Standard Contract Form TREC No. 15-5, and §535.27, Standard Contract Form TREC No. 16-5, contain changes made as a result of the Commission's quadrennial rule review. Those changes add the corresponding standard contract form title to the rule title and add clarifying language to specify that both of the forms adopted by reference in these rules are for mandatory use by license holders.

One comment was received from the Texas Association of Builders (TAB), who believes that the proposed addition of "mandatory" to the rules §535.26 and §535.27 will lead to confusion regarding the right of a property owner to use non-TREC forms in certain transactions, and in turn, may delay these transactions. TAB suggested that where the term "mandatory" has been added to the rules, the statement "unless otherwise permitted under 22 TAC 537.11(a)" be appended. The Commission declines to make any changes at this time in response to TAB's comments. However, the Commission is currently reviewing 22 TAC §537.11, Use of Standard Contract Forms, and plans to present recommended changes to that rule, as well as a new definitions section that would include definitions of "mandatory use" and "voluntary use", at the November Commission meeting for proposal. The Commission believes these revisions will better address TAB's concerns.

The amendments and new rules are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments and new rules are also adopted under Texas Occupations Code, §1101.155, which authorizes the Texas Real Estate Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and adopted by the Commission.

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 August 10, 2022.

TRD-202202968

Abby Lee

Deputy General Counsel

Texas Real Estate Commission

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Proposal publication date: May 20, 2022

For further information, please call: (512) 936-3057

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CHAPTER 543. RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT

22 TAC §§543.1 - 543.13

The Texas Real Estate Commission (TREC) adopts the repeal of 22 TAC §543.1, Registration; §543.2, Amendments; §543.3, Fees; §543.4, Forms; §543.5, Violations; §543.6, Complaints and Disciplinary Proceedings; §543.7, Contract Requirements; §543.8, Disclosure Requirement; §543.9, Exemptions; §543.10, Escrow Requirements; §543.11, Maintenance of Registration; and §543.12, Renewal of Registration; §543.13, Assumed Names, in Chapter 543, Rules Relating to the Provisions of the Texas Timeshare Act. The repeals are adopted without changes, as published in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3014), and will not be republished.

The repeal of these sections is made as a result of the Commission's quadrennial rule review, and more specifically, is the result of a proposed new definitions section in this chapter, which will require the renumbering of these sections. TREC will renumber and replace these rules, with some proposed changes.

No comments were received on the proposed repeal as published.

The repeal is adopted under the Texas Property Code, §221.024, which authorizes the Texas Real Estate Commission to prescribe and publish forms and adopt rules necessary to carry out the provisions of The Texas Timeshare Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2022.

TRD-202202985

Abby Lee

Deputy General Counsel

Texas Real Estate Commission

Effective date: August 30, 2022

Proposal publication date: May 20, 2022

For further information, please call: (512) 936-3057

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22 TAC §§543.1 - 543.14

The Texas Real Estate Commission (TREC) adopts new 22 TAC §543.1, Definitions; §543.2, Registration; §543.3, Amendments; §543.4, Fees; §543.5, Forms; §543.6, Violations; §543.7, Complaints and Disciplinary Proceedings; §543.8, Contract Requirements; §543.9, Disclosure Requirement; §543.10, Exemptions; §543.11, Escrow Requirements; §543.12, Maintenance of Registration; §543.13, Renewal of Registration; and §543.14, Assumed Names, in Chapter 543, Rules Relating to the Provi-

sions of the Texas Timeshare Act. The rules are adopted without changes to the text as published in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3015) and will not be republished.

The adopted new rules to Chapter 543 are made as a result of the Commission's quadrennial rule review. The adopted changes add a new definitions section for ease of reading and update terminology for consistency throughout the chapter. Additionally, new §543.5, Forms, and §543.13, Renewal of Registration, correct a reference to a Commission form.

No comments were received on the proposed new rules as published.

The new rules are adopted under the Texas Property Code, §221.024, which authorizes the Texas Real Estate Commission to prescribe and publish forms and adopt rules necessary to carry out the provisions of The Texas Timeshare Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Effective date: August 30, 2022
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For further information, please call: (512) 936-3057

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 12. INDEPENDENT REVIEW ORGANIZATIONS

The Commissioner of Insurance adopts amended 28 TAC §12.4, concerning applicability, and new 28 TAC Subchapter G, §12.601, concerning review of preauthorization exemptions by independent review organizations (IROs). These amended and new sections implement House Bill 3459, 87th Legislature, 2021. The amended and new sections were published in the April 8, 2022, issue of the *Texas Register* (47 TexReg 1854). The Commissioner adopts amended §12.4 with a nonsubstantive change to the proposed text. The Commissioner adopts new §12.601 with changes to the proposed text in response to public comments and other nonsubstantive changes. The rules will be republished.

REASONED JUSTIFICATION. Amended §12.4 and new §12.601, are necessary to conform the Texas Department of Insurance's (TDI) utilization review rules with HB 3459, which allows a health maintenance organization or insurer to rescind an exemption from preauthorization requirements under certain conditions. A physician or provider may appeal an adverse determination regarding a preauthorization to an IRO to review the appropriateness of the rescission determination by the health maintenance organization or insurer.

The amended and new sections are described in the following paragraphs.

Section 12.4. The amendments to §12.4(a) replace the phrase "of this subchapter" with "of this title" and add a reference to the section heading for consistency with current agency language preferences and drafting practices. TDI makes a grammatical change to the text of subsection (a) as proposed to remove the comma that follows "managed care entities."

The amendments to §12.4(b) remove obsolete applicability language. New language states that independent reviews of adverse determinations regarding preauthorization exemptions made under Texas Insurance Code Chapter 4201, Subchapter N, must comply with new §12.601.

Subchapter G. Independent Review of Preauthorization Exemptions. TDI adds new Subchapter G, which consists of new §12.601. TDI modifies the proposed title of the new subchapter to more clearly describe the contents of the subchapter.

Section 12.601. New §12.601 outlines requirements and procedures for appeals of adverse determinations regarding a preauthorization exemption.

New §12.601(a) defines "adverse determination regarding a preauthorization exemption," "issuer," "physician," "preauthorization exemption," and "provider" to clarify these terms, which may have different meanings in other contexts in 28 TAC Chapter 12, and to refer to the preauthorization exemption process in 28 TAC Chapter 19.

New §12.601(b) states that the independent review of an adverse determination regarding a preauthorization exemption, the IRO that performs the review, and the appropriate issuer are subject to Insurance Code Chapter 4201, Subchapter N, and 28 TAC Chapter 12, except as otherwise specified in §12.601.

Section 12.601(c) states that for the purposes of §12.601, a physician or provider should be identified using the National Provider Identifier under which a physician or provider makes preauthorization requests.

New §12.601(d) states that an issuer must submit a request for independent review of an adverse determination regarding a preauthorization exemption to TDI on behalf of a physician or provider.

In response to comment, TDI modifies the text of new §12.601(e) as proposed to clarify that the IRO must base its decision on whether to uphold an exemption recission on the total number of claims in the initial random sample and a second random sample, if one was requested under Insurance Code §4201.656(d) and available as provided in 28 TAC §19.1733(e). New §12.601(e) provides that, if a second random sample is requested and available, the IRO must identify the new sample of at least five and no more than 20 claims from the list of eligible claims provided by the issuer. The IRO must review each claim that the issuer retrospectively reviewed and determined did not meet the applicable criteria and, if applicable, each claim included in the second random sample identified by the IRO. The IRO may request any medical records needed to evaluate the claims subject to review and must provide at least three business days for receipt of records.

Section 12.601(f) states that appeals for an adverse determination regarding a preauthorization exemption follow TDI's process for assigning IROs under 28 TAC §12.502, except that TDI will

only provide notice of the appeal to the IRO, the issuer, and the physician or provider.

New §12.601(g) states that 28 TAC §12.206 does not apply to an IRO's independent review of an adverse determination regarding a preauthorization exemption. In response to comment, TDI modifies §12.601(g) to clarify that an IRO must provide timely notice to an issuer regarding its determination consistent with the timeframe provided under Insurance Code §4201.656(c).

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received written comments from 23 commenters, and two commenters spoke at a public hearing on the proposal held on May 12, 2022.

Commenters in support of the proposal were: Texas Healthcare and Bioscience Institute.

Commenters in support of the proposal with changes were: eviCore Healthcare, Pharmaceutical Care Management Association, Quest Diagnostics, Texas Academy of Family Physicians, Texas Association of Health Plans, Texas Chapter of the American College of Cardiology, Texas Chapter of the American College of Physicians Services, Texas College of Emergency Physicians, Texas Medical Association, Texas Neurological Society, Texas Orthopaedic Association, Texas Pain Society, Texas Pediatric Society, Texas Public Policy Foundation, Texas Society for Gastroenterology and Endoscopy, Texas Society of Pathologists, Texas Society of Plastic Surgeons, Texas Urological Society, one individual, two state representatives, and two state senators.

Comments on Chapter 12 Generally

Comment. One commenter expresses broad support for the proposal.

Agency Response. TDI appreciates the support.

Comment. One commenter suggests that TDI require providers to be responsible for IRO fees if the IRO upholds an issuer's rescission determination.

Agency Response. TDI declines to make the requested change. Insurance Code §4201.656(b) requires the issuer to pay for any appeal or independent review.

Comments on §12.601

Comment. One commenter requests TDI provide clarification on how a random sample is compiled and the number of claims required to be included in the sample. Another commenter requests TDI make an amendment to confirm that (1) the only reason a physician or provider may request a new sample for the IRO is if the issuer based the rescission on cases that were outside the random sample, and (2) that the physician or provider cannot request review of a second random sample without reason.

Another commenter objects to an IRO reviewing only the claims in a second random sample, arguing that Insurance Code §4201.656(d) requires that if another random sample is requested, the IRO must base its determination on both the original random sample and the second random sample.

Several commenters jointly state that they oppose the language in proposed §12.601(e) that references the issuer reviewing claims outside of the original random sample because of concerns with lack of alignment with the statutory language. They recommend that TDI implement the language of Insurance Code §4201.656(d) according to its express terms. The commenters suggest that when a provider requests review of "another random sample," as permitted under Insurance Code §4201.656(d), the IRO should perform a first-time review and not a re-review of claims reviewed by the issuer. Alternatively, the commenters suggest that the plan review additional claims upon the provider's request.

Agency Response. In response to the request for clarification, TDI affirms that an evaluation of a physician's or provider's continued eligibility for an exemption is based on a random sample of five to 20 payable claims that were submitted during the most recent evaluation period.

TDI agrees that an issuer may conduct a retrospective review of a health care service subject to an exemption only as provided in §4201.659(b)(1) and (2) and has modified the text of §12.601 as adopted to permit a provider to request that an IRO review another random sample of claims as long as the notice of rescission identified that at least five additional claims were eligible for review but not included in the original random sample. As adopted, §12.601(e) states that the IRO must identify the second random sample of at least five and no more than 20 claims from the list of eligible claims provided by the issuer. In the case that the issuer did not identify that at least five additional claims were eligible but not included in the original random sample, the IRO would be unable to select an additional random sample that differed from the original sample.

The revisions to §12.601(e) require the IRO to review each claim that the issuer retrospectively reviewed and determined did not meet the applicable medical necessity criteria and, if applicable, each claim included in the second random sample identified by the IRO. The IRO's evaluation of a physician's or provider's continued eligibility for an exemption is based on the total number of claims in the initial random sample and, if applicable, the second random sample, consistent with Insurance Code §4201.656(d).

TDI declines to make the requested amendment to limit the circumstances under which the physician or provider may request a second random sample because such an amendment would be inconsistent with Insurance Code §4201.656.

Comment. Several commenters jointly recommend that an IRO be required to make an independent decision regarding whether there was truly a failure to provide medical records necessary for the issuer to make a determination.

Agency Response. TDI declines to make a change. If a rescission is based on one or more claims in which the issuer determined that the physician or provider failed to provide sufficient records to demonstrate medical necessity, the physician or provider must include the applicable records with the request for an independent review. If an IRO believes additional information is needed, the IRO can request any medical records needed to make a determination.

Comment. Two commenters request clarification on the length of time an IRO has to process a review and return the determination to the issuer. The commenters note that there is no clarification for how long the IRO has to perform and complete the review before returning a verdict to the issuer, and that under §12.601(g), the general IRO notice requirements within §12.206 do not apply. One commenter recommends a requirement for a timely IRO notice to the issuer. The other commenter recommends adding a 30-day limitation on the length of time an IRO has to process an appeal. The commenter says this would en-

sure that a physician denied an exemption experiences no delay in his or her appeal process.

Agency Response. Insurance Code §4201.656(c) clearly states that an IRO must complete its review not later than the 30th day after a physician or provider files the request for a review. TDI modifies the text of §12.601(g) as proposed to clarify that an IRO must provide timely notice to an issuer regarding its determination consistent with the timeframe provided under Insurance Code §4201.656(c).

Comment. One commenter asks that TDI provide clarity on when rescissions become effective.

Agency Response. Consistent with Insurance Code §4201.654, a rescission becomes effective either on the 30th day after the issuer notifies the physician or provider of the rescission determination (as indicated on the notice issued under §19.1732(d)), or, if the physician or provider appeals the determination, on the fifth day after the date the IRO affirms the issuer's determination to rescind the exemption.

SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §12.4

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §12.4 under Insurance Code §4201.003 and §36.001.

Insurance Code §4201.003 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 4201.

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.

§12.4. Applicability.

(a) All independent review organizations (IROs) performing independent reviews of adverse determinations made by utilization review agents, health insurance carriers, health maintenance organizations, and managed care entities must comply with this chapter. IROs performing independent reviews of adverse determinations made by certified workers' compensation health care networks and workers' compensation insurance carriers must comply with this chapter, subject to §12.6 of this title (relating to Independent Review of Adverse Determinations of Health Care Provided Under Labor Code Title 5 or Insurance Code Chapter 1305).

(b) All IROs performing independent reviews of adverse determinations regarding preauthorization exemptions made under Insurance Code Chapter 4201, Subchapter N, concerning Exemption From Preauthorization Requirements for Physicians and Providers Providing Certain Health Care Services, must comply with §12.601 of this title (relating to Preauthorization Exemptions).

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 August 12, 2022.

TRD-202203027
James Person
General Counsel
Texas Department of Insurance
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Proposal publication date: April 8, 2022
For further information, please call: (512) 676-6587

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SUBCHAPTER G. EXEMPTIONS FOR INDEPENDENT REVIEW ORGANIZATIONS

28 TAC §12.601

STATUTORY AUTHORITY. The Commissioner adopts new §12.601 under Insurance Code §4201.003 and §36.001.

Insurance Code §4201.003 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 4201.

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.

§12.601. Preauthorization Exemptions.

(a) In this section, the following words and terms have the following meanings unless context clearly indicates otherwise.

(1) Adverse determination regarding a preauthorization exemption--Has the same meaning as defined in §19.1730 of this title (relating to Definitions).

(2) Issuer--Has the same meaning as defined in §19.1730 of this title.

(3) Physician--Has the same meaning as defined by Insurance Code §843.002, concerning Definitions.

(4) Preauthorization exemption--Has the same meaning as defined in §19.1730 of this title.

(5) Provider--Has the same meaning as defined in Insurance Code §843.002.

(b) An independent review of an adverse determination regarding a preauthorization exemption, the independent review organization (IRO) that performs the review, and the appropriate issuer are subject to Insurance Code Chapter 4201, Subchapter N, concerning Exemption from Preauthorization Requirements for Physicians and Providers Providing Certain Health Care Services, and the associated standards and requirements in this chapter, except as otherwise specified in this section.

(c) For purposes of this section, a physician or provider should be identified using the National Provider Identifier under which a physician or provider makes preauthorization requests.

(d) Notwithstanding §12.501 of this title (relating to Requests for Independent Review), an issuer must submit a request for independent review of an adverse determination regarding a preauthorization exemption to the department on behalf of a physician or provider.

(e) If a second random sample is requested under Insurance Code §4201.656(d), concerning Independent Review of Exemption Determination, and available as provided in §19.1733(e) of this title (relating to Retrospective Reviews and Appeals of Preauthorization Exemption Rescissions), the IRO must identify, from the list of eligible claims provided by the issuer, a second random sample of at least five and no more than 20 claims. The IRO must review each claim that the issuer retrospectively reviewed and determined did not meet the applicable medical necessity criteria and, if applicable, each claim included in the second random sample identified by the IRO. Consistent with Insurance Code §4201.656(b), the IRO may request any medical records needed to evaluate the claims subject to review and must provide at least three business days for receipt of records. Based on the total number of claims in the initial random sample and, if applicable, the second random sample, the IRO must determine

whether to affirm or overturn the issuer's determination that less than 90 percent of the claims met the applicable medical necessity criteria.

(f) Appeals for an adverse determination regarding a preauthorization exemption to an IRO follow the department's process for assigning IROs under §12.502 of this title (relating to Random Assignment), except that notification under §12.502(a) will only be made to the IRO, the issuer, and the physician or provider.

(g) Section 12.206 of this title (relating to Notice of Determinations Made by Independent Review Organizations) does not apply to a review by an IRO under this section. An IRO must complete its review and provide timely notice to an issuer regarding its determination, consistent with the timeframe provided under Insurance Code §4201.656(c).

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 August 12, 2022.

TRD-202203028
James Person
General Counsel
Texas Department of Insurance
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Proposal publication date: April 8, 2022
For further information, please call: (512) 676-6587

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CHAPTER 19. LICENSING AND REGULATION OF INSURANCE PROFESSIONALS

The Commissioner of Insurance adopts amended 28 TAC §19.1710 and new 28 TAC Chapter 19, Subchapter R, Division 2, §§19.1730 - 19.1733, concerning requirements prior to issuing an adverse determination and preauthorization exemptions. These amended and new sections implement House Bill 3459, 87th Legislature, 2021. The Commissioner adopts §19.1710 without changes to the proposed text published in the April 8, 2022, issue of the *Texas Register* (47 TexReg 1856). This section will not be republished. The Commissioner adopts §§19.1730 - 19.1733 with revisions made in response to public comments. These sections will be republished.

REASONED JUSTIFICATION. Amended §19.1710 and new Division 2, §§19.1730 - 19.1733 are necessary to conform the Texas Department of Insurance's (TDI) utilization review rules with HB 3459, which allows an issuer such as a health maintenance organization or insurer to grant, deny, or rescind an exemption from preauthorization requirements under certain conditions. Under the adopted rules, an issuer must provide notice of an initial exemption or denial of an exemption not later than October 1, 2022, based on an evaluation period of January 1, 2022, through June 30, 2022.

The amended and new sections are described in the following paragraphs.

Section 19.1710. Amended §19.1710 clarifies that a utilization review agent must afford the provider of record a reasonable opportunity to discuss the plan of treatment for the enrollee with a physician licensed to practice in Texas. This section follows Insurance Code §4201.206, as amended by HB 3459, in which new language specifies that an agent must provide to a health care provider an opportunity to discuss the health care service in question with a physician licensed to practice medicine "in this state." The section is also amended to add a sentence stating, in accordance with Insurance Code §4201.206, that if the health care service was ordered, requested, or provided by a physician, the opportunity to discuss the health care service in question must be with a physician licensed to practice medicine in Texas and who has the same or similar specialty as the requesting physician. Physicians holding Texas Administrative Medicine Licenses under the Medical Practice Act and Texas Medical Board rule, 22 TAC §172.17, can meet this standard. TDI has historically interpreted §4201.206 to include Texas Administrative Medicine Licenses, and TDI believes that recent changes to Insurance Code §4201.206 do not indicate that this long-standing position should change.

Division 2. Preauthorization Exemptions. TDI adds new Division 2, titled "Preauthorization Exemptions," to distinguish §§19.1730 - 19.1733 from existing rules in Subchapter R, which relate to utilization review and preauthorization procedures generally. A new Division 1 with the heading "Utilization Reviews" and consisting of §§19.1701 - 19.1719 has been administratively designated in Chapter 19, Subchapter R to distinguish between the sections that address utilization review and those that address preauthorization exemptions.

Section 19.1730. New §19.1730 defines terms used in the new division: "adverse determination regarding a preauthorization exemption," "denial of preauthorization exemption," "eligible preauthorization request," "evaluation," "evaluation period," "issuer," "particular health care service," "physician," "preauthorization," "preauthorization exemption," "provider," "random sample," "rescission of preauthorization exemption," and "treating physician or provider." The definitions clarify:

- the nature of an adverse determination regarding a preauthorization exemption, as compared with the meaning of adverse determination under §19.1703;

- the number of eligible preauthorization requests needed for granting or denying a preauthorization exemption;

- the threshold percentage of accepted claims needed for an issuer to grant, deny, or rescind a preauthorization exemption;

- the nature of an evaluation depending on whether the physician or provider currently has a preauthorization exemption in place;

- the time allowed for evaluation periods; and

- the scope of "particular health care service" to include prescription drugs.

TDI changes the definition of "adverse determination regarding a preauthorization exemption" as proposed to add the word "retrospectively" and include a reference to paragraph (4)(B) of the section, where the applicable evaluation is defined, to add clarity and consistency with other changes made in response to comments.

TDI changes the definition of "denial of preauthorization exemption" as proposed in response to comment to add clarity by inserting a reference to paragraph (4)(A) of the section and adding references to the newly defined term, "eligible preauthorization request."

Along with the proposed defined terms, TDI adopts a new defined term "eligible preauthorization request" in response to comments to clarify which preauthorization requests may be counted as approved or denied for the purposes of an evaluation.

TDI changes the definition of "evaluation" as proposed in response to comments to specify that the evaluation for a continuation or rescission analysis is based on a retrospective review of a random sample of claims. The definition is changed to add references to "eligible" preauthorization requests, "retrospective" review, and "payable" claims. TDI also clarifies that claims submitted "in connection with" a physician or provider are subject to an evaluation of the physician's or provider's continued eligibility for an exemption. TDI adds the word "meeting" to clarify that a determination the claims would have been approved is based on meeting the issuer's applicable medical necessity criteria. TDI makes a grammatical change at the end of the definition of "evaluation," to replace the semicolon with a period.

TDI changes the definition of "provider" as proposed by removing unnecessary text after citing to Insurance Code §843.002.

TDI changes the definition of "rescission of preauthorization exemption" as proposed in response to comments to add a reference to paragraph (4)(B) of the section, where the applicable evaluation is defined, and replace language regarding the physician licensure requirement with a reference to Insurance Code §4201.655(b).

TDI changes the definition of "treating physician or provider" as proposed to reference "health and medical care" in place of "health care for an illness or injury," and add "or ordering" to add clarification and avoid the appearance of unintentionally narrowing the scope of the definition. TDI also replaces "includes" with "can include" to improve the grammatical structure in the second sentence of the definition.

TDI renumbers the paragraphs of the defined terms that follow the new defined "eligible preauthorization request."

Section 19.1731. New §19.1731 describes the initial preauthorization exemption process. Subsection (a) clarifies that for purposes of Division 2, a "physician" or "provider" should be identified using the National Provider Identifier (NPI) under which a physician or provider makes preauthorization requests. TDI changes subsection (a) as proposed to add a reference to the abbreviation "NPI."

Subsection (b) states that an issuer must review the outcomes of no fewer than five eligible preauthorization requests for a particular health care service in a given evaluation period and determine whether the physician or provider qualifies for an exemption. TDI specifically sought comments on this minimum threshold for review and in response to comments changes the proposed text to reduce it from 20 preauthorization requests to five eligible preauthorization requests.

Subsection (c) provides the requirements for an issuer to rescind a preauthorization exemption that has already been granted to a physician or provider, which must be rescinded consistent with Insurance Code §4201.655. TDI changes subsection (c) as proposed to add a reference to the definition of evaluation in §19.1730(4)(B).

Subsection (d) clarifies that if a treating physician or provider without a preauthorization exemption relies on another physician's or provider's preauthorization exemption in violation of subsection (d), the physician or provider who has qualified for an exemption may be considered by the issuer as failing to substantially perform the health care service. In that situation, the issuer may reduce or deny payment for that service under Insurance Code §4201.659. In response to comments, TDI changes subsection (d) as proposed to consistently reference a physician "or provider" and clarifies that it is the exempt physician or provider that would be considered to have failed to provide a service if the treating physician or provider inappropriately relied on the exempt physician's or provider's exemption. In response to comments and questions, TDI adds a sentence to subsection (d) that clarifies that supervised providers, such as nurses and physician's assistants, may rely on the supervising physician's exemption in certain circumstances.

Finally, TDI adds new subsection (e) to the text of §19.1731 as proposed to address concerns that issuers would be unable to operationalize exemptions for ordering or referring physicians and providers, unless the rendering and billing provider includes the exempt provider's NPI on the claim form.

Section 19.1732. New §19.1732(a) states that an issuer must provide notice to the physician or provider when granting a preauthorization exemption, and it requires that an exemption be in place for at least six months before it can be rescinded. In response to comments, TDI changes subsection (a) as proposed to require the exemption notice to include a plain language explanation of the effect of the preauthorization exemption and any claim coding guidance needed to document the exemption, consistent with §19.1731(e). If an issuer subsequently receives a preauthorization request from the physician or provider for a service for which the physician or provider has been granted an exemption, the issuer must provide notice in accordance with Insurance Code §4201.659(e).

For denials of preauthorization exemptions, new §19.1732(b) states that an issuer must provide notice of the denial to the physician or provider and list the reasons for a denial in accordance with Insurance Code §4201.655(c)(2). In response to comments, TDI changes subsection (b) as proposed to also require a denial notice to include a description of how to appeal the denial using the issuer's complaints and appeals processes and information on how to file a complaint with TDI.

New §19.1732(c) provides a required timeframe for issuing notices of exemption or denial following the initial and subsequent evaluation periods and clarifies that such notices are required with respect to a particular health care service only if the physician or provider had submitted at least five eligible preauthorization requests during the evaluation period. TDI specifically sought comments on this minimum duration for exemptions and the timeframe for issuing notices, and whether either should be modified. In response to comments, TDI changes subsection (c) as proposed to clarify that an issuer must provide notice within five days of completing an evaluation, as required by Insurance Code §4201.659(d). Consistent with the change to §19.1731(b) as proposed, TDI also changes the minimum threshold from 20 to five eligible preauthorization requests. To conform with agency style, TDI removes the parenthetical reference following §19.1731(b), since the reference is added as part of the change to subsection (a).

New §19.1732(d) describes the requirements of the notice that must be delivered to a physician or provider when rescinding a preauthorization exemption, the requirements for a physician or provider to appeal a rescission of preauthorization exemption, and notes an example form (LHL011) available on TDI's website. In response to comments, TDI changes the text of subsection (d) as proposed to clarify that rescission notices must be provided during the months specified in Insurance Code §4201.655(a)(1). TDI changes subsection (d)(1) as proposed to specify that the rescission notice must include the date the notice is issued and changes subsection (d)(2) as proposed to clarify that issuers

must allow providers to return appeal forms by mail or electronic means. TDI changes subsection (d)(3) as proposed to provide that the notice must state the total number of eligible claims with respect to the health care service subject to rescission and the number of claims included in the random sample. TDI changes subsection (d)(3)(A) as proposed to remove the reference to retrospective review of additional claims that were not included in the random sample. In response to comment, TDI changes subsection (d)(3)(C)(i) to clarify that the rescission notice must state if the principal reason for a determination is based on a failure to submit specified medical records. TDI makes a grammatical change in subsection (d)(3)(C)(iv) as proposed by replacing "that" with "who," when referencing the physician, doctor, or other health care provider. TDI changes subsection (d)(5) as proposed in response to comment to require the rescission notice to include an instruction for the physician or provider to include applicable medical records with the request for independent review for any determination that was based on a failure to provide medical records.

TDI also adds new subsection (e) to the text of §19.1732 as proposed to require issuers to offer physicians and providers an option to request appeals and receive communications regarding preauthorization exemptions by mail or electronically and a method for physicians and providers to indicate their preferred contact information for these communications.

Section 19.1733. New §19.1733(a) clarifies that Insurance Code §4201.305 does not apply to retrospective reviews conducted under Insurance Code §4201.659(b)(1).

New §19.1733(b) provides that a physician or provider has at least 30 days to provide medical records or other documents for the issuer to conduct an evaluation. Medical records can be requested only during an evaluation period or within 90 days following the end of an evaluation period. If the physician or provider does not provide the necessary records for an issuer to make a determination, the issuer may determine that the claim would not have met the screening criteria. In response to comment, TDI changes the text as proposed to add a reference to the applicable definition of evaluation in §19.1730(4)(B). TDI makes a nonsubstantive formatting change to the proposed text to capitalize "Contact" in the reference to "URA Contact." TDI also changes language in subsection (b) as proposed to clarify that medical records requested "in connection with a retrospective review of a random sample of claims as authorized under Insurance Code §4201.659(b)(1) should be limited to no more than 20 claims. . ."

New §19.1733(c) states that a physician or provider may request an independent review of the retrospective review that resulted in the rescission of preauthorization exemption at any time before the rescission is effective. In response to comment, TDI changes the proposed text to clarify that the date of the request must be documented on the form and the form must be sent electronically or postmarked before the date the rescission becomes effective.

New §19.1733(d) provides that a physician or provider must submit to the issuer the form provided by the issuer under §19.1732(c) in order to request an independent review. Upon receipt, the issuer must submit the request for independent review to TDI, consistent with adopted new 28 TAC §12.601 (included in a separate adoption) and 28 TAC §19.1717. In response to comment, TDI changes subsection (d) as proposed to require that a physician or provider include applicable records with any request for independent review where one or more determinations subject to review were based on a failure to provide specified medical records. In the last sentence of subsection (d), TDI clarifies that the requirement for the issuer to submit the request for independent review applies only if the issuer seeks to proceed with the proposed rescission. TDI adds a reference to Insurance Code §4201.402 to clarify the obligation of the issuer to provide information concerning the appeal to the independent review organization (IRO) in a timely manner.

TDI changes new §19.1733(e) as proposed in response to comments. The subsection now states that a physician or provider may request that the IRO review another random sample of claims, as authorized under Insurance Code §4201.656(d), if the notice of rescission of preauthorization exemption identified that at least five additional claims were eligible for review but not included in the original random sample. If the request for a new random sample is made, the issuer must provide a listing of all eligible claims that were not included in the original random sample when submitting the request for independent review to TDI. The listing must be sufficiently detailed to allow the IRO to identify each payable claim to be used in an additional random sample, as provided in conforming changes to §12.601(e), which are discussed in a separate adoption.

New §19.1733(f) states that an issuer must communicate the determination of a review by the IRO to the physician or provider within five days.

New §19.1733(g) states that physicians and providers must continue to maintain medical records adequate to demonstrate that the exempted services they provide meet medical guidelines, in order to retain a preauthorization exemption. Most, if not all, physicians and providers subject to this adopted rule already maintain records for a sufficient amount of time. *See, e.g.,* 22 TAC §76.4(a) (Texas Board of Chiropractic Examiners rule imposing a six-year records retention requirement); 22 TAC §165.1(b)(1) (Texas Medical Board rule imposing a six-year records retention requirement); and 22 TAC §§291.34(a), 291.75(a), and 291.94(a) (Texas State Pharmacy Board rules imposing a two-year records retention requirement). If there are no adequate records for an issuer to use during an evaluation, an exemption may be rescinded.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received written comments from 32 commenters, and two commenters spoke at a public hearing on the proposal held on May 12, 2022.

Commenters in support of the proposal were: Texas Healthcare and Bioscience Institute.

Commenters in support of the proposal with changes, were: America's Health Insurance Plans; eviCore Healthcare; Harris Health System; National Infusion Center Association; Oncology Consultants, P.A.; Pharmaceutical Care Management Association; Quest Diagnostics, Sendero Health Plans, Inc.; Texas Academy of Family Physicians; Texas Association of Community Health Plans; Texas Association of Health Plans; Texas Chapter of the American College of Cardiology; Texas Chapter of the American College of Physicians Services; Texas College of Emergency Physicians; Texas Medical Association; Texas Neurological Society; Texas Oncology; Texas Orthopaedic Association; Texas Pain Society; Texas Pediatric Society; Texas Public Policy Foundation; Texas Society for Gastroenterology and Endoscopy; Texas Society of Pathologists; Texas Society of Plastic Surgeons; Texas Urological Society; TSAOG Orthopaedics & Spine; one individual; two state representatives; and two state senators.

Comments on Chapter 19 Generally

Comment. One commenter expresses support for the amendments.

Agency Response. TDI appreciates the support.

Comment. One commenter strongly encourages TDI to allow preauthorization requests to be made by clinical laboratories for laboratory services, and permit clinical laboratory claims to be measured to grant or deny preauthorization exemption requests. The commenter suggests that these modifications would ensure that clinical laboratories are evaluated fairly and able to obtain the exemption stated in the law.

Agency Response. TDI disagrees that a change is needed. Preauthorization exemptions are available to any physician or provider who makes preauthorization requests with respect to a particular health care service. The definitions of "provider" and "health care services" in Insurance Code §843.002 are generally broad enough to encapsulate clinical laboratories and laboratory services, respectively.

Comment. One commenter suggests that insurance companies and pharmacy benefit managers may have initiated more denials in anticipation of the rule, so that physicians would be denied access to a prior authorization exemption.

Agency Response. TDI recognizes that the statute may have unavoidable incentives with respect to approvals and denials as implementation became imminent, but TDI is unable to address that issue through rulemaking. TDI will monitor issuers' compliance with the law and rules and take appropriate action as necessary.

Comments on §19.1710

Comment. Two commenters support allowing physicians holding administrative medical licenses to discuss the plan of treatment for the enrollee with a physician licensed to practice medicine in Texas. Another commenter expresses support for the proposed amendments and states the language is critical in ensuring justified discussions during utilization review. One commenter states that the amendments may have the unintended consequence of preventing a plan from providing a specialty expert who has a higher level of specialty knowledge than the ordering physician.

Several commenters jointly disagree with TDI's assertion that a full medical license is not needed to act as a utilization review peer. They state that the limitations placed on an administrative medical license make the licensee ill-suited for the functions performed by the Texas-licensed physician who conducts the peer-to-peer call. They further state that the use of a limited license for the practice of administrative medicine is inconsistent with both the statutory intent and public policy goals of HB 3459. They recommend adding a new subsection (b) to §19.1710 that provides that a "physician licensed to practice medicine in Texas" means an individual with a full, unrestricted license to practice medicine in Texas issued by the Texas Medical Board (TMB).

Agency Response. TDI disagrees that a change is needed. In 2005, the Legislature enacted Occupations Code §155.009, which directs TMB to adopt rules on licensure for administrative medicine. In 2010, TMB adopted 22 TAC §172.17, establishing criteria for obtaining a limited license for the practice of administrative medicine. The rules define "administrative medicine" to mean "administration or management utilizing the medical and clinical knowledge, skill, and judgment of a licensed physician, and capable of affecting the health and safety of the public or any person." The rules make clear that a physician who holds an administrative medicine license is subject to the Medical Practice Act and the same rules of the board as a person holding a full Texas medical license. In 2013, TDI updated utilization review rules and added a requirement in 28 TAC §19.1706(a), implementing Insurance Code §4201.153(d) and §4201.252(a) and providing that all health care providers that perform utilization review be appropriately trained, qualified, and currently licensed (including via an administrative license).

In 2019, the Legislature enacted Senate Bill 1742, 86th Legislature, which amended Insurance Code Chapter 4201 in several places to require utilization review to be conducted under the direction of a "physician licensed to practice medicine in this state." In implementing SB 1742, TDI has accepted Texas administrative licenses for those physicians. HB 3459 amended Insurance Code §4201.206 to require that a peer-to-peer discussion (which must be offered before an adverse determination may be issued) must be with "a physician licensed to practice medicine in this state and who has the same or similar specialty as the physician" who ordered, requested, or is to provide the health care service. This change did not alter utilization review more broadly or otherwise exclude administrative medical licensees from participating in the peer-to-peer discussions.

From a practical perspective, TMB rules generally require physicians to be engaged in the active practice of medicine on a "full-time basis" in order to obtain a full medical license. *See* 22 TAC §163.11 ("full-time basis" means "at least 20 hours per week for 40 weeks' duration during a given year). Physicians employed by health plans generally do not meet this standard. Therefore, requiring physicians who perform utilization review and conduct peer-to-peer reviews under Insurance Code §4201.206 to hold a full medical license, rather than an administrative license, would significantly limit the ability of health plans to hire full-time physicians to perform utilization review.

Comments on §19.1730

Comment. One commenter suggests a modification to §19.1730(2) to specifically reference the evaluation in the definition of "denial of preauthorization exemption." The suggested change would read "A determination that a physician or provider does not qualify for a preauthorization exemption based on the issuer conducting an evaluation, as defined in [§19.1730(4)(A),] of preauthorization requests and demonstrating that the physician or provider received full and final approval for fewer than 90% of the preauthorization requests made for a particular health care service during the most recent evaluation period."

Agency Response. TDI agrees and has made the suggested change.

Comment. A commenter states that the proposed definition of "denial of preauthorization exemption" in §19.1730(2) may encourage delay as a result of including "full and final approval" as part of the term. The commenter suggests that insurers often include modifications to prior authorization approvals, and that this language may encourage the addition of modifications. The commenter states that these modifications could delay or prevent exemptions, and ultimately delay access to care or pose unnecessary risk if modifications are routine.

Several commenters express concern about what TDI may mean by "full" approval and request clarification. Many prior authorizations are reviewed on the basis of Current Procedural Terminology (CPT) codes, either for a specific CPT code or

for a group of codes. In addition, the commenters state that for a three-drug regimen, each drug should be considered a separate service. They ask whether the language concerning "full" approval is intended to apply so that a denial of any part of a three-drug regimen results in the service not being approved for granting a preauthorization exemption.

Agency Response. TDI agrees that if a preauthorization request is modified with agreement of the provider and approval of the issuer, it should be counted as an approved preauthorization request for the purposes of calculating eligibility for a preauthorization exemption with respect to the service that is approved. TDI modifies the definition of "denial of preauthorization exemption" to remove the words "full and final" and add the term "eligible" before the references to "preauthorization requests." For consistency, TDI modifies the definition of "evaluation" in §19.1730(4)(A) to add the word "eligible" before "preauthorization requests." TDI also adds a definition of "eligible preauthorization request" to clarify that a preauthorization request is eligible for the purposes of an evaluation if the request is submitted by the physician or provider and finalized by the health plan during the evaluation period, is not pending appeal, and has an outcome of either approving the request or issuing an adverse determination. If a preauthorization request includes more than one particular health care service, the outcome for each service must be counted separately for the purposes of an evaluation.

Comment. Several commenters jointly suggest that the definition of "evaluation" in proposed §19.1730(3) (redesignated as §19.1730(4)) be clarified to specify that the retrospective review for a continuation or rescission analysis is based on a retrospective review of a random sample of claims. The commenters express concern that the rule language as proposed could be construed as permitting additional claims selected by the issuer to be reviewed as part of the retrospective review to assess continuation or rescission of a preauthorization exemption. Specifically, they suggest that §19.1730(3)(B) read "with respect to a particular health care service for which a physician or provider has a preauthorization exemption, a retrospective review of a random sample of claims submitted by the physician or provider during the most recent evaluation period to determine the percentage of claims that would have been approved, based on meeting the issuer's applicable medical necessity criteria at the time the service was provided, which is conducted for the purpose of evaluating whether to continue or rescind a preauthorization exemption and consistent with Insurance Code §4201.655, concerning Denial or Rescission of Preauthorization Exemption."

Agency Response. TDI agrees that the suggested language better aligns with Insurance Code §4201.655(a)(2) and has made the change.

Comment. One commenter suggests that plans may not have the ability to evaluate exempt providers with fewer than five claims in an evaluation period. The commenter states that this would be a barrier to health plans evaluating quality of care.

Agency Response. TDI understands the commenter's concern but declines to make a change. Insurance Code §4201.655(a) permits an issuer to rescind an exemption "only . . . on the basis of a retrospective review of a random sample of not fewer than five and no more than 20 claims. . . . " TDI also believes that the minimum threshold for receiving an initial preauthorization exemption provides an adequate method to ensure that preauthorization exemptions are granted to physicians and providers who have demonstrated appropriate clinical judgment.

Comment. One commenter states that, based on the definition of "evaluation" in §19.1730(3)(B) (redesignated as §19.1730(4)(B)), it is possible that a provider who is not the treating provider could become perpetually exempt. Since many referring providers do not perform the treatments and will never submit a claim for the service, there would be no way to pull a sample of claims for exempt referring providers. The commenter also suggests that in situations where the referring and treating providers differ--because of the absence of an existing authorization--health plans cannot approve the claim for a non-exempt treating provider if there is no reference on the claim to the exempt ordering (referring) provider. The commenter recommends that TDI require all claims to include ordering provider information on the claim form - HCFA Box 17 (name) and Box 17B (NPI).

Another commenter states that the term "claims submitted" is broad and could be interpreted to include complete claims, rejected claims, claims denied due to bundling/coding errors, etc. The commenter recommends the language be revised to read "payable claims submitted."

Another commenter asks whether pharmacy benefit managers are expected to determine a provider's rate for each prescription drug, for all requests, for particular drug classes, or for some other grouping of medications.

Agency Response. TDI agrees that to take advantage of a preauthorization exemption, the claim must include information that identifies the physician or provider with the exemption. In response to this comment, TDI adds subsection (e) to §19.1731 to require the treating physician or provider to include the name and NPI of the ordering physician or provider on the claim in fields 17 and 17B of CMS Form 1500, or in fields 76 - 79, or another appropriate field in Form UB-04 or in the corresponding fields for electronic claims using the ASC X12N 837 format. The issuer may provide coding guidance to physicians and providers to ensure this information is appropriately captured on the claim.

Absent this information, an issuer may treat the claim as subject to an otherwise applicable preauthorization requirement. TDI also modifies the definition of "evaluation" in §19.1730(4)(B) by replacing the phrase "claims submitted by the physician or provider during the most recent evaluation period," with "*payable* claims submitted by *or in connection with* the physician or provider during the most recent evaluation period." This change removes the implication that an evaluation of a preauthorization exemption is possible only for claims submitted by the treating provider. All claims that rely on a physician's or provider's exemption are subject to an evaluation to determine continued eligibility for an exemption, whether the claim is submitted by the exempt provider or the claim references the exempt provider's information on the claim as required by §19.1731(e).

With respect to the question of how evaluations must be conducted for prescription drugs, this will depend on the issuer's listing that identifies the particular health care services that are subject to preauthorization. Refer to the definition of "particular health care service" in §19.1730(6).

Comment. Several commenters jointly state they would strongly object to any further delay in defining the initial evaluation period. In addition, the commenters state that it is unclear how TDI intends to implement proposed §19.1730(4)(C) (which TDI redesignates as §19.1730(5)(C)). The commenters state that the rule would permit plan-determined six-month evaluation periods for the rescissions, provided that notice of rescission (in either Jan-

uary or June of the year) is no more than two months after the evaluation period ends. The commenters have concerns about plan-determined evaluation periods, as this could promote issuer manipulation of the preauthorization exemption results and lead to shorter preauthorization exemption durations. The commenters ask that TDI (1) make it clear that a plan cannot duplicate any months from an evaluation period that was already reviewed, and (2) adopt language similar to that in proposed §19.1732.

Another commenter states that the timeframe of auditing denials may require additional attention by TDI. The commenter states concern that the timing of denials does not appear to line up with the six-month look-back period, as denials are only allowed in January and June.

Another commenter states that it appears that the rule gives issuers flexibility to determine a six-month period that could be used for the rescission evaluation period, but that the language is confusing. The commenter requests that TDI clarify the language.

Agency Response. TDI declines to make a change to the evaluation periods. While there are rare circumstances when an evaluation period for a rescission could overlap with a previous evaluation period in which an exemption was granted, this is a result of the statutory requirement that rescissions occur only in January or June of each year. Section 19.1732(a) requires than an exemption be in place for at least six months before it may be rescinded. TDI clarifies that the requirement in Insurance Code §4201.655(a)(1) that rescissions occur only in January or June does not apply to denials. If an exemption is not in place, the issuer must adhere to the evaluation period specified in §19.1730(5)(B). TDI also clarifies that issuers do have some flexibility to determine the six-month evaluation period on which a notice of rescission is based. The phrase "or the subsequent six-month periods that follow" would be relevant if a rescission is not finalized.

Comment. Two commenters specifically assert that TDI has the authority to include drug benefits and prescription drugs in the proposed §19.1730(6) definition of "particular health care service," which TDI redesignates as §19.1730(7). The commenters note that Insurance Code §4201.651 states that terms defined by Insurance Code §843.002, including "health care services," "physician," and "provider," have the meanings assigned by that section. Further, the commenters state that the definition of "health care services" in Insurance Code §843.002 specifically includes pharmaceutical services. Another commenter states that preauthorization exemption provisions of HB 3459 must apply to health care services, including prescriptions.

On the other hand, another commenter states that there are no references to prescription drugs in HB 3459, and a plain language reading of the bill shows the exemption requirements apply only to health care services provided, and not for products such as prescription drugs or devices.

Another commenter also opposes the inclusion of prescription drugs under the definition of a "particular health care service." The commenter suggests that the provisions of HB 3459 contain no language that would expand the purview of these preauthorization exemptions to prescription drugs. Specifically, HB 3459 provides no statutory authority to apply the preauthorization exemption and payment requirements to products like prescription drugs. Under the plain language of the law, the requirements apply only to "health care services." While pharmacy "services" would likely be included, prescription drugs by plain definition are not included within health care "services" or pharmacy "services"--they are supplies and products. So HB 3459's requirements simply do not apply. In the commenter's view, pharmaceutical "services" are not the same thing as prescription drugs. The commenter notes that there are CPT codes specific to pharmaceutical services and procedures, while prescription drugs are billed using different coding systems. The commenter also notes that lawmakers have recognized "pharmacy procedures," such as in Insurance Code §1451.1261, and argues that "services" and "procedures" are different from drugs.

In addition, two commenters state that applying preauthorization exemption requirements to prescription drugs would create a very dangerous and expensive new mandate to cover and pay for prescription drugs, including opioids and other dangerous narcotics, with no ability to check for dangerous drug interactions or to confirm that risky drugs are appropriate for certain patients. One commenter raises further concerns, including that health plans often suggest more appropriate drugs, whether certain high-risk medications ought to be exempted from the program, whether there are allowances for considerations such as clinical appropriateness and patient safety, and how it would work when claims are for opioid drugs. The commenter also asks whether application of the exception would be permitted at the generic-product-identifier level. The commenter asks, too, whether management of formulary exceptions by pharmacy benefit managers should be included in preauthorization exemption evaluations.

Agency Response. TDI declines to make a change. Insurance Code §843.002(13) defines "health care services" as "services provided to an individual to prevent, alleviate, cure, or heal human illness or injury," including pharmaceutical services and medical care, and care or services incidental to pharmaceutical services and medical care. TDI recognizes that in certain circumstances, the term "services" is distinguishable from products or commodities. But in the context of HB 3459, TDI believes the Legislature intended that "pharmaceutical services," as defined in §843.002, includes prescription drugs. *See* Webster's Ninth New Collegiate Dictionary 881 (1987) (the adjective "pharmaceutical" means "of, relating to, or engaged in pharmacy," which in turn means "the art or practice of preparing, preserving, compounding, and dispensing drugs[.]"). This position is consistent with TDI rules implementing SB 1742 (adopted at 46 TexReg 1647).

TDI is also mindful of the real safety concerns that could arise from improper prescribing or unintentional drug interactions and encourages providers and plans to remain vigilant on this issue. However, as noted in the preceding paragraph, TDI believes it was the Legislature's intent that HB 3459 cover prescription drugs. But TDI encourages stakeholders to maintain and provide, as needed, additional information as exemptions are implemented to help policymakers monitor this issue.

Comment. One commenter states that HB 3459's preauthorization exemption provisions must apply to health care services, including prescriptions, supplies, products, and procedures. The commenter recommends that proposed §19.1370(6) (which TDI redesignates as §19.1730(7)) be changed to read "A health care service, as defined by §4201.651(2), Insurance Code, including a prescription drug, lab, x-ray, medical equipment, product, or supply, that is subject to preauthorization as listed on the issuer's website under §19.1718(j) of this title (relating to Preauthorization for Health Maintenance Organizations and Preferred

Provider Benefit Plans)." The commenter suggests that anything less than an expansive application of the term "health care services" would thwart the Legislature's goal of removing unnecessary barriers to patient access to care.

Agency Response. TDI agrees with the commenter's suggestion that the term "health care services" is broad but declines to make a change. The definition of "health care services" in Insurance Code §843.002(13) includes medical care and care or services incidental to medical care. By extension, the definitions of "medical care" in Insurance Code §843.002(19) and "practicing medicine" under Occupations Code §151.002(13) provide additional specificity regarding the meaning of the term "health care services." Collectively, these definitions provide sufficient clarity that the term would include drugs, labs, imaging, and medical equipment and supplies ordered by a physician to diagnose, prevent, and "treat a mental or physical disease or disorder or a physical deformity or injury by any system or method."

Comment. One commenter has concerns that §19.1730(6) as proposed (which TDI redesignates as §19.1730(7)) ties the definition of "particular health care service" to what is posted on the plan's website. The commenter has concerns about transparency and how this affects the implementation of HB 3459's requirements. The commenter notes that various plan websites do not approach preauthorization in a consistent format. The commenter suggests that TDI set clearer parameters on the definition of "particular health care service." The commenter does not necessarily oppose tying the definition of a "particular health care service" to the website posting in theory, but states that TDI needs to adopt clearer regulatory parameters for a "particular health care service" posting to avoid any potential gamesmanship and to promote transparency. The commenter suggests that TDI conduct additional monitoring of plan websites for compliance with statutory and regulatory requirements on the posting of preauthorization requirements to ensure that the goals of HB 3459 would be addressed through this definition.

Another commenter states that the proposed definition of "particular health care service" in §19.1730(6) removes critical patient protections because reasons for requesting a particular health care service can vary. For example, services ordered as a combination of service codes performed at the same time are different clinical services than each code ordered individually. The commenter recommends amending the definition of "particular health care service" to mean "a specific individual or combination of health care services, including prescription drugs, that is subject to preauthorization as listed on the issuer's website, used for a specific clinical indication."

Agency Response. TDI recognizes these concerns related to preauthorization procedures and acknowledges that different plans may have different preauthorization procedures. However, TDI does not agree that changes to the rule text are necessary and declines to amend the rule. TDI is not proposing specific additional regulations that would directly prescribe a singular method or format for preauthorization review. Existing §19.1718(j) provides detailed preauthorization requirements, including (1) information about how the preauthorization requirements must be posted; (2) that the posting must specify a detailed description of the process and procedure; and (3) that it must include an accurate list of the services for which the plan requires preauthorization, as well as specific information on each service subject to preauthorization.

TDI will monitor compliance with the provisions of HB 3459 and other insurance laws and take further regulatory action as necessary, including amendments to the sections included in this adoption order. TDI wishes to balance the efficacy of these rules while remaining mindful of the potential unforeseen consequences of prescribing overly detailed and inflexible procedures. TDI will use market conduct examinations, complaint information, and targeted data collections where necessary to follow implementation of HB 3459 and these rules. In addition, TDI will closely observe implementation and be ready to provide additional guidance as needed.

Comment. One commenter expresses concern about the overall lack of specificity of definitions in §19.1730. The commenter encourages TDI to specifically include clinical laboratories as part of the definition of "provider" and laboratory and pathology services as part of the definition of "particular health care service."

Agency Response. TDI declines to amend the proposed rule to include clinical laboratories as part of the definition of "provider" and laboratory and pathology services as part of the definition of "particular health care service." The definitions are clearly defined under Insurance Code §843.002 and are intended to be as broad as the statute allows.

Comment. A commenter states support for the definition of "preauthorization" in proposed §19.1730(8), which TDI redesignates as §19.1730(9). The commenter approves of not including concurrent utilization review within the scope of preauthorization, consistent with the definition in Insurance Code §4201.651.

Agency Response. TDI appreciates the support.

Comment. One commenter requests that TDI replace the word "privilege" in the proposed definition of "preauthorization exemption" under §19.1730(9), which TDI redesignates as §19.1730(10). The commenter states that there are rights and payment protections associated with a preauthorization exemption granted under the law. The commenter is concerned that the word "privilege" fails to accurately reflect the legal status of an exemption.

Agency Response. TDI declines to make a change, as the wording does not interfere with any of the rights and protections granted under the law.

Comment. Several commenters jointly suggest a change to the definition of "random sample" in proposed §19.1730(11), which TDI redesignates as §19.1730(12). The commenters are concerned that this proposed definition of "random sample" does not sufficiently (1) reflect what a true "random sample" is; (2) set parameters to avoid gamesmanship or cherry-picking in issuer selection of random samples; and (3) address TDI's prior questions regarding what happens when there are fewer than five total claims for a particular health care service during the relevant evaluation period. The commenters suggest TDI modify the language to reflect that the sample must be selected through a method that gives each claim an equal probability of being chosen for the sample.

The commenters suggest the definition be "A collection of at least five but no more than 20 claims for a particular health care service, selected through a method that gives each claim an equal chance of being chosen for the sample, for the purpose of conducting an evaluation, as defined by [§19.1730(4)(B)], of physician's or provider's continued eligibility for or rescission of a preauthorization exemption. The random samples must be selected as follows: (A) If only five to 20 claims were submitted by the physician or provider during the most recent evaluation period, all of the claims submitted by the physician or provider

during the most recent evaluation period will constitute the random sample; (B) If more than 20 claims were submitted by the physician or provider during the most recent evaluation period, 20 of those claims will constitute the random sample but those claims must be selected through simple random sampling, which requires using randomly generated numbers to choose a sample. Specific metrics may not be applied by the issuer in selecting a random sample, such as specific patient cohorts or site of service, which may favor the issuer's decision-making. An issuer must maintain records demonstrating the simple random sampling used for each sample under this paragraph. If an issuer does not maintain records and the physician or provider files a complaint with the department or the department performs an audit or review regarding the sample selection, the department shall presume that the sampling was not random and automatically continue any preauthorization exemption that was being reviewed using a non-random sample."

Agency Response. TDI understands the commenters' concerns but declines to make a change. Insurance Code §4201.655(a)(2) gives issuers discretion regarding the size of the random sample, as long as it includes at least five and no more than 20 claims. The definition of "random sample" as proposed requires that the claims be selected "without method or conscious decision," which is consistent with the meaning of "random."

Comment. Several commenters jointly express concerns with the language in the definition of "rescission of preauthorization exemption" as proposed in §19.1730(12), which TDI redesignates as §19.1730(13). The commenters state that the language as proposed fails to clarify that a rescission must be based on a random sample of claims under Insurance Code §4201.655 and reflect other limitations or conditions imposed on rescissions under the law and the proposed rules. They state that it omits statutory language specifying that if the determination is in regard to an exemption for a physician, then the decision must be made by an individual licensed to practice medicine in this state who has the same or similar specialty as that physician.

The commenters suggest the definition read "An adverse determination regarding a preauthorization exemption's continuation based on an evaluation, as defined in [paragraph (4)(B)] of this section, of a random sample of claims and determination made by an individual licensed to practice medicine in this state in which the issuer would have approved fewer than 90% of claims for a particular health care service. For a determination under this paragraph with respect to a preauthorization exemption held by a physician, the determination must be made by an individual licensed to practice medicine in this state who has the same or similar specialty as the physician."

Agency Response. TDI agrees with the comment and has modified the definition of a "rescission of preauthorization exemption" to reference the applicable definition of an evaluation related to a rescission determination and to replace the physician licensure language with a reference to Insurance Code §4201.655(b), in order to fully capture the statutory requirements without restating them unnecessarily. TDI also agrees that a rescission evaluation must be based on a random sample, but in the interest of brevity declines to repeat that in this definition, since it is already clearly stated in §19.1731(c) and Insurance Code §4201.655(a)(2), and incorporated into the referenced definition of "evaluation."

Comment. Several commenters jointly suggest new language for the definition of "treating physician or provider" as proposed in §19.1730(13), which TDI redesignates as §19.1730(14). They state the proposed definition is too restrictive, and that the "primarily responsible" and the "illness" or "injury" language could inappropriately narrow the scope of the law's application. They suggest the definition read "A physician or other provider who is treating or responsible for a patient's health care for an illness, physical or mental condition, disease, or disorder, injury, physical deformity, or providing preventative care. A 'treating physician or provider' includes a rendering physician or provider or a referring or ordering physician or provider."

Another commenter encourages TDI to limit the definition to the referring physician or provider, as the rendering provider generally does not evaluate the patient or determine the course of treatment. The commenter says that precertification exemption must be tied to the primary care physician who evaluated the patient and made the decision to request the service, not the physician who conducted the MRI and did not participate in the clinical decision-making to order the service for the patient.

Another commenter supports the proposed rules, stating that the rule successfully encourages claims payment by defining a treating physician or provider as including "a rendering physician or provider."

Agency Response. TDI agrees to modify the definition of "treating physician or provider" to clarify that care may be broader than in relation to an illness or injury. TDI also modifies the definition by replacing "health care for an illness or injury" with "health and medical care," and expanding the definition to include an "ordering" physician or provider. TDI disagrees with suggestions for further modifying the definition. TDI believes it is unnecessary to exclude a rendering physician or provider from the definition since a preauthorization exemption can be obtained only on the basis of a history of approved preauthorization requests. Also, a treating provider may both order and render the care.

Comments on §19.1731

Comment. One commenter suggests that §19.1731(a) be modified to require a physical location, in addition to an NPI, as a means of identifying a facility. The commenter argues that HB 3459 seeks to reduce burdens for providers that are considered exemplary in determining what care is medically necessary and appropriate; since this could vary by hospital location, the exemption should be determined for each location separately.

Agency Response. TDI declines to make a change. Applying the exemption analysis at a more granular level as the commenter suggests would create additional complexity and reduce the amount of data available to inform each exemption.

Comment. TDI specifically sought comment on the minimum number of preauthorization requests needed to qualify for an exemption. Many commenters provided valuable input.

Several commenters support the proposed provision requiring a minimum of 20 preauthorization requests for an exemption. One states that the requirement is sufficiently stringent and is aligned with the principles of HB 3459. Another commenter states the threshold provides guardrails for low-volume providers, who are most likely to benefit from utilization management under the preauthorization process. One of these commenters recommends that the number of the threshold be raised to 30, stating that 30 is considered by statisticians to be the minimum number to have an appropriate confidence interval.

Several commenters disagree with the proposed minimum threshold of 20 claims. One commenter states that the threshold

is too high and would prevent far too many capable physicians from receiving exempt preauthorization status.

Other commenters state that HB 3459, as written and passed, does not contain a minimum number of claims for a particular health care service that must be met for the initial granting of a preauthorization exemption. They say that imposing such a requirement at all, but certainly one that requires a minimum of 20 claims, would undercut the goal of the legislation by reducing the intended scope of its application. The commenters argue that applying a minimum of 20 preauthorization requests would inappropriately limit the number of exemptions. One commenter recommends lowering the minimum threshold for review to five claims. Other commenters recommend removing the language "The evaluation must be based on no fewer than 20 preauthorization requests." The commenters state that TDI's creation of the threshold lacks statutory authority and is contrary to the intended meaning of the statute. The commenters also disagree that the request must be both submitted and finalized during the relevant six-month period.

One commenter states that the proposed threshold would create unintended consequences if each particular health care service required no fewer than 20 preauthorization requests to be reviewed within a six-month period to determine whether the physician or provider qualifies for an exemption. The commenter notes that many providers will not have the minimum number of preauthorization requests of a particular health care service for each insurance carrier. The commenter also requests clarification on services that required preauthorization under the parent insurance carrier.

Several commenters jointly oppose §19.1731(c) as proposed. They state it effectively creates a minimum preauthorization submission threshold of 20 requests for reviewing, granting, or denying, and notifying of a grant or denial of a preauthorization exemption, which is in clear conflict with the plain language of the law and the intent of HB 3459.

Agency Response. TDI agrees to reduce the proposed minimum threshold of 20 preauthorization requests for a particular health care service because it may unintentionally limit the number of exemptions that are granted. As adopted, the rule sets a minimum threshold of five eligible preauthorization requests. TDI also adds a definition of "eligible preauthorization request" to clarify which preauthorization requests are counted in an evaluation. TDI declines to change the requirement that the minimum threshold be based on preauthorization requests submitted and finalized during the six-month evaluation period because this aligns with the basis for an evaluation provided in Insurance Code §4201.653(a).

While the statute does not expressly set a minimum number of preauthorization requests needed to qualify for an exemption, TDI does not believe that deprives the agency of authority to set a reasonable threshold by rule or that such a threshold is inconsistent with the statute. *See Tex. State Bd. of Exam'rs of Marriage & Family Therapists v. Tex. Med. Ass'n,* 511 S.W.3d 28, 33 (Tex. 2017) (A state agency "can adopt only such rules as are authorized by and consistent with its statutory authority.") (internal citations and quotations omitted). A primary purpose of HB 3459 is to reduce the burden of preauthorization requirements for providers who have demonstrated high approval rates and adherence to medical necessity guidelines. When there are fewer than five preauthorization requests, there may be insufficient evidence to warrant an exemption and the continued preauthorization requirement creates only a limited burden. Furthermore, without such a threshold, it could allow for abuse of the system (especially since issuers can only rescind a provider's exemption for a particular health care service if the provider has at least five claims for that service during an evaluation period). Ultimately, TDI believes this rule is in harmony with HB 3459's general objectives. *See id.* (a rule must be "in harmony with the general objectives of the act involved").

Comment. One commenter recommends modifying the rule to prevent exemptions from continuing in perpetuity, even if the provider retires, or if the standard of care evolves. The commenter suggests either requiring a minimum number of services to be provided for an exemption to be retained, or allowing an issuer to rescind an exemption with fewer than five claims after a reasonable length of time has passed without any new claims for the particular health care service.

Agency Response. TDI declines to make a change. Insurance Code §4201.655 provides a process and standards for issuers to rescind an exemption. Furthermore, if a provider is not actively practicing, the exemption would not be in use.

Comment. One commenter notes that some carriers have different preauthorization requirements for each of their plans. The commenter suggests that each provider be reviewed on the basis of all requests in total of all health care provided under a parent insurance company - not by each particular health care service.

Another commenter asks for clarification on whether exemptions are assessed separately for each health plan.

Another commenter asks whether reviews for provider exemption for medical benefit drugs and pharmacy benefit drugs are to be conducted separately if the preauthorization requirements are different and preauthorization determinations are made by a different entity.

Agency Response. TDI agrees that the minimum threshold should apply across each issuer and clarifies that an issuer may not conduct evaluations and grant exemptions separately for different plans offered by the issuer. Affiliated issuers are encouraged to perform a combined exemption analysis, to the extent practical. Likewise, to the extent that an issuer uses similar networks and utilization review processes to administer self-funded plans, TDI encourages issuers to use all applicable data when evaluating a physician's or provider's exemption with respect to a particular health care service.

Reviews for different health care services may occur separately, but a review with respect to a particular health care service must include all applicable data and may not be segmented, even if the issuer uses multiple administrators. TDI disagrees that an exemption review can occur across all health care services, because Insurance Code §4201.653(a) provides for an exemption "for a particular health care service."

Comment. One commenter asks whether the data included in the review to determine exemption eligibility would include claims data and actual preauthorization submissions. The commenter notes that not all payor preauthorization web portals include both the ordering physician NPI and the facility NPI. The commenter also asks for clarification in a situation where a facility requests preauthorization for the facility charges but the facility is not actually ordering the service. The commenter asks whether facilities will be awarded an exemption status of their own, and if not, how an affiliated facility will know of exemption status awarded to physicians. Relatedly, if facilities

will be awarded their own exemptions status, the commenter wants to know how those determinations would be made.

Agency Response. Evaluations for an initial exemption are based on the preauthorization requests submitted by a physician or provider for a particular health care service. The initial review does not include claims data. The exemption would be granted to the physician or provider who makes the preauthorization request. There is nothing in the statutes or rules that prevents a facility from qualifying for a preauthorization exemption. Evaluations for continued eligibility for an exemption are based on claims submitted by, *or in connection with,* a physician or provider for the particular health care service. If the preauthorization exemption is held by a physician or provider who orders but does not render a particular health care service, then the billing provider must obtain information about the exemption and include the ordering physician's or provider's NPI on the claim. Such claims would be evaluated to determine whether to continue or rescind an exemption held by the ordering physician or provider. TDI adds new subsection (e) to §19.1731 to clarify the information that must be included on a claim. Issuers must ensure that their systems enable providers to include all information required to identify exempt providers where needed to operationalize the exemptions.

Comment. Several commenters jointly recommend that TDI change the provision regarding rescissions to underscore that an issuer may, but is not required to, conduct an evaluation to determine whether to rescind an exemption. They also suggest the language clarify what the effect is when there is an insufficient number of claims to constitute a "random sample" of claims and suggest the language cross-reference the definition of "evaluation" to make clear that a rescission is based on a retrospective review of a random sample of claims. They suggest specific language to amend §19.1731(c).

Agency Response. TDI modifies §19.1731(c) to include a reference to the definition of the applicable evaluation under §19.1730(4)(B). TDI declines to make other changes, as Insurance Code §4201.653(c) makes clear that issuers may continue an exemption without performing an evaluation. Likewise, Insurance Code §4201.655(a)(2) makes clear that a rescission is not permitted if the issuer does not evaluate at least five claims. This standard is restated in the definition of "random sample" in §19.1730(12) and in §19.1731(c).

Comment. One commenter supports the provision in proposed §19.1731(d) under which a treating physician or provider who inappropriately relies on another physician's or provider's exemption in violation of the rule may be considered by the issuer as failing to substantially perform the health care service. The commenter also states opposition to the provision allowing a "rendering" provider who does not qualify for an exemption to take advantage of an exemption held by the ordering physician or provider.

Another commenter supports preventing a treating physician or provider who does not have a preauthorization exemption from relying on another physician's or provider's exemption. The commenter expresses strong concern with the proposed rules that allow a non-exempt rendering provider to use the ordering or referring provider's preauthorization exemption. The commenter recommends that a preauthorization exemption should be available only when the ordering provider is the same as the provider providing the direct care of the patient.

One commenter asks whether a referring physician without a preauthorization exemption can rely on the rendering physician's exemption. The commenter asks for additional clarification from TDI on how this would be tracked. Another commenter asks whether the exemption extends to anyone that may submit an authorization under the provider's authority.

Several commenters jointly recommend that §19.1731(d) be modified to also apply to treating providers. The commenters also recommend that TDI strike the last sentence of subsection (d), as providing a service in erroneous reliance on another physician's or provider's exemption is not the same as failure to substantially perform a service from a plain language standpoint. The commenters state that Insurance Code §4201.659, referenced in the proposed section, would imply that a preauthorization exemption is not in effect for--and could not be used by--the physician or provider to whom the issuer attempts to reduce or deny payment. The commenters provide alternate language for §19.1731(d). The commenters state that if TDI does not adopt their suggested language, they strongly recommend the inclusion of additional language, which they offer, to limit the ability of the issuer to utilize Insurance Code §4201.659. In addition, the commenters ask TDI to clarify the intent of the provision and include illustrative examples to aid understanding of the provision's application and impact.

Agency Response. TDI believes that limiting the application of a preauthorization exemption to care ordered and performed by a physician or provider would unintentionally limit the scope of the statute and inappropriately shift the responsibilities for obtaining preauthorization to other physicians and providers rather than reducing the burden of preauthorization when an exemption has been granted. With respect to evaluations and tracking exemptions generally, §19.1731(a) indicates that physicians and providers are identified using the NPI under which they make preauthorization requests. TDI adds new subsection (e) to §19.1731 to clarify how an exempt physician or provider would be identified on a claim for care that they order but do not perform or bill for.

TDI modifies §19.1731(d) in response to comments to consistently reference both physicians and providers, and TDI replaces the phrase "that treating physician" with "the physician or provider who has qualified for the preauthorization exemption." This change more accurately reflects that the exemption and its protections do not extend to care that is not ordered, referred, or provided by the physician or provider who qualifies for the exemption. TDI also adds a sentence to the end of subsection (d) to clarify that it is not a violation for a provider, such as a nurse or physician's assistant who practices under the supervision of a physician, to rely on the supervising physician's exemption if the provider appropriately orders care and requests preauthorization under the supervising physician's NPI.

To clarify this provision, TDI offers the following examples:

1. A nurse and physician's assistant work under the supervision of a physician and submit preauthorization requests under the physician's NPI. The physician qualifies for an exemption. In this case, the nurse and physician's assistant are permitted to rely on the physician's exemption because the physician is supervising the care and is considered to be a treating physician.

2. A physician works in a group practice with other physicians. Each physician in the group practice submits preauthorization requests under their individual NPIs. One physician qualifies for an exemption. In this case, the other physicians are not per-

mitted to rely on their partner's exemption; they must continue submitting preauthorization requests for their own patients. The physician with the exemption is not considered to be a treating physician with respect to the patients of his or her partners.

Comment. One commenter asks whether there will be a data repository that identifies all physicians and providers who have been awarded a preauthorization exemption.

Agency Response. Neither the statute nor the rules require issuers to publish data regarding preauthorization exemptions. However, TDI encourages issuers to consider how best to maintain and share this information with providers, in addition to the notices required under §19.1732.

Comment. One commenter asks if, in a situation where an exempted service is provided and the service transitions into a more complicated service, additional services, or surgery, whether all associated services will also be exempt.

Agency Response. Exemptions apply only with respect to particular health care services. If a service is performed that is not eligible for an exemption, then it could be subject to a retrospective review to evaluate whether it is medically necessary and would not have the protections that are provided in Insurance Code §4201.659.

Comments on §19.1732

Comment. One commenter disagrees with the requirement in §19.1732(a) that an exemption must be in place for at least six months before it may be rescinded. The commenter states that it would be cumbersome for both the health plan and provider. The commenter notes that industry standards already issue authorizations for cancer patients and other chronic disease treatments for one year, and the commenter suggests that the preauthorization exemption period be extended to an annual basis. The commenter states this would result in savings both toward patients' benefits premium dollars and the costly work involved in the process for both health plans and providers.

Another commenter also encourages a one-year exemption duration. This cycle would allow predictability around the staffing levels required to perform the administrative functions of preauthorization. The commenter states that having to adjust to a six-month basis and have the appropriate number of staff to support this will be nearly impossible. Another commenter states that the exemption should be determined by an annual evaluation period. The commenter states that, because of the seasonal nature of health care, a physician may perform a procedure or prescribe a treatment that requires preauthorization far more often in one six-month period than another.

Several commenters jointly state that they strongly support requiring the exemption to be in place for at least six months before it can be rescinded and strongly contend that any shorter period would be contrary to both the express language and spirit of the law.

Agency Response. TDI declines to make a change. Since the statute provides that a health plan may rescind a preauthorization exemption only in January or June, TDI does not believe the Legislature anticipated an exemption to have a minimum duration of one year. TDI believes the minimum duration of six months is more consistent with the language and intent of the statute.

Comment. Several commenters jointly ask TDI to expand on the list of statutory elements for the notification letters described in §19.1732. They note that Insurance Code §4201.659(d) requires this notice to "include" certain elements, and that "includes" is a word of enlargement under the Code Construction Act. They suggest that the exemption notice under §19.1732(a) should be required to include (1) a plain language explanation of the impact and meaning of the exemption, and (2) contact information for both TDI and the issuer. In addition, they recommend that TDI standardize these notices and require the use of the form so that the notices are more uniform, easier to identify, and easier to read. They state that the notification of a denial under §19.1732(b) should include notice of the physician's or provider's appeal rights; require the form to state that the issuer is required to pay for any IRO review; and include the email address, fax, and any other electronic method the physician or provider prefers to use to return the form.

The commenters provide some specific recommendations to modify the wording on Form LHL011, and to clarify the rule text regarding the dates that exemption notices are issued, effective, and appealed.

The commenters also ask that TDI clarify that the date the appeal is being requested in the context of Form LHL011 is the same thing as the signature date of the physician completing the appeal form, even if the provider returns the form to the issuer before the date the rescission becomes effective.

Another commenter expresses concern with the level of detail required in the rescission notices, specifically citing the requirement to include the principal reason for the determination, the clinical basis for the determination, a description of the sources of screening criteria used as guidelines, and the specialty of the determining provider. The commentor argues that the rule goes well beyond what is required by the statute.

Another commenter suggests that the notice of the initial exemption be required only for physicians or providers who receive an exemption, and that notification not be required for denial of preauthorization exemption for services that the physician or provider did not expressly request an exemption for.

One commenter states support for the rule that an issuer must provide notice when exemptions are both granted or denied. This protects physicians or providers from mistakenly thinking they are exempt, ordering tests, and not requesting preauthorization.

Agency Response. TDI agrees to modify the notice requirement for exemptions issued under §19.1732 and require notices to include a plain language explanation of the effect of the preauthorization exemption and any claim-coding guidance needed to document the exemption. TDI declines to create standardized forms for exemption and denial notices, or to require the use of TDI's example form for rescission notice. Such requirements would limit the flexibility that issuers have and would be difficult to establish at this early phase of implementation. TDI will instead monitor issuers' implementation of these notices and take future action to improve clarity and uniformity if necessary.

TDI also agrees that a denial notification should include a description of how to appeal the denial using an issuer's complaints and appeals processes and information on how to file a complaint with TDI. Section 19.1732(b) has been modified accordingly.

TDI disagrees that the contents of the rescission notice required under §19.1732(d) are too burdensome or inconsistent with statute. Insurance Code §4201.655(a)(3) requires an

issuer to include on a rescission notice "the sample information used to make the determination" that less than 90% of the claims met the medical necessity criteria. Insurance Code §4201.655(b) requires a rescission determination to be made by a Texas-licensed physician, and for a rescission of a physician's exemption, the physician must have the same or similar specialty. The contents of the rescission notice required under §19.1732(d) are simply designed to inform the provider why the exemption is being rescinded, who made that decision, and what the provider can do about it.

TDI declines to remove the requirement that issuers provide denial notices. Insurance Code §4201.653 broadly requires issuers to conduct exemption evaluations without the physician's or provider's request, and Insurance Code §4201.655(c) requires denial notices. However, consistent with changes to the initial threshold under §19.1731(b), TDI modifies §19.1732(c) to clarify that notice is provided only when at least five eligible preauthorization requests are available for an initial evaluation.

With respect to the date a rescission notice is provided and the date it is effective, TDI declines to make a change; Insurance Code §4201.654 makes clear that an exemption remains in effect until the 30th day after the date the issuer notifies the physician or provider of the issuer's determination to rescind the exemption. TDI agrees to clarify the language in the Form LHL011 notice by adding "Unless you request an appeal to an independent dispute resolution organization as set forth below," before the statement of the effective date of the rescission. TDI expects issuers to use timely methods to transmit notices so providers receive the notices on the same day they are sent electronically, or typically within five calendar days of mailing.

TDI also modifies Form LHL011 to add the clarifying text "at no cost to you" within the explanation of the right to appeal the rescission and clarifies that the appeal request form may be sent electronically. TDI modifies §19.1732(d)(1) to clarify that the rescission notice must include the date the notice is issued, consistent with the example form LHL011 as proposed. TDI modifies §19.1732(d)(2) to clarify that the issuer must provide contact information for returning the appeal form "by paper or electronic means."

Comment. Several commenters jointly recommend the addition of a new subsection requiring issuers to solicit from physicians and providers their preferred contact method and preferred contact information, and to use the preferred method and information to provide required notices. A separate commenter also recommends that physicians and providers should be permitted to designate their notification address. The joint commenters suggest that TDI add language that if an issuer notifies a physician or provider via any other method, any rescission notice would be defective, and the exemption would continue. The commenters also suggest that TDI require issuers to retain records to show they provided timely and effective notice through the preferred method and contact information, and that failure to retain records would make rescission ineffective. In addition, the commenters recommend that TDI modify the rule to provide that if an issuer fails to retain a record of notice of granting a preauthorization exemption, then the six-month period before an exemption may be rescinded is extended to be counted from the date the issuer provides effective notice.

Agency Response. TDI agrees that physicians and providers should be able to designate their preferred contact information and has added new subsection (e) to §19.1732 to clarify that issuers must allow physicians and providers to choose whether to receive communications regarding preauthorization exemptions electronically or by mail and provide a method for updating contact information. New §19.1732(e) also requires issuers to include instructions for updating contact preferences on the website required under §19.1718(j) and in all communications issued under §19.1732. TDI disagrees that additional requirements are necessary; it will monitor this issue through complaints, but expects issuers and providers to work in good faith to establish practical and effective communication methods. TDI declines to modify the rule to add extensive record retention requirements for issuers. The statute and rule provide sufficient clarity regarding the notification requirements, minimum period for an exemption, and requirements for rescissions. Consistent with Insurance Code §4201.654, a rescission is not effective until at least 30 days after notice is issued.

Comment. One commenter recommends modifying the threshold percentage and timeframe to require providers to submit proof to a health plan 30 days before the end of an exemption period that they have maintained an 80% compliance rate with evidence-based guidelines for a particular medical service.

Agency Response. TDI declines to make a change. The statutory criteria for exemptions require a provider to meet the medical guidelines in 90% of cases. With respect to the timeframe, the statute requires a six-month evaluation period. This could not be achieved if the exemption determination is made before the end of the six-month period. While the 90-day period following the initial evaluation period does delay the effective date of exemptions, TDI believes this is necessary for the health plans to operationalize the rules. Once an exemption is granted, it will be in effect until it is rescinded.

Comment. One commenter states that the October 1 deadline for initial notification of preauthorizing exemptions is too delayed. The commenter states that if the data necessary to evaluate is readily available, then there should be no reason that this excessive amount of time is necessary.

Several commenters jointly state they oppose the October 1 deadline. They state that Insurance Code §4201.659(d) suggests that the law would technically require issuers to provide initial notices granting or denying exemptions no later than five days after the physician or provider qualifies for the exemption. They also recognize that the timing of the rule adoption may inhibit compliance with this timeframe for the initial grant or denial of a preauthorization exemption. They recommend that if TDI intends to move forward with a longer period for the initial notice granting or denying a preauthorization exemption to account for the adoption of final rules, then TDI should require the notice of the initial granting or denial to be provided no later than August 1, 2022. The commenters also state that for subsequent evaluation periods during which a physician or provider does not have a preauthorization exemption, an issuer must provide notice to the physician or provider granting or denying a preauthorization exemption no later than five days following the day after the end of the evaluation period, rather than the two-month period in proposed §19.1730(4)(C), redesignated as §19.1730(5)(C).

Noting the initial exemption notification date, another commenter asks whether providers can count on all aspects of this law to be operationalized by October 1, 2022, or whether there is another date for implementation.

Agency Response. TDI understands the commenters' concerns regarding the five-day notice following the end of the evalua-

tion period and modifies §19.1732(c) to clarify that, consistent with Insurance Code §4201.659(d), an issuer must provide a notice granting or denying a preauthorization exemption within five days of completing an evaluation. This clarifies that issuers should issue notices timely, following the completion of an evaluation, rather than waiting until the specified deadline. However, TDI declines to modify the proposed deadlines for issuing notices. Issuers must make substantial operational changes to implement the requirements of the statute and rule, and the flexibility provided in the timeframes should support issuers' ability to implement the statute as intended, with minimal impact on the physicians and providers who qualify for exemptions. TDI expects that as time goes on, issuers will develop systems that allow evaluations to be completed and communicated faster than the maximum amount of time provided by the rules. TDI will monitor the issue to determine whether future changes are needed.

This rule takes effect 20 days after the date it is submitted to the *Texas Register.* October 1, 2022, represents the deadline for issuers to provide initial notifications of preauthorizing exemptions.

Comment. One commenter states that a provider should be notified by May 15 or December 15 of the notice to rescind an exemption. The commenter states that providers need notification early enough to make sure they have the processes in place before rescission.

Agency Response. TDI disagrees that providers should be notified by May 15 or December 15 of the notice to rescind an exemption. Insurance Code §4201.654(a) requires notice 30 days before a rescission is effective. Insurance Code §4201.655 permits rescissions to occur only during January or June of each year. Given that an appeal would likely modify the actual effective date of a rescission, for consistency, TDI modifies §19.1732(d) to clarify that the January and June dates specified by statute apply with respect to the timing of the notice, rather than with respect to the timing of the rescission effective date.

Comments on §19.1733

Comment. One commenter notes that the proposed rules contain no mechanism to challenge the initial denial of a preauthorization exemption. The commenter recommends that an appeal process should include the initial evaluation period.

One commenter supports limiting the IRO review to the rescission evaluation.

Other commenters request clarification that the right to appeal to an IRO exists for initial exemptions. They state that the legislative intent was to allow physicians and providers the opportunity to appeal in the event they do not receive an exemption for a particular health care service as expected.

Agency Response. TDI declines to make a change to §19.1733 but does modify §19.1732(b) to require denial notices to describe how to appeal using the issuer's complaints and appeals processes and how to file a complaint with TDI. An initial denial of a preauthorization exemption is issued on the basis of the total rate of approvals and adverse determinations of preauthorization requests during the evaluation period, and under Insurance Code Chapter 4201, providers have the right to appeal each adverse determination of a preauthorization request on which an exemption denial is based. The calculation of the approval rate that determines whether an exemption is granted or denied does not involve the use of medical judgment.

Insurance Code §4201.656 provides for an independent review of an adverse determination regarding a preauthorization exemption. The term "adverse determination regarding a preauthorization exemption" is not defined in the Insurance Code, but TDI interprets it in §19.1730(1) as "a decision by an issuer that one or more claims retrospectively reviewed as part of an evaluation as defined in §19.1730(4)(B) . . . , with respect to a particular health care service for which the physician or provider has a preauthorization exemption, did not meet the issuer's screening criteria[.]" This interpretation is informed by the definition of "independent review" in 28 TAC §12.5 ("Independent review" means a "system for final administrative review by a designated IRO of an adverse determination regarding the *medical necessity and appropriateness or the experimental or investigational nature of health care services."*) (emphasis added); the definition of "adverse determination" in Insurance Code §4201.002 ("Adverse determination" means "a determination by a utilization review agent that health care services provided or proposed to be provided to a patient *are not medically necessary or are experimental or investigational.* ") (emphasis added); and the references to a "rescission review" in Insurance Code §4201.656(b)(2), "claims" in Insurance Code §4201.656(d), and "determination . . . to rescind" in Insurance Code §4201.657.

Comment. One commenter states that §19.1733(b) requires that up to 20 medical records requests per particular health care service, per individual plan per provider, would need to be submitted to the insurance carrier during the evaluation period. The commenter states that this could effectively require the provider to submit almost all patient medical record files to each insurance carrier during the review period. This would cause an extreme burden on the practice, increasing--not reducing--the administrative burden this legislation intended to relieve responsible providers of.

Several commenters jointly suggest alternate language for proposed §19.1733(b). They suggest language that would, (1) add a reference to proposed §19.1730(3)(B) (redesignated as §19.1730(4)(B)), (2) specify that the request for documents be "as minimally necessary," and (3) clarify that medical records may not be requested and a retrospective review may not be conducted for any claims that are outside the original random sample of five to 20 claims, unless a provider agrees. The commenters also recommend that the rules require the issuer to provide a physician or provider with a reminder request for any outstanding records needed for the assessment at least 15 days before the end of the deadline; require the issuer's notice to have enough specificity that a reasonable physician could identify the needed records; require the issuer to inform the physician or provider of the effect of a failure to provide records in the reminder request; and expressly make it a violation to request more information than is needed, fail to provide a request with sufficient specificity, or fail to provide the follow-up request.

Agency Response. TDI declines to restrict an issuer's ability to determine the size of the random sample (and by extension, the number of medical records requested for each particular health care service) beyond the statutory constraint. The statute requires a rescission to be based on a review of at least five and no more than 20 claims.

TDI recognizes these concerns related to potential additional specificity and clarification of the review procedures. However, TDI does not agree that substantive changes to the rule text are necessary. TDI declines to add language that medical record re-

quests must be "as minimally necessary" and include sufficient specificity, because §19.1707, as referenced, already provides standards for requesting medical records. To add clarity, TDI modifies §19.1733(b) to add a reference to the definition of an applicable evaluation under §19.1730(4)(B). TDI also clarifies that medical records requested in connection with a retrospective review of a random sample of claims as authorized under Insurance Code §4201.659(b)(1) should be limited to no more than 20 claims.

TDI declines to add a new requirement for issuers to provide a reminder request or warn physicians or providers of the consequences of failing to respond to a request for medical records because physicians and providers should already have systems in place to be responsive to such requests. However, issuers are not precluded from providing such reminders or warnings.

TDI will monitor compliance with the provisions of HB 3459 and other insurance laws and may take further regulatory action as necessary, including amendments to these rules. TDI wishes to balance the efficacy of the rules while remaining mindful of the potential unforeseen consequences of prescribing overly detailed and inflexible procedures. TDI will use market conduct examinations, complaint information, and targeted data collections where necessary to follow implementation of HB 3459 and these rules. In addition, TDI will closely observe implementation and be ready to provide additional guidance as needed.

Comment. One commenter recommends changing the time limit for providers to submit medical records from 30 to 15 days. The commenter argues that there is a built-in incentive for providers to appeal every rescission determination and it could give providers months of additional time under an exemption that should be rescinded. In addition, the commenter suggests that an independent review should not be available for a rescission that is based on a provider's failure to provide medical records. The commenter argues that allowing a provider to submit supporting records for the first time as part of an independent review would add substantial additional costs.

Another commenter states support for the need for a time limit for providers to submit requested records in proposed §19.1733(b), but states the language is not sufficiently clear as to require submission of records in a timely manner. The commenter recommends that a physician's or provider's timeframe to submit records be capped at 30 days to ensure that the reviewing organization has adequate time to conduct the evaluation.

Agency Response. TDI declines to change the time limit for providers to submit medical records from 30 to 15 days because the definition of evaluation periods under §19.1730(5)(C) provides sufficient time and flexibility for issuers to complete evaluations, taking into account the 30-day period. TDI disagrees that the language is not sufficiently clear. Under §19.1733(b), issuers must provide at least 30 days for medical records to be provided and specifies the consequence if medical records are not provided.

TDI agrees that issuers may face costs in the form of IRO fees if providers habitually fail to submit medical records and then appeal rescissions to IROs. If issuers are unable to review the medical records, this could lead to more proposed rescissions and more appeals, when the issuer would not have proposed to rescind the exemption had they been able to review the medical records. Nevertheless, Insurance Code §4201.656(a) provides a clear right to providers to have a recission reviewed by an IRO, and the statute does not limit that right based on the issuer's reason for a recission. But because of the potential costs to issuers noted above, TDI will monitor the issue to determine whether future changes are needed.

TDI also agrees that it would be impractical for an IRO to request medical records for the first time in cases where the provider has failed to provide them during the issuer's initial review. Insurance Code §4201.656(c) requires an IRO to complete its review not later than the 30th day after the physician or provider requests a review and does not provide for this timeframe to be extended while records are being requested. Therefore, to address this concern, TDI does modify §19.1733(d) to clarify that in order to request an appeal for a determination that was based on a failure to provide medical records, the physician or provider must include the applicable records in conjunction with their request for an independent review. Conforming changes are made to §19.1732(d)(3)(C)(i) and §19.1732(d)(5) to ensure that issuers specify when a determination is based on lack of medical records and instruct providers to include the records with the request for an independent review.

TDI also changes the last sentence in §19.1733(d) to clarify that the requirement for the issuer to submit the request for independent review applies only if the issuer seeks to proceed with the proposed rescission. This should mitigate the risk of unnecessary IRO appeals when the issuer is able to review records and determine that the provider continues to qualify for an exemption.

Comment. One commenter states that proposed §19.1733(b) should require issuers to send a medical records request via certified mail and that the request be made within 30 days following the end of the evaluation period, rather than 90 days as proposed. The commenter expresses concern that issuers could receive a negative determination due to lack of medical records where the request was not received because it was not sent via certified mail.

Agency Response. TDI declines to require issuers to send requests via certified mail because this would significantly increase costs. This should not be necessary since issuers will allow providers to designate their preferred contact method and address. Issuers will need to make timely requests for medical records, either during or shortly after an evaluation period, in order to meet the timeframe for rescissions specified in §19.1732(c). TDI declines to change the 90-day timeframe for medical record requests because an issuer or IRO may need to request additional records during an evaluation or appeal.

Comment. A commenter requests clarification of §19.1733(b) to avoid ambiguity or interpretation by the carriers that would cause claims already submitted and paid during the exemption period to be retrospectively denied if the provider fails to submit medical records.

Agency Response. TDI declines to make a change. In response to the commenter's clarification request, an issuer would not be allowed to request repayment of claims paid while an exemption was in effect, even if the exemption was subsequently rescinded. Insurance Code §4201.657(b) makes clear that an issuer is not permitted to retroactively deny a claim.

Comment. Several commenters jointly express concern with the reference to "additional claims that were not included in the random sample." They contend that the statute does not give issuers authority to choose to review claims that are not part of the operative sample. The commenters suggest that when a provider requests review of "another random sample," as permit-

ted under Insurance Code §4201.656(d), the IRO should perform a first-time review and not a re-review of claims reviewed by the issuer.

One commenter states that proposed §19.1733(e) introduces ambiguity that can be read as allowing the provider to request a second random sample. The commenter requests that TDI change the provision to confirm that the only reason a physician or provider may request a new sample for the IRO is if the issuer based the rescission on cases that were outside the random sample, and that the physician or provider cannot request review of a second random sample without reason.

Another commenter objects to an IRO reviewing only the claims in a second random sample, arguing that Insurance Code §4201.656(d) requires that if another random sample is requested, the IRO must base its determination on both the original random sample and the second random sample.

Agency Response. TDI agrees that an issuer may conduct a retrospective review of a health care service subject to an exemption only as provided in Insurance Code §4201.659(b)(1) and (2) and modifies §19.1733(d)(3)(A) to remove the reference to retrospective review of additional claims that were not included in the random sample.

TDI agrees that Insurance Code §4201.656(d) permits an IRO to review claims for the first time that were not first reviewed by the issuer and modifies §19.1733(e), as proposed, to permit a provider to request that an IRO review another random sample of claims if the issuer identifies on the rescission form that at least five additional claims were eligible for review but not included in the original random sample. In the case that fewer than five additional claims were eligible for review, it would not be possible to select another random sample that did not duplicate claims from the original sample. If a second random sample is requested, the issuer must, when submitting the request for independent review to the department, provide a listing of all payable claims that were eligible to be evaluated but that were not included in the original random sample. The listing must be sufficiently detailed to allow the IRO to identify each claim when selecting an additional random sample. Conforming changes were made to §12.601(e), which are discussed in a separate adoption.

To support the changes made in §19.1733(e), TDI modifies §19.1732(d)(3) to require issuers to include on the rescission notice the total number of payable claims that were eligible to be evaluated with respect to the health care service subject to rescission and the number of claims included in the random sample. This makes clear whether the physician or provider may request another random sample.

Comment. A commenter suggests clarifying that the response time for an insurer to communicate the determination of a review by the IRO to the physician or provider under §19.1733(f) is five business days.

Two commenters request clarification on the length of time an IRO has to process a review and return the determination to the issuer. The commenters note that proposed §19.1733(f) states that the issuer has five days to give an IRO determination to a physician. The commenters also note that there is no clarification for how long the IRO has to perform and complete the review before returning a verdict to the issuer, and that the general IRO notice requirements within 28 TAC §12.206 do not apply. One commenter recommends a requirement for a timely IRO notice to the issuer. The other commenter recommends adding a 30-day limitation on the length of time an IRO has to process an appeal. The commenter says this would ensure that a physician denied an exemption experiences no delay in his or her appeal process.

Agency Response. TDI declines to change §19.1733(f) in response to comment. The five-day requirement is based on the provision in Insurance Code §4201.654(a)(2) that a preauthorization exemption remains in effect until the fifth day after the date the IRO affirms the issuer's determination to rescind the exemption. The five days provided is consistent with Government Code §311.014, which requires that if the last day occurs on a Saturday, Sunday, or legal holiday, the period is extended to include the next business day. TDI also declines to amend §19.1733(f) to specify how long the IRO has to complete its review because Insurance Code §4201.656(c) clearly states that an IRO must complete its review not later than the 30th day after the physician or provider files the request for a review.

Comment. Several commenters jointly recommend that TDI clarify proposed §19.1733(g) to be limited to requiring the maintenance of medical records only with respect to claims eligible to be evaluated under the rules. Since the independent review is limited to claims that the issuer determined did not meet the screening criteria, the commenters ask TDI to clarify that the other reviewed claims be deemed to have met screening criteria and not be subsequently challenged on the basis of a lack of medical necessity or a failure to maintain medical records.

Agency Response. TDI disagrees that clarification is needed and declines to make a change. The requirement to maintain medical records clearly applies only in the context of the retention of a preauthorization exemption and the obligation of a physician or provider to cooperate with an evaluation and an appeal, which can be conducted and result in a favorable outcome only if the physician or provider provides the necessary records.

SUBCHAPTER R. UTILIZATION REVIEWS FOR HEALTH CARE PROVIDED UNDER A HEALTH BENEFIT PLAN OR HEALTH INSURANCE POLICY

DIVISION 1. UTILIZATION REVIEWS

28 TAC §19.1710

STATUTORY AUTHORITY. The Commissioner adopts amended §19.1710 under Insurance Code §4201.003 and §36.001.

Insurance Code §4201.003 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 4201.

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.

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 August 12, 2022.

TRD-202203025
James Person
General Counsel
Texas Department of Insurance
Effective date: September 1, 2022
Proposal publication date: April 8, 2022
For further information, please call: (512) 676-6584

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DIVISION 2. PREAUTHORIZATION EXEMPTIONS

28 TAC §§19.1730 - 19.1733

STATUTORY AUTHORITY. The Commissioner adopts new Division 2, §§19.1730 - 19.1733, under Insurance Code §4201.003 and §36.001.

Insurance Code §4201.003 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 4201.

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.

§19.1730. Definitions.

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

(1) Adverse determination regarding a preauthorization exemption--A decision by an issuer that one or more claims retrospectively reviewed as part of an evaluation as defined in paragraph (4)(B) of this section, with respect to a particular health care service for which the physician or provider has a preauthorization exemption, did not meet the issuer's screening criteria, and leads to an issuer's decision to rescind a preauthorization exemption. An adverse determination regarding a preauthorization exemption is not an adverse determination as defined under §19.1703 of this title (relating to Definitions).

(2) Denial of preauthorization exemption--A determination that a physician or provider does not qualify for a preauthorization exemption based on the issuer conducting an evaluation, as defined in paragraph (4)(A) of this section, of eligible preauthorization requests and demonstrating that the physician or provider received approval for fewer than 90% of the eligible preauthorization requests made for a particular health care service during the most recent evaluation period.

(3) Eligible preauthorization request--A preauthorization request for a particular health care service is eligible for the purposes of an evaluation under paragraph (4)(A) of this section if it is submitted by the physician or provider and finalized by the health plan during the evaluation period, is not pending appeal, and has an outcome of either approving the particular health care service or issuing an adverse determination for the particular health care service. A preauthorization request that is modified with the acceptance of the physician or provider and approved by the plan as modified is an eligible preauthorization request for the purpose of conducting an evaluation under this section, with respect to the particular health care service that was approved. If a preauthorization request includes more than one particular health care service, the outcome for each service must be counted separately for the purposes of an evaluation.

(4) Evaluation--

(A) with respect to a particular health care service for which a physician or provider does not have a preauthorization exemption, a review of the outcomes of eligible preauthorization requests submitted by the physician or provider during the most recent evaluation period to determine the percentage of requests that were approved, which is conducted for the purpose of evaluating whether to grant or deny a preauthorization exemption; or

(B) with respect to a particular health care service for which a physician or provider has a preauthorization exemption, a retrospective review of a random sample of payable claims submitted by or in connection with the physician or provider during the most recent evaluation period to determine the percentage of claims that would have been approved, based on meeting the issuer's applicable medical necessity criteria at the time the service was provided, which is conducted for the purpose of evaluating whether to continue or rescind a preauthorization exemption and consistent with Insurance Code §4201.655, concerning Denial or Rescission of Preauthorization Exemption.

(5) Evaluation period--The six-month period preceding an evaluation. The evaluation periods are as follows:

(A) for an initial determination of a preauthorization exemption grant or denial, the evaluation period is the six-month period that begins on January 1, 2022, or the subsequent six-month periods of July 1 - December 31 and January 1 - June 30 that follow each year;

(B) after a denial or rescission of a preauthorization exemption for a particular health care service, the subsequent six-month evaluation period begins on the first day following the end of the evaluation period that formed the basis of the denial or rescission; and

(C) for a notification of a preauthorization exemption rescission as provided in Insurance Code §4201.655(a), the evaluation period is the six-month period an issuer determines or the subsequent six-month periods that follow, but there may not be more than two months between an evaluation period ending and the provision of notice under §19.1732 of this title (relating to Notice of Preauthorization Exemption Grants, Denials, or Rescissions).

(6) Issuer--A health maintenance organization or insurer that is subject to Insurance Code Chapter 4201, Subchapter N, including a URA or a person who contracts with an issuer to issue a preauthorization determination, or performs the functions described in this division.

(7) Particular health care service--A health care service, including a prescription drug, that is subject to preauthorization as listed on the issuer's website under §19.1718(j) of this title (relating to Preauthorization for Health Maintenance Organizations and Preferred Provider Benefit Plans).

(8) Physician--Has the meaning assigned by Insurance Code §843.002, concerning Definitions.

(9) Preauthorization--Has the meaning assigned in Insurance Code §4201.651, concerning Definitions. "Preauthorization" under this division does not include concurrent utilization review.

(10) Preauthorization exemption--A privilege obtained under this division in which a physician or provider is not subject to a preauthorization requirement that otherwise applies with respect to a particular health care service. The preauthorization exemption applies both to care rendered by a treating physician or provider and to care ordered by a physician or provider who is acting in his or her capacity as a treating physician or provider.

(11) Provider--Has the meaning assigned by Insurance Code §843.002.

(12) Random sample--A collection of at least five but no more than 20 claims for a particular health care service, selected without method or conscious decision, for the purpose of evaluating a physician's or provider's continued eligibility for a preauthorization exemption.

(13) Rescission of preauthorization exemption--An adverse determination regarding a preauthorization exemption based on an evaluation, as defined in paragraph (4)(B) of this section and consistent with Insurance Code §4201.655(b), in which the issuer

would have fully approved fewer than 90% of claims for a particular health care service.

(14) Treating physician or provider--The physician or other provider who is primarily responsible for a patient's health and medical care. A "treating physician or provider" can include a rendering physician or provider or a referring or ordering physician or provider.

§19.1731. Preauthorization Exemption.

(a) For the purposes of this division, a physician or provider should be identified using the National Provider Identifier (NPI) under which a physician or provider makes preauthorization requests.

(b) With respect to a particular health care service for which a physician or provider does not have a preauthorization exemption, an issuer must conduct an evaluation of all preauthorization requests submitted by the physician or provider during the most recent evaluation period that were finalized prior to the evaluation and may not include a request that is pending appeal at the time the data is analyzed. The evaluation must be based on no fewer than five eligible preauthorization requests.

(c) With respect to a particular health care service for which a physician or provider has a preauthorization exemption, an issuer may conduct an evaluation, as defined in §19.1730(4)(B) of this title (relating to Definitions), to determine whether to rescind a preauthorization exemption consistent with Insurance Code §4201.655, concerning Denial or Rescission of Preauthorization Exemption. In order to determine whether to rescind an exemption, the issuer must conduct a retrospective review of a random sample of at least five and no more than 20 claims submitted during the most recent evaluation period.

(d) Other than care ordered by a treating physician or provider that has a preauthorization exemption that is then rendered by a physician or provider that does not have an exemption, a treating physician or provider may not rely on another physician's or provider's preauthorization exemption. If a treating physician or provider does not have a preauthorization exemption and relies on another physician's or provider's preauthorization exemption in violation of this subsection, an issuer may consider the physician or provider who has qualified for the preauthorization exemption as failing to substantially perform the health care service under Insurance Code §4201.659, concerning Effect of Preauthorization Exemption, and may reduce or deny payment for that service on that basis. It is not a violation of this subsection for a provider, such as a nurse or physician's assistant, who practices under the supervision of a physician, to rely on the supervising physician's exemption, if the provider appropriately orders care and requests preauthorization under the supervising physician's NPI.

(e) For care ordered by a treating physician or provider that has a preauthorization exemption that is then rendered by a physician or provider that does not have an exemption, the treating physician or provider must include the name and NPI of the ordering physician or provider on the claim in fields 17 and 17B of CMS Form 1500, in fields 76 - 79 or another appropriate field in Form UB-04, or in the corresponding fields for electronic claims using the ASC X12N 837 format. The issuer may provide coding guidance to physicians and providers to ensure that this information is appropriately captured on the claim. If this information is not included, the issuer may treat the claim as subject to an otherwise applicable preauthorization requirement.

§19.1732. Notice of Preauthorization Exemption Grants, Denials, or Rescissions.

(a) When granting a preauthorization exemption, an issuer must provide notice to the physician or provider, consistent with Insurance Code §4201.659(d), concerning Effect of Preauthorization Exemption. The notice must include a plain language explanation of the effect of the preauthorization exemption and any claim coding guidance needed to document the preauthorization exemption, consistent with §19.1731(e) of this title (relating to Preauthorization Exemption). The exemption begins on the date the notice is issued and must be in place for at least six months before it may be rescinded. If an issuer subsequently receives a preauthorization request from the physician or provider for a particular health care service for which an exemption has been granted, the issuer must provide a notice consistent with Insurance Code §4201.659(e).

(b) When denying a preauthorization exemption, an issuer must provide notice to the physician or provider that demonstrates that the physician or provider does not meet the criteria for a preauthorization exemption, consistent with Insurance Code §4201.655(c)(2), concerning Denial or Rescission of Preauthorization Exemption; a description of how to appeal the denial using the issuer's complaints and appeals processes; and information on how to file a complaint with the department.

(c) After completing an evaluation as defined under §19.1730(4)(A) of this title (relating to Definitions), an issuer must provide a notice granting or denying a preauthorization exemption within five days. For the initial evaluation period of January 1 through June 30, 2022, an issuer must provide notice granting or denying a preauthorization exemption no later than October 1, 2022. For subsequent evaluation periods during which a physician or provider does not have a preauthorization exemption, an issuer must provide notice to the physician or provider granting or denying a preauthorization exemption no later than two months following the day after the end of the evaluation period. Notice need only be provided for a particular health care service if the issuer was able to complete an evaluation of at least five eligible preauthorization requests, as provided in §19.1731(b) of this title.

(d) When rescinding a preauthorization exemption, an issuer must provide notice to the physician or provider, consistent with Insurance Code §4201.655(a)(3). Notice of the rescission must be provided during the months specified in Insurance Code §4201.655(a)(1). The notice must include the following (a sample form LHL011 is available on TDI's website):

(1) an identification of the health care service for which a preauthorization exemption is being rescinded, the date the notice is issued, and the date the rescission is effective, consistent with Insurance Code §4201.654, concerning Duration of Preauthorization Exemption;

(2) a plain language explanation of how the physician or provider may appeal and seek an independent review of the determination, the date the notice is issued, and the company's address and contact information for returning the form by mail or electronic means to request an appeal;

(3) a statement of the total number of payable claims submitted by or in connection with the physician or provider during the most recent evaluation period that were eligible to be evaluated with respect to the health care service subject to rescission, the number of claims included in the random sample, and the sample information used to make the determination, including:

(A) identification of each claim included in the random sample;

(B) the issuer's determination of whether each claim met the issuer's screening criteria; and

(C) for any claim determined to not have met the issuer's screening criteria:

(i) the principal reasons for the determination that the claim did not meet the issuer's screening criteria, including, if applicable, a statement that the determination was based on a failure to submit specified medical records;

(ii) the clinical basis for the determination that the claim did not meet the issuer's screening criteria;

(iii) a description of the sources of the screening criteria that were used as guidelines in making the determination; and

(iv) the professional specialty of the physician, doctor, or other health care provider who made the determination;

(4) a space to be filled out by the physician or provider that includes:

(A) the name, address, contact information, and identification number of the physician or provider requesting an independent review;

(B) an indication of whether the physician or provider is requesting that the independent review organization review the same random sample or a different random sample of claims, if available; and

(C) the date the appeal is being requested; and

(5) an instruction for the physician or provider to return the form to the issuer before the date the rescission becomes effective and to include applicable medical records for any determination that was based on a failure to provide medical records.

(e) An issuer must allow physicians and providers to designate an email address or a mailing address for communications regarding preauthorization exemptions, denials, and rescissions. An issuer must provide an option for physicians and providers to submit a request for appeal by mail or by email or other electronic method. Issuers must include an explanation of how the physician or provider may update their preferred contact information and delivery method on all communications issued under this section and on the website required under §19.1718(j) of this title (relating to Preauthorization for Health Maintenance Organizations and Preferred Provider Benefit Plans).

§19.1733. Retrospective Reviews and Appeals of Preauthorization Exemption Rescissions.

(a) For a retrospective review that is conducted under Insurance Code §4201.659(b)(1), concerning Effect of Preauthorization Exemption, to determine whether the physician or provider still qualifies for an exemption, Insurance Code §4201.305, concerning Notice of Adverse Determination for Retrospective Utilization Review, does not apply.

(b) An issuer that is conducting an evaluation as defined in §19.1730(4)(B) of this title (relating to Definitions) to determine whether a physician or provider still qualifies for a preauthorization exemption may request medical records or other documents, consistent with §19.1707 of this title (relating to URA Contact with and Receipt of Information from Health Care Providers), and must provide at least 30 days for a physician or provider to provide the records. Medical records requested in connection with a retrospective review of a random sample of claims as authorized under Insurance Code §4201.659(b)(1) should be limited to no more than 20 claims for a particular health care service and may be requested only during an evaluation period or within 90 days following the end of an evaluation period. If the physician or provider fails to provide the records necessary for the issuer to make a determination, the issuer may determine that the claim would not have met the screening criteria.

(c) After receiving a notice of rescission, a physician or provider may request an independent review of the adverse determination regarding a preauthorization exemption at any time before the rescission becomes effective. The date of the request must be documented on the form, and the form must be sent electronically or postmarked before the date the rescission becomes effective.

(d) In order to request an independent review of a rescission of a preauthorization exemption, a physician or provider must submit the form provided by the issuer under §19.1732(c) of this title (relating to Notice of Preauthorization Exemption Grants, Denials, or Rescissions). If one or more determinations subject to review were based on a failure to provide specified medical records, the physician or provider must include the applicable records with the request for an independent review. Upon receipt, if the issuer seeks to proceed with the proposed rescission, the issuer must submit the request for independent review to the department, consistent with §12.601 of this title (relating to Preauthorization Exemptions), and §19.1717(c) of this title (relating to Independent Review of Adverse Determinations), and provide information to the IRO consistent with Insurance Code §4201.402.

(e) If the notice of rescission of preauthorization exemption identified that at least five additional claims were eligible for review but not included in the original random sample, the physician or provider may request review of another random sample of claims, as authorized under Insurance Code §4201.656(d). If this request is made, the issuer must, when submitting the request for independent review to the department, provide a listing of all payable claims for the same health care service submitted by or in connection with the physician or provider during the most recent evaluation period that were eligible to be evaluated but that were not included in the original random sample. The listing must be sufficiently detailed to allow the IRO to identify each payable claim to be used in an additional random sample, as provided by §12.601(e) of this title.

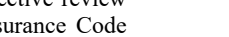
(f) An issuer must communicate the determination of a review by an independent review organization under §12.601 of this title to the physician or provider within five days.

(g) In order to retain a preauthorization exemption, a physician or provider must continue to maintain medical records adequate to demonstrate that health care services meet medical guidelines. In the absence of adequate records during an evaluation or appeal, an exemption may be rescinded.

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 August 12, 2022.

TRD-202203026
James Person
General Counsel
Texas Department of Insurance
Effective date: September 1, 2022
Proposal publication date: April 8, 2022
For further information, please call: (512) 676-6584



PART 4. STATE OFFICE OF RISK MANAGEMENT

CHAPTER 251. STATE EMPLOYEES - WORKERS' COMPENSATION

SUBCHAPTER E. RISK ALLOCATION PROGRAM

28 TAC §251.503

The State Office of Risk Management (Office) adopts amended rules in Title 28, Part 4, Chapter 251, Subchapter E, Risk Allocation Program, §251.503, without changes to the proposed text as published in the May 27, 2022, issue of the *Texas Register* (47 TexReg 3104). The name referenced currently is the Risk Management for Texas State Agencies (RMTSA). The Office has renamed the guidelines to the Texas Enterprise Risk Management (TERM) Guidelines. The rules will not be republished.

Specifically, §§251.503 renames the guidelines to the Texas Enterprise Risk Management (TERM) Guidelines to ensure consistency with current policy and the proposed rules.

REASONED JUSTIFICATION: The Office adopts this name change to ensure consistency with current policy and the published rules. In addition, the Office adopts other changes for the purpose of simplification and administrative convenience.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 27, 2022, and ended at 5:00 p.m. on June 27, 2022. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under: Texas Labor Code §412.031 which requires the Office board to adopt rules as necessary to implement this chapter and Chapter 501; §412.041(c)(3) requiring the SORM director to prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter and Chapter 501, including rules and proposals for administrative procedures consistent with this chapter and Chapter 501; and under Texas Labor Code §412.0125(b)(3) which requires the Office to adopt, as part of return-to-work coordination services, rules that set standards and provide guidance to a state agency interacting with an injured employee.

CROSS REFERENCE TO STATUTES AFFECTED. Texas Labor Code §§412.031 and 412.0125(b)(3).

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 August 15, 2022.

TRD-202203032
Deea Western
Chief and General Counsel
State Office of Risk Management
Effective date: September 4, 2022
Proposal publication date: May 27, 2022
For further information, please call: (512) 936-1462

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CHAPTER 252. STATE RISK MANAGEMENT
SUBCHAPTER B. RISK MANAGEMENT

28 TAC §252.201

The State Office of Risk Management (Office) adopts amended rules in Title 28, Part 4, Chapter 252, Subchapter B, Risk Management, §252.201, without changes to the proposed text as published in the May 27, 2022, issue of the *Texas Register* (47 TexReg 3105). The rules will not be republished.

Specifically, §252.201 renames the guidelines to the Texas Enterprise Risk Management (TERM) Guidelines.

REASONED JUSTIFICATION: The Office adopts this name change to ensure consistency with current policy and the published rules. In addition, the Office adopts other changes for the purpose of simplification and administrative convenience.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 27, 2022, and ended at 5:00 p.m. on June 27, 2022. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under: Texas Labor Code §412.031 which requires the Office board to adopt rules as necessary to implement this chapter and Chapter 501; §412.041(c)(3) requiring the SORM director to prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter and Chapter 501, including rules and proposals for administrative procedures consistent with this chapter and Chapter 501; and under Texas Labor Code §412.0125(b)(3) which requires the Office to adopt, as part of return-to-work coordination services, rules that set standards and provide guidance to a state agency interacting with an injured employee.

CROSS REFERENCE TO STATUTES AFFECTED. Texas Labor Code §§412.031 and 412.0125(b)(3).

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 August 15, 2022.

TRD-202203033
Deea Western
Chief and General Counsel
State Office of Risk Management
Effective date: September 4, 2022
Proposal publication date: May 27, 2022
For further information, please call: (512) 936-1462

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION
SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.5

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code, Subchapter A, §217.5 concerning motor vehicle titles. These amendments are necessary to expand the definition of evidence of ownership to provide an alternative to filing lawsuits to satisfy evidence of ownership requirements under Transportation Code §501.033(b). The department adopts the amendments to §217.5 without changes to the proposed text as published in the Febru-

ary 25. 2022, issue of the *Texas Register* (47 TexReg 896). The rule will not be republished.

REASONED JUSTIFICATION. The amendments to §217.5 are necessary to remove unnecessary costs and burdens imposed by requiring a court order as evidence of ownership for identification number assignments and reassignments. The amendments provide for an alternative form of evidence of ownership for identification number assignments and reassignments in the form of a surety bond, while retaining the option of seeking a court order. The department's experience has shown that requiring court orders to serve as evidence of ownership is impractical and imposes significant costs on applicants, the court system, and the department. To pursue a court order, applicants must pay filing fees and the cost of service of process and may also incur costs associated with legal representation. The legal system is designed to handle genuine disputes as to ownership between parties, rather than issues as to lost ownership evidence. In most identification number assignment cases, there is no genuine dispute as to ownership; and pro se litigants, attorneys, and judges are uncertain as to who should be added as a party and how to structure a legitimate lawsuit declaring ownership.

The department has determined that a surety bond will eliminate these issues, while providing adequate evidence of ownership. An interested person damaged by the issuance of title on a motor vehicle will be protected under Transportation Code §501.053(c), which affords a right of action to recover on the bond. The department's proposed process will allow applicants with vehicles needing an identification number to have a surety bond serve as evidence of ownership which will allow for the assignment or reassignment of an identification number and the issuance of title.

SUMMARY OF COMMENTS.

The department received six written comments on the proposal from the Texas Association of Vehicle Theft Investigators, the Panhandle Auto Burglary and Theft Unit, the National Insurance Crime Bureau, the Lubbock County Tax Assessor-Collector, the Laredo Police Department Auto Theft Task Force, and the Tax Assessor-Collectors Association of Texas.

Comment:

A commenter expressed concern that law enforcement was not consulted during the development of the amendments because the amendments would have an impact on law enforcement personnel qualified to perform identification number inspections.

Agency Response:

The department did not consult law enforcement personnel prior to drafting the amendments because the amendments do not change how or when law enforcement personnel conduct identification number inspections. Instead, the changes deal with evidence of ownership presented to the department as part of an application for an identification number assignment or reassignment under Transportation Code §501.033(b). However, after seeing the concerns expressed by law enforcement personnel and tax assessor-collectors, the department reached out to each of the commenters to clarify the intent and purpose of the amendments and to address the concerns raised in their comments. These discussions were fruitful and helped to clear up misunderstandings regarding the purpose and implementation of the amendments.

No change has been made in response to this comment.

Comment:

The commenter also stated allowing a bond to serve as valid evidence of ownership would allow criminals to apply for an identification number and receive a title to a stolen vehicle without a judicial review of evidence of ownership.

Agency Response:

The department disagrees with this comment. Any application for an identification number assignment or reassignment requires an identification number inspection under Transportation Code §501.0321. If during an identification number inspection, a law enforcement inspector develops probable cause that a vehicle or part is stolen, or has had the serial number removed, altered, or obliterated, the law enforcement inspector may seize the vehicle or part and treat it as stolen property for purposes of custody and disposition of the vehicle under the authority of Transportation Code §501.158. The amendments do not remove the requirement to obtain an identification number inspection nor the authority of law enforcement to seize stolen vehicles.

Therefore, any applicant for an identification number assignment or reassignment will have already obtained an identification number inspection during which trained and qualified law enforcement inspectors determined the vehicle was not stolen. Only then will an applicant have the option of obtaining a bond or court order declaring that the applicant is the owner of the vehicle to serve as evidence of ownership for purposes of Transportation Code §501.033(b). The department believes that well-trained, experienced law enforcement inspectors will continue to detect and seize stolen vehicles they inspect, so the department may be confident that applicants for identification number assignment or reassignment do not possess stolen vehicles.

The amendments do not eliminate the option of obtaining a court order declaring that the applicant seeking an identification number assignment or reassignment for a vehicle is the owner of the vehicle in question, but only creates a streamlined alternative in the form of a surety bond that will serve to protect any party damaged by the assignment or reassignment of an identification number and issuance of a title.

No change has been made in response to this comment.

Comment

A commenter expressed support for the amendments and stated that "it seems surety bonds will help streamline the process for our customers."

Agency Response:

The department appreciates the support and agrees with the commenter that allowing surety bonds as evidence of ownership for the purposes of Transportation Code §501.033(b) will streamline the process for customers.

Comment:

The commenter stated that the proposal to eliminate inspections in order to streamline the process of getting a number assigned while keeping courts out of the process will lead to stolen property being assigned an identifying number.

Agency Response:

The department disagrees with the comment that keeping courts out of the process will lead to stolen property being assigned an identifying number. The department believes that well-trained,

experienced law enforcement inspectors will continue to detect and seize stolen vehicles they inspect, so the department may be confident that applicants for identification number assignment or reassignment do not possess stolen vehicles.

Courts are not in a strong position to assess whether a vehicle may be stolen based on the pleadings in court cases related to identification number assignments or reassignments.

Unlike proceedings under Chapter 47 of the Code of Criminal Procedure, where law enforcement officers are necessary parties, lawsuits brought to establish ownership of a vehicle to obtain an identification number assignment or reassignment most often do not involve testimony by law enforcement officers or parties disputing ownership. It is often unclear who should be named as a party in these cases as most of these cases do not involve disputes over ownership, but rather deal with lost ownership evidence. The Transportation Code, other statutes, and case law, provide little or no guidance or standards for courts to determine who is the owner of a vehicle in the absence of a title or vehicle identification number. Evidence presented is generally limited to a bill of sale, a completed identification number inspection, and testimony by the applicant.

The legislature provided the option of obtaining a title by filing a bond in Transportation Code §501.053 to address situations in which an applicant for title is not able to produce evidence of ownership in the form of a title. The surety bond purchased under §501.053 is intended to provide a recovery for any person damaged because of the issuance of a title to a vehicle or for a defect in or undisclosed security interest on the right, title, or interest of the applicant to the vehicle.

Transportation Code §501.074 only addresses court orders, which require the department to issue a new title for a motor vehicle registered in this state when ownership is transferred by operation of law or other involuntary divestiture of ownership. This section is intended mainly to cover transfers of title through operation of law by death, divorce decrees, judicial sales, non-judicial foreclosures, and foreclosures of constitutional or statutory liens. Section 501.074 does not squarely address situations where there is no dispute as to a sale and ownership of a motor vehicle and offers no standards for a court to use in evaluating cases in the absence of evidence of ownership in the form of a title.

No change has been made in response to this comment.

Comment:

The commenter requested that language be inserted into new proposed subsection (a)(3) allowing an applicant for assignment or reassignment of an identification number under Transportation Code §501.033 to use a tax assessor-collector hearing order under Transportation Code §501.052 as evidence of ownership for the purposes of §501.033(b).

Agency Response:

The Transportation Code does not authorize tax assessor-collector hearings under §501.052 for denials of applications for identification number assignments or reassignments. Transportation Code §501.052(a) authorizes persons aggrieved by a refusal, rescission, or cancellation, of a title under §501.051 to apply for a tax assessor-collector hearing. Section 501.051 applies to department action related to titles, and does not apply to actions related to applications for identification number assignments and reassignments under Transportation Code §501.033. If a tax assessor-collector hearing identifies that an applicant meets requirements under Transportation Code, Chapter 501, then a hearing would be acceptable for an applicant to obtain an identification number assignment or reassignment using the ownership evidence the applicant provided. The department will not be incorporating the proposed language allowing a tax assessor-collector hearing as evidence of ownership for an identification number assignment or reassignment under Transportation Code §501.033.

No change has been made in response to this comment.

Comment:

The commenter recommends that the department delay adoption of the amendments to consult with law enforcement, the National Insurance Crime Bureau (NICB), and tax assessor-collectors to allow law enforcement teams to determine what impact these amendments have on operations.

Agency Response:

The department will not delay the adoption of the amendments as all commenters have been contacted since the publication of the proposed amendments and positive discussions were had regarding the amendments. The department is also responding in detail to all written comments received.

No change has been made in response to this comment.

Comment:

The commenter disagrees with the impact assessment and states that the amendments, as posted, will result in using governmental processes to convert stolen property "into their own property." The commenter opines this will create liability for the state and local agencies conducting identification number inspections.

Agency Response:

The department disagrees that the amendments will create any liability for government actors. Law enforcement inspectors and the department are protected by the doctrine of sovereign immunity when acting under lawfully promulgated statutes and rules. The department does not agree that the amendments as posted will be used to convert stolen property into personal property as the department is confident that well-trained law enforcement inspectors will continue to detect stolen vehicles during the inspection process.

Comment:

The commenter expresses concern that the amendments remove qualified courts from making determinations of evidence of ownership. The commenter stated that judicial review allows for a controlled setting where all evidence of ownership can be presented.

Agency Response:

The department disagrees with this comment. As described in detail in responses above, courts are not in a good position to determine ownership of a vehicle where there is no active dispute of ownership between two parties. Further, the amendments do not eliminate the option of obtaining a court order to serve as evidence of ownership for the purpose of an identification number assignment or reassignment.

Comment:

The commenter states that proposed amendments to §217.5 would allow applicants to file a bond without any other evidence in order to prove ownership, where no title exists.

Agency Response:

The department disagrees with this comment. Applicants must complete an identification number inspection before they may apply for an identification number assignment or reassignment and bond to serve as evidence of ownership. Additionally, in drafting Transportation Code §501.053, the legislature understood that applicants applying for a bonded title will not have evidence of ownership in the form of a title, and the surety bond backing the title will provide a means of recovery for any person damaged by the issuance of the title.

STATUTORY AUTHORITY. The department adopts amendments to §217.5 under Transportation Code §501.0041 and §1002.001.

--Transportation Code §501.0041 authorizes the department to adopt rules to administer Chapter 501.

--Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §501.033 and §501.053.

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 August 11, 2022.

TRD-202203000
Elizabeth Brown Fore
General Counsel
Texas Department of Motor Vehicles
Effective date: August 31, 2022
Proposal publication date: February 25, 2022
For further information, please call: (512) 465-4160

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43 TAC §217.9

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §217.9 concerning Bonded Titles. The department adopts §217.9 with changes to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 900). The amendments to §217.9 are necessary to clarify portions of §217.9, remove duplicative information, and provide a lower-cost alternative to an appraisal for owners of trailers and semitrailers. The rule will be republished.

In response to comments, the department adopts nonsubstantive changes to renumbered §217.9(e)(6) to clarify the text regarding a weight certificate.

REASONED JUSTIFICATION.

The department adopts substantive and nonsubstantive changes to §217.9. The substantive changes to §217.9(c) clarify that the standard presumptive value (SPV) under existing Tax Code §152.0412 is the department's existing resource to determine the value of a motor vehicle. Amendments to §217.9(c) also provide an additional option for a person to determine the value of a motor vehicle that is 25 years old or older for purposes of applying for a bond. Amendments to §217.9(c) are necessary to ensure a person may use a valuation method that accurately reflects the value of their motor vehicle in its current condition. The option to use an appraisal instead of a national reference guide is at the person's discretion at the time of application for bond.

Amendments to §217.9(c)(4) provide a standard value for certain trailers whose value cannot be determined by SPV or a national reference guide. These amendments are necessary to provide a person with an alternative to determining the value of trailers and semitrailers from an appraisal by establishing a uniform value for trailers under 20 feet in length and another value for trailers 20 feet in length or greater. Subsection (e) is amended to clarify the language, including the language in renumbered subsection (e)(6), that says a weight certificate is required only if the department is unable to determine the weight using standard department resources. Nonsubstantive amendments to subsection (e)(1) delete existing duplicative requirements found in renumbered subsection (e)(5).

SUMMARY OF COMMENTS.

The department received six written comments on the proposal from the Texas Association of Vehicle Theft Investigators, the Panhandle Auto Burglary and Theft Unit, the National Insurance Crime Bureau, the Lubbock County Tax Assessor-Collector, the Laredo Police Department Auto Theft Task Force, and the Tax Assessor-Collector's Association of Texas.

Comment:

A commenter expressed concern that law enforcement was not consulted during the development of the amendments because the amendments would have an impact on law enforcement personnel qualified to perform identification number inspections.

Agency Response:

The department did not consult law enforcement personnel prior to drafting the proposed amendments because the amendments do not change how or when law enforcement personnel conduct identification number inspections. Instead, the changes deal with evidence of ownership presented to the department as part of an application for an identification number assignment or reassignment under Transportation Code §501.033(b). However, after seeing the concerns expressed by law enforcement personnel and tax assessor-collectors, the department reached out to each of the commenters to clarify the intent and purpose of the proposed amendments and to address the concerns raised in their comments. These discussions were fruitful and helped to clear up misunderstandings regarding the purpose and implementation of the proposed amendments.

No change has been made in response to this comment.

Comment:

Two commenters opposed deleting the requirement to produce a weight certificate and another commenter asked whether a weight certificate would still be required.

Agency Response:

The department appreciates the comments and will not delete renumbered subsection (e)(6) in its entirety as originally proposed. The department changed the language to make it clear that a weight certificate will be required only if the weight of the vehicle cannot be determined by the department through stan-

dard department resources. Most motor vehicles have a standard weight associated with them that the department can determine through various national reference guides if a weight is not already established on the department's motor vehicle record. However, in the case of trailers, trucks with added modifications, and some commercial vehicles, the department will not be able to determine the weight using a national reference guide. In these cases, the department will require a weight certificate.

The changes to the rule will eliminate the cost and expense of obtaining a weight certificate for customers with standard vehicles whose weights can easily be determined, while making certain that owners of trailers weighing over 4,000 pounds register and title their trailers as required.

The rule text has been changed in response to the comments as described above.

Comment:

The commenter states that the proposed new language in subsection (c), will not be sufficient for victims to recover damages through an action against a bond. Subsection (c) allows a bond amount to be based on the length of the trailers and semitrailers, as an alternative to an appraisal.

Agency Response:

The department disagrees with this comment. Proposed new subsection (c)(4) is intended to address assembled trailers under Chapter 217, Subchapter L. The value of most motor vehicles, including manufactured trailers, will be determined by the department's SPV resources or national reference guides, without issue, even if a motor vehicle lacks an identification number. This would not be the case for assembled trailers that would otherwise need an appraisal. Subsection (c)(4) eliminates the cost and expense of seeking an appraisal when a customer is pursuing a bonded title. The owner of a high value trailer or semitrailer, such as a dump trailer, livestock trailer, or custom barbecue pit trailer, who is applying for a bonded title continues to retain the option of using an appraisal to determine the value of the vehicle in place of the standard amounts in subsection (c)(4).

No change has been made in response to this comment.

Comment:

The commenter is not in favor of the proposed deletion of language stating that SPV can be determined using the department's internet website, and prefers that this language be retained.

Agency Response:

The deletion of language regarding the determination of SPV through the department's internet website and substitution of the language "under Tax Code §152.0412," does not eliminate the authority to determine SPV using the department's internet website, and instead includes SPV resources available on desktop applications currently utilized by the department.

No change has been made in response to this comment.

Comment:

The commenter recommends that the department delay adoption of the amendments to consult with law enforcement, the National Insurance Crime Bureau (NICB), and tax assessor-collectors to allow law enforcement teams to determine what impact these amendments have on operations.

Agency Response:

The department will not delay the adoption of the amendments as all commenters have been contacted since the publication of the proposed amendments, and positive discussions were had regarding the amendments. The department is also responding in detail to all written comments received.

No change has been made in response to this comment.

Comment:

The commenter disagrees with the impact assessment and states that the amendments, as posted, will result in using governmental processes to convert stolen property "into their own property." The commenter opines this will create liability for the state and local agencies conducting identification number inspections.

Agency Response:

The department disagrees with the comment that the amendments will create any liability for government actors. As government actors, law enforcement inspectors and department staff are protected by the doctrine of sovereign immunity when acting under lawfully promulgated statutes and rules such as Transportation Code §501.053 and §217.9. The department does not agree that the amendments will be used to convert stolen property into personal property as the department is confident that well-trained law enforcement inspectors will continue to detect stolen vehicles during the inspection process. No change has been made in response to this comment.

Comment:

The commenter also states that the proposed amendments to §217.9 would allow persons to use an appraisal to determine the value for vehicles 25 years or older, and for trailer or semitrailers, use set values in lieu of appraisals. The commenter proposes that the department not adopt the proposed amendment until the department can engage in substantive consultation with Texas law enforcement, NICB, property-casualty insurers, and Texas tax assessor-collectors.

Agency Response:

The department agrees that the proposed amendments would allow persons to use an appraisal in lieu of using a national reference guide for a vehicle 25 years or older, which will result in a more accurate evaluation of a vehicle's value, particularly when a vehicle is not in pristine or even operable condition and not worth the value identified by the national reference guide. The department also agrees the amendments provide for the use of predetermined values for trailers or semitrailers, based on the length of the trailer, but only in situations where the value of the trailer or semitrailer may not be determined using SPV or national reference guides. In those situations, a person is still allowed to use an appraisal if they believed an appraisal would provide a more accurate determination of the value of the trailer.

No change has been made in response to this comment.

Comment:

The commenter states that the proposed amendments strike the requirement "to present the inspection to be submitted as part of the bonded title process."

Agency Response:

The department proposes to delete subsection (e)(1), which requires verification of the vehicle identification number on a form specified by the department and replaces the verification

requirement with language in subsection (d) which states, "the vehicle identification number must be verified by an inspection under Transportation Code §501.0321." Transportation Code §501.0321 describes all the requirements of an identification number inspection, including the requirement that the department prescribe a form on which the inspection is to be recorded. The rule still requires proof of a completed identification number inspection as part of the bonded title process, as indicated in subsection (e)(5), and the deleted language is being eliminated as duplicative.

No change has been made in response to this comment.

STATUTORY AUTHORITY. The department adopts amendments to §217.9 under Transportation Code §501.0041 and §1002.001

Transportation Code §501.0041 authorizes the department to adopt rules to administer Chapter 501.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §501.053.

§217.9. Bonded Titles.

(a) Who may file. A person who has an interest in a motor vehicle to which the department has refused to issue a title or has suspended or revoked a title may request issuance of a title from the department on a prescribed form if the vehicle is in the possession of the applicant; and

(1) there is a record that indicates a lien that is less than ten years old and the surety bonding company ensures lien satisfaction or release of lien;

(2) there is a record that indicates there is not a lien or the lien is ten or more years old; or

(3) the department has no previous motor vehicle record.

(b) Administrative fee. The applicant must pay the department a $15 administrative fee in addition to any other required fees.

(c) Value. The amount of the bond must be equal to one and one-half times the value of the vehicle as determined under Tax Code §152.0412 regarding Standard Presumptive Value (SPV). If the SPV is not available, then a national reference guide will be used. If the value cannot be determined by the department through either source, then the person may obtain an appraisal. If a motor vehicle is 25 years or older, a person may obtain an appraisal to determine the value instead of using a national reference guide.

(1) The appraisal must be on a form specified by the department from a Texas licensed motor vehicle dealer for the categories of motor vehicles that the dealer is licensed to sell or a Texas licensed insurance adjuster who may appraise any type of motor vehicle.

(2) The appraisal must be dated and be submitted to the department within 30 days of the appraisal.

(3) If the motor vehicle is 25 years or older and the appraised value of the vehicle is less than $4,000, the bond amount will be established from a value of $4,000.

(4) If the motor vehicle is a trailer or semitrailer, the person may, as an alternative to an appraisal, have the bond amount established from a value of:

(A) $4,000, if under 20 feet in length, or

(B) $7,000, if 20 or more feet in length.

(d) Vehicle identification number inspection. If the department has no motor vehicle record for the vehicle, the vehicle identification number must be verified by an inspection under Transportation Code §501.0321.

(e) Required documentation. An applicant may apply for a bonded title if the applicant submits:

(1) any evidence of ownership;

(2) the original bond within 30 days of issuance;

(3) the notice of determination within one year of issuance and the receipt for $15 paid to the department;

(4) the documentation determining the value of the vehicle;

(5) proof of the vehicle identification number inspection, as described in subsection (d) of this section, if the department has no motor vehicle record for the vehicle;

(6) a weight certificate if the weight cannot otherwise be determined;

(7) a certification of lien satisfaction by the surety bonding company, or a release of lien, if the notice of determination letter states that there may be a lien less than ten years old; and

(8) any other required documentation and fees.

(f) Report of Judgment. The bond must require that the surety report payment of any judgment to the department within 30 days.

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 August 11, 2022.

TRD-202202999
Elizabeth Brown Fore
General Counsel
Texas Department of Motor Vehicles
Effective date: August 31, 2022
Proposal publication date: February 25, 2022
For further information, please call: (512) 465-4160

♦ ♦ ♦


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

Finance Commission of Texas

Title 7, Part 1

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 5 (Administration of Finance Agencies), comprised of §§5.100 - 5.105.

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register.*

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as a proposed rule in the *Texas Register.* Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202203003
Catherine Reyer
General Counsel
Finance Commission of Texas
Filed: August 11, 2022

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Texas Department of Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 11 (Miscellaneous), comprised of Subchapter A (§§11.10 - 11.37).

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register.*

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as a proposed rule in the *Texas Register.* Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202203005
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: August 11, 2022

♦ ♦ ♦

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 26 (Perpetual Care Cemeteries), comprised of §§26.1 - 26.12.

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register.*

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register.* Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202203006
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: August 11, 2022

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On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 27 (Applications), comprised of §27.1.

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the section under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register.*

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to this section as a result of the rule review will be published as a proposed rule in the *Texas Register.* Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202203007
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: August 11, 2022

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Adopted Rule Reviews

Texas Real Estate Commission

Title 22, Part 23

In accordance with Texas Government Code §2001.039, the Texas Real Estate Commission (TREC) has concluded its review of Texas Administrative Code, Title 22, Part 23, Chapter 537, Professional Agreements and Standard Contracts and Chapter 543, Rules Relating to the Provisions of the Texas Timeshare Act. The notice of proposed rule review was published in the March 4, 2022, issue of the *Texas Register* (47 TexReg 1107).

TREC has determined that the reasoned justification for adopting Texas Administrative Code, Title 22, Part 23, Chapters 537 and 543 continues to exist. Furthermore, the review process indicated that certain rules needed to be amended to further refine or better reflect current TREC procedures and policy considerations or that rules should be combined or reduced for simplification and clarity. Accordingly, amendments to 22 TAC Chapters 537 and 543 were proposed and published in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3010) and (47 TexReg 3014), respectively, and are adopted under the Adopted Rules section of this issue of the *Texas Register.*

No comments were received regarding TREC's notice of review. This notice concludes TREC's review of Texas Administrative Code, Title 22, Part 23, Chapters 537 and 543.

TRD-202202990
Vanessa Burgess
General Counsel
Texas Real Estate Commission
Filed: August 10, 2022

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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 1: 1 TAC §18.31(a)

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
253.031(b)	PAC: Amount of contributions or expenditures permitted before TA is required	$500	$980[~~$930~~]
253.031(d)(2)	CEC: Amount of contributions or expenditures permitted before TA is required	$25,000	$36,630[$34,220]
253.032(a)	Contribution by Out-of-state PAC: Threshold above which certain paperwork is required	$500	$1,010[~~$940~~]
253.032(a)(1)	Contribution to Out-of-state PAC: Threshold above which certain contribution information is required	$100	$200[~~$190~~]
253.032(e)	Contribution by Out-of-state PAC: Threshold at or below which certain information is required	$500	$1,010[~~$940~~]
254.031(a)(1)	Contributions: Threshold over which more information is required	$50	$100[~~$90~~]
254.031(a)(2)	Loans: Threshold over which more information is required	$50	$100[~~$90~~]
254.031(a)(3)	Expenditures: Threshold over which more information is required	$100	$200[~~$190~~]
254.031(a)(5)	Contributions: Threshold at or below which more information is not required	$50	$100[~~$90~~]
254.031(a)(5)	Expenditures: Threshold at or below which more information is not required	$100	$200[~~$190~~]
254.031(a)(9)	Interest, credits, refunds: Threshold over which more information is required	$100	$130[~~$120~~]
254.031(a)(10)	Sale of political assets: Threshold over which proceeds must be reported	$100	$130[~~$120~~]
254.031(a)(11)	Investment Gain: Threshold over which more information is required	$100	$130[~~$120~~]
254.031(a)(12)	Contribution Gain: Threshold over which more information is required	$100	$130[~~$120~~]
254.0311(b)(1)	Caucus, contributions from non-caucus members: Threshold over which more information is required	$50	$100[~~$90~~]
254.0311(b)(2)	Caucus, loans: Threshold over which more information is required	$50	$100[~~$90~~]
254.0311(b)(3)	Caucus, expenditures: Threshold over which more information is required	$50	$100[~~$90~~]
254.0311(b)(4)	Caucus, contributions and expenditures: Threshold at or below which more information is not required	$50	$100[~~$90~~]

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.0312	Contributions, Best Efforts: Threshold under which filer is not required to request contributor information to be in compliance	$500	$770[~~$720~~]
254.036	Electronic Filing Exemption: Threshold at or below which a filer may qualify	$20,000	$30,820[~~$28,800~~]
254.038(a)	Daily Reports by certain candidates and PACs: Contribution threshold triggering report	$1,000	$2,020[~~$1,890~~]
254.039	Daily Reports by GPACs: Contribution threshold triggering report	$5,000	$6,910[~~$6,450~~]
254.039	Daily reports by GPACs: DCE expenditure thresholds (single candidate/group of candidates)	$1,000/$15,000	$2,020/$30,330 [~~$1,890/$28,330~~]
254.0611(a)(2)	Judicial candidates, contributions: Threshold over which more information is required	$50	$100[~~$90~~]
254.0611(a)(3)	Judicial candidates, asset purchase: Threshold over which more information is required	$500	$1,010[~~$940~~]
254.0612	Statewide executive and legislative candidates, contributions: Threshold over which more information is required	$500	$1,010[~~$940~~]
254.095	Local officeholders, contributions: Threshold under which reporting is not required	$500	$1,010[~~$940~~]
254.151(6)	GPAC, contributions: Threshold over which more information is required	$50	$100[~~$90~~]
254.1541(a)	GPAC, higher itemization threshold: Threshold under which it applies	$20,000	$29,300[~~$27,380~~]
254.1541(b)	GPACs that meet higher itemization threshold: Threshold over which more contributor information is required	$100	$200[~~$190~~]
254.156(1)	MPAC: Threshold over which contribution, lender and expenditure information is required	$10	$20
254.156(2)	MPACs that meet higher itemization threshold: Threshold over which more contributor information is required	$20	$40
254.181 254.182 254.183	Candidate or SPACs, modified reporting: Contribution or expenditure threshold at or below which filers may avoid pre-election reports	$500	$1,010[~~$940~~]
254.261	DCE filers: Threshold over which a report must be filed	$100	$150[~~$140~~]

Figure 2: 1 TAC §18.31(a)

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
305.003(1)	Lobbyist, expenditures: Threshold over which registration is required	$500, by 1 Tex. Admin. Code §34.41	$880 [~~$820~~]
305.003(2)	Lobbyist, compensation: Threshold over which registration is required	$1,000, by 1 Tex. Admin. Code §34.43	$1,760 [~~$1,640~~]
305.004(7)	Lobbying for political party: Threshold at or below which registration is not required	$5,000	$10,110 [~~$9,440~~]
305.005(g)(2)	Lobbyist: Compensation threshold	$10,000	Less than $20,220 [~~Less than $18,890~~]
305.005(g)(3)	Lobbyist: Compensation threshold	$25,000	$20,220 to less than $50,540 [~~$18,890 to less than $47,220~~]
305.005(g)(4)	Lobbyist: Compensation threshold	$50,000	$50,540 to less than $101,090 [~~$47,220 to less than $94,440~~]
305.005(g)(5)	Lobbyist: Compensation threshold	$100,000	$101,090 to less than $202,180 [~~$94,440 to less than $188,890~~]
305.005(g)(6)	Lobbyist: Compensation threshold	$150,000	$202,180 to less than $303,270 [~~$188,890 to less than $283,330~~]
305.005(g)(7)	Lobbyist: Compensation threshold	$200,000	$303,270 to less than $404,350 [~~$283,330 to less than $377,770~~]
305.005(g)(8)	Lobbyist: Compensation threshold	$250,000	$404,350 to less than $505,440 [~~$377,770 to less than $472,220~~]
305.005(g)(9)	Lobbyist: Compensation threshold	$300,000	$505,440 to less than $606,530 [~~$472,220 to less than $566,660~~]
305.005(g)(10)	Lobbyist: Compensation threshold	$350,000	$606,530 to less than $707,620 [~~$566,660 to less than $661,100~~]

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
305.005(g)(11)	Lobbyist: Compensation threshold	$400,000	$707,620 to less than $808,710 [~~$661,100 to less than $755,540~~]
305.005(g)(12)	Lobbyist: Compensation threshold	$450,000	$808,710 to less than $909,800 [~~$755,540 to less than $849,990~~]
305.005(g)(13)	Lobbyist: Compensation threshold	$500,000	$909,800 to less than $1,010,880 [~~$849,990 to less than $944,430~~]
305.005(g-1)	Lobbyist: Compensation threshold	$500,000	$1,010,880 or more [~~$944,430 or more~~]
305.0061(c)~~(3)~~	Lobbyist, legislative/executive branch member: Threshold over which gifts, awards and mementos must be disclosed	$50	$100 [~~$90~~]
305.0061(e-1)	Lobbyist, food and beverage: Threshold at or below which it is considered a gift and reported as such	$50	$100 [~~$90~~]
305.0063	Lobbyist, annual filer: Expenditure threshold at or below which filer may file annually	$1,000	$2,020 [~~$1,890~~]

Figure 3: 1 TAC §18.31(a)

Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
572.022(a)(1)	PFS threshold	less than $5,000	less than $10,110 [~~$9,440~~]
572.022(a)(2)	PFS threshold	$5,000 to less than $10,000	$10,110 [~~$9,440~~] to less than $20,220 [~~$18,890~~]
572.022(a)(3)	PFS threshold	$10,000 to less than $25,000	$20,220 [~~$18,890~~] to less than $50,540 [~~$47,220~~]
572.022(a)(4)	PFS threshold	$25,000 or more	$50,540 [~~$47,220~~] or more
572.005, 572.023(b)(1)	PFS, retainer: Threshold over which filer with a substantial interest in a business entity must report more information	$25,000	$50,540 [~~$47,220~~]
572.023(b)(4)	PFS, interest, dividends, royalties and rents: Threshold over which information must be reported	$500	$1,010 [~~$940~~]
572.023(b)(5)	PFS, loans: Threshold over which information must be reported	$1,000	$2,020 [~~$1,890~~]
572.023(b)(7)	PFS, gifts: Threshold over which information must be reported	$250	$510[~~$470~~]
572.023(b)(8)	PFS, income from trust: Threshold over which information must be reported	$500	$1,010 [~~$940~~]
572.023(b)(15)	PFS, government contracts: Threshold of aggregate over which more information must be reported	Exceeds $10,000	Exceeds $11,100 [~~$10,370~~]
572.023(b)(15)(A)	PFS, government contracts: Itemization threshold	$2,500 or more	$2,770 [~~$2,590~~] or more
572.023(b)(16)(D)(i)	PFS, bond counsel fees paid to legislator: Threshold	less than $5,000	less than $5,550 [~~$5,180~~]
572.023(b)(16)(D)(ii)	PFS, bond counsel fees paid to legislator: Threshold	at least $5,000 but less than $10,000	at least $5,550 [~~$5,180~~] but less than $11,100 [~~$10,370~~]
572.023(b)(16)(D)(iii)	PFS, bond counsel fees paid to legislator: Threshold	at least $10,000 but less than $25,000	at least $11,100 [~~$10,370~~] but less than $27,740 [~~$25,920~~]
572.023(b)(16)(D)(iv)	PFS, bond counsel fees paid to legislator: Threshold	$25,000 or more	$27,740 [~~$25,920~~] or more

Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
572.023(b)(16)(E)(i)	PFS, bond counsel fees paid to individual's firm: Threshold	less than $5,000	less than $5,550 [~~$5,180~~]
572.023(b)(16)(E)(ii)	PFS, bond counsel fees paid to individual's firm: Threshold	at least $5,000 but less than $10,000	at least $5,550 [~~$5,180~~] but less than $11,100 [~~$10,370~~]
572.023(b)(16)(E)(iii)	PFS, bond counsel fees paid to individual's firm: Threshold	at least $10,000 but less than $25,000	at least $11,100 [~~$10,370~~] but less than $27,740 [~~$25,920~~]
572.023(b)(16)(E)(iv)	PFS, bond counsel fees paid to individual's firm: Threshold	$25,000 or more	$27,740 [~~$25,920~~] or more

Figure 4: 1 TAC §18.31(a)

Speaker Election and Certain Ceremonial Reports: Section of Government Code	Threshold Type	Current Threshold Amount	Adjusted Amount
302.014(4)	Speaker: Expenditures over which more information must be reported	$10	$20
303.005(a)(1) – (10)	Governor for a Day/Speaker's Day: Threshold over which more information must be reported	$50	$100 [~~$90~~]

Figure: 4 TAC §20.22(a)(3)

Pest Mgmt Zone	Earliest Planting Date	Destruction Deadline	End Date for Destruction Requirements
1	February 1	September 1	March 1
2 [- Area 1]	February 1	October 1 [September 1]	March 1
[2 - Area 2]	[February 1]	[September 1]	[March 1]
[2 - Area 3]	[February 1]	[September 15]	[March 1]
[2 - Area 4]	[February 1]	[October 1]	[March 1]
3	February 1	October 31	Emergence of new crop
4	February 1	October 15 [10]	Emergence of new crop
5 [6]	February 1	October 31	Emergence of new crop
6 [7 - Area 1]	February 1	November 30	Emergence of new crop
[7 - Area 2]	[February 1]	[November 30]	[Emergence of new crop]
7 [8 - Area 1]	February 1	November 20 [October 31]	Emergence of new crop
[8 - Area 2]	[February 1]	[November 20]	[Emergence of new crop]
8 [9]	April 1	March 1	March [May] 1
9 [10]	March 1 [25]	February 1	March 25

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.

Alamo Area Metropolitan Planning Organization

Request for Proposals - General Planning Services

The Alamo Area Metropolitan Planning Organization (AAMPO) is seeking proposals from qualified firms to provide General Planning Services.

The Request for Proposals (RFP) may be obtained by downloading the RFP and attachments from AAMPO's website at www.alamoareampo.org or calling Sonia Jiménez, Deputy Director, at (210) 227-8651. Anyone wishing to submit a proposal must email it by 12:00 p.m. (CDT), Friday, September 30, 2022, to the AAMPO office at aampo@alamoareampo.org.

Reimbursable funding for this study, in the amount of $750,000, is contingent upon the availability of federal transportation planning funds.

TRD-202203073
Sonia Jimenez
Deputy Director
Alamo Area Metropolitan Planning Organization
Filed: August 17, 2022

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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 08/22/22 - 08/28/22 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 08/22/22 - 08/28//22 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-202203066
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 16, 2022

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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 **September 27, 2022.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **September 27, 2022.** 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: Big Spring ISD; DOCKET NUMBER: 2022-0490-PST-E; IDENTIFIER: RN101751287; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: fleet refueling; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the regulated USTs; PENALTY: $9,000; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(2) COMPANY: City of Austin; DOCKET NUMBER: 2022-0515-AIR-E; IDENTIFIER: RN103219127; LOCATION: Cushing, Nacogdoches County; TYPE OF FACILITY: power plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 77679 and PSDTX1061M1, Special Conditions Number 1, Federal Operating Permit Number O3455, General Terms and Conditions and Special Terms and Conditions Number 8, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: $9,000; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: City of Beeville; DOCKET NUMBER: 2022-0472-MWD-E; IDENTIFIER: RN101614089; LOCATION: Beeville, Bee County; TYPE OF FACILITY: wastewater treatment; RULES VIOLATED: 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1),

and Texas Pollutant Discharge Elimination System Permit Number WQ0010124002, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; PENALTY: $14,000; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: City of George West; DOCKET NUMBER: 2018-1738-MWD-E; IDENTIFIER: RN101651495; LOCATION: George West, Live Oak County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §217.36(h) and §305.125(1) and (5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010455002, Operational Requirements Number 4, by failing to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater; 30 TAC §217.59(b)(2) and §317.3(a), by failing to secure the lift station in an intruder resistant manner; 30 TAC §305.125(1) and TPDES Permit Number WQ0010455002, Monitoring and Reporting Requirements Number 7(c), by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of noncompliance; 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010455002, Permit Conditions Number 2(d), by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment; 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0010455002, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010455002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1), §319.6 and TPDES Permit Number WQ0010455002, Monitoring and Reporting Requirements Number 1, by failing to assure the quality of all measurements through the use of blanks, standards, duplicate analyses, and spikes; and 30 TAC §305.125(1) and §319.7(c), and TPDES Permit Number WQ0010455002, Monitoring and Reporting Requirements Number 3(c), by failing to maintain complete and accurate records of monitoring activities; PENALTY: $96,476; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $96,476; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(5) COMPANY: City of Junction; DOCKET NUMBER: 2022-0505-PWS-E; IDENTIFIER: RN101383990; LOCATION: Junction, Kimble County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(g)(3)(F), by failing to design the membrane system so that membrane units' feed water, filtrate, backwash supply, waste, and chemical cleaning piping have cross-connection protection to prevent chemicals from all chemical cleaning processes from contaminating other membrane units in other modes of operation; PENALTY: $7,065; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(6) COMPANY: Dixie Chemical Company, Incorporated; DOCKET NUMBER: 2021-1272-AIR-E; IDENTIFIER: RN100218486; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 18342, Special Conditions Number 32, Federal Operating Permit Number O3669, General Terms and Conditions and Special Terms and Conditions Number 16, and Texas Health and Safety Code, §382.085(b), by failing to maintain the net heating value of the combustion zone gas of the flare at or above 270 British thermal units per standard cubic foot on an instantaneous basis at all times when waste is vented to the flare; PENALTY: $98,100; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $39,240; ENFORCEMENT COORDINATOR: Jo Hunsberger, (512) 239-1274; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: FIRST LAREDO STORE INC dba Tejano Mart 518; DOCKET NUMBER: 2022-0301-PST-E; IDENTIFIER: RN101432573; LOCATION: Laredo, Webb County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,719; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(8) COMPANY: Goodwill AB Inc dba Willis Food Mart; DOCKET NUMBER: 2022-0498-PST-E; IDENTIFIER: RN102784642; LOCATION: Commerce, Hunt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: High Country Real Estate LLC dba FUEL CITY FLEET EXPRESS; DOCKET NUMBER: 2021-1007-PST-E; IDENTIFIER: RN105984553; LOCATION: Mesquite, Dallas County; TYPE OF FACILITY: unmanned truck stop with retail sales of diesel; RULES VIOLATED: 30 TAC §334.45(d)(1)(E)(iv), by failing to install and maintain sumps in a manner that assures that their sides, bottoms, and any penetration points are liquid tight; 30 TAC §334.50(b)(1)(B) and (2)(A)(iii) and TWC, §26.3475(c)(1), by failing to conduct release detection for underground storage tank and piping installed after January 1, 2009, at a frequency of at least once every 30 days using interstitial monitoring; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72; PENALTY: $16,776; ENFORCEMENT COORDINATOR: Horus Garcia, (512) 239-1813; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: KARMAN DHILLON INC dba Nu Way; DOCKET NUMBER: 2022-0516-PST-E; IDENTIFIER: RN102345451; LOCATION: Cooper, Delta County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Nerro Supply, LLC; DOCKET NUMBER: 2022-0522-PWS-E; IDENTIFIER: RN101238723; LOCATION: Dayton, Liberty County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation

report to the Executive Director within 90 days after being notified of the analytical results that caused an exceedance of the operational evaluation level of total trihalomethanes (TTHM) for Stage 2 Disinfection Byproducts at Site 2 during the fourth quarter of 2021; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for TTHM, based on the locational running annual average; PENALTY: $2,487; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: SOUTHERN HORIZONS DEVELOPMENT, INCORPORATED; DOCKET NUMBER: 2022-0493-PWS-E; IDENTIFIER: RN101226108; LOCATION: Splendora, Liberty County; TYPE OF FACILITY: public water supply; RULES 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 Well Number 3 into service; and 30 TAC §290.46(f)(2) and (3)(A)(vi), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; PENALTY: $687; ENFORCEMENT COORDINATOR: America Ruiz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Southwest Texas Commercial Properties LLC dba Star Stop 430530; DOCKET NUMBER: 2021-1497-PST-E; IDENTIFIER: RN102387255; LOCATION: Eldorado, Schleicher County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(h)(1)(A)(i) and TWC, §26.3475(c)(2), by failing to conduct a walkthrough visual inspection of the spill prevention equipment at least once every 30 days; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.51(b)(2)(C)(ii) and TWC, §26.3475(c)(2), by failing to equip each UST with a valve or other appropriate device that shall be designed to automatically restrict the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level which shall be no higher than the 90% capacity level for the tank; PENALTY: $6,775; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(14) COMPANY: Southwest Texas Commercial Properties LLC dba Star Stop Food Mart 11; DOCKET NUMBER: 2021-1426-PST-E; IDENTIFIER: RN102410545; LOCATION: Eden, Concho County; TYPE OF FACILITY: convenience store with retail sales of fuel; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(15) COMPANY: SUNNY SKIES RETAILER INCORPORATED dba EZ In N Out 2; DOCKET NUMBER: 2022-0509-PST-E; IDENTIFIER: RN102274917; LOCATION: Cleburne, Johnson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Horus Garcia, (512) 239-1813; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Sunoco Retail LLC dba Fast Break 9; DOCKET NUMBER: 2022-0261-PST-E; IDENTIFIER: RN102141405; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(17) COMPANY: Surjit Singh dba Express Food Mart; DOCKET NUMBER: 2022-0521-PST-E; IDENTIFIER: RN102347879; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: TAKHAR & SON, L.L.C. dba Texas Oasis; DOCKET NUMBER: 2022-0517-PST-E; IDENTIFIER: RN102036878; LOCATION: Tioga, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2022-0496-PST-E; IDENTIFIER: RN105205462; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: emergency generator; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $4,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $3,600; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: Texas MEX Limited Company, LLC dba Tejano Mart 515; DOCKET NUMBER: 2022-0363-PST-E; IDENTIFIER: RN101824670; LOCATION: Laredo, Webb County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $4,619; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-202203050
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: August 16, 2022

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 169774

APPLICATION. BURNCO Texas, LLC, 8505 Freeport Parkway, Suite 190, Irving, Texas 75063-2548 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 169774 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 9636 County Road 419, Anna, Collin County, Texas 75409. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.321666&lng=-96.525163&zoom=13&type=r. This application was submitted to the TCEQ on July 27, 2022. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on August 2, 2022.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Monday, September 26, 2022, at 6:00 p.m.

Judith L. Harlow Elementary School (Cafeteria)

2412 Leonard Avenue

Anna, Texas 75409

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from BURNCO Texas LLC, 8505 Freeport Parkway, Suite 190, Irving, Texas 75063-2548, or by calling Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: August 12, 2022

TRD-202203049
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 16, 2022

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Notice of Correction to Agreed Order Number 8

In the July 1, 2022, issue of the *Texas Register* (47 TexReg 3831), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 8, for Friday Building Corporation Inc; Docket Number 2022-0608-WQ-E. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "FRIDAY BUILDING CORPORATION INC."

For questions concerning the error, please contact Michael Parrish at (512) 239-2548.

TRD-202203053
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: August 16, 2022

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Notice of Correction to Agreed Order Number 10

In the July 1, 2022, issue of the *Texas Register* (47 TexReg 3831), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 10, for Mike Brattloff Homes Inc; Docket Number 2022-0607-WQ-E. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "MIKE BRATTLOF HOMES, INC."

For questions concerning the error, please contact Michael Parrish at (512) 239-2548.

TRD-202203052
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: August 16, 2022

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Notice of Correction to Agreed Order Number 20

In the April 23, 2021, issue of the *Texas Register* (46 TexReg 2842), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 20, for SSM Business Enterprises dba Chilly Mart; Docket Number 2019-1354-PST-E. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "SSM Business Enterprises, Inc. dba Chilly Mart."

The reference to rules violated should be corrected to remove: "30 TAC §334.50(d)(9)(A)(iv)."

The reference to the penalty should be corrected to read: "$17,992."

For questions concerning the error, please contact Michael Parrish at (512) 239-2548.

TRD-202203051
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: August 16, 2022

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Notice of Costs to Administer the Voluntary Cleanup Program and the Innocent Owner/Operator Program

In accordance with Texas Health and Safety Code, §361.613 (pertaining to the Voluntary Cleanup Program (VCP)) and 30 Texas Administrative Code §333.43 (pertaining to the Innocent Owner/Operator Program (IOP)), the executive director of the Texas Commission on Environmental Quality (TCEQ or commission) annually shall calculate the commission's costs to administer the VCP and the IOP, and shall publish in the *Texas Register* the rates established for the purpose of identifying the costs recoverable by the commission. The TCEQ has calculated and is publishing the bill rate for both the VCP and the IOP as $115 per hour for the commission's Fiscal Year 2023.

The VCP and the IOP are implemented by the same TCEQ staff. Therefore, a single hourly bill rate for both programs is appropriate. The hourly bill rate is determined based upon current projections for staff salaries for the Fiscal Year 2023, including the fringe benefit rate and the indirect cost rate, minus anticipated federal funding that the commission will receive, and then divided by the estimated number of staff hours necessary to complete the program tasks. Fringe benefits include retirement, social security, and insurance expenses and are calculated at a set rate for the entire agency. The current fringe benefit rate is 33.30% of the budgeted salaries. Indirect costs include allowable overhead expenses and also are calculated at a set rate for the entire agency. The current indirect cost rate is 36.83% of the budgeted salary. The hourly bill rate was calculated and then rounded to the nearest whole dollar amount. The commission will use an hourly bill rate of $115 for both the VCP and the IOP for the Fiscal Year 2023. After an applicant's initial $1,000 application fee has been depleted for the VCP or the IOP review and oversight costs, invoices will be sent monthly to the applicant, or designee, for payment.

The commission anticipates receiving federal funding during Fiscal Year 2023 for the continued development and enhancement of the VCP and the IOP. If the federal funding anticipated for Fiscal Year 2023 does not become available, the commission may calculate and publish a new hourly bill rate. Federal funding of the VCP and the IOP should occur prior to October 1, 2022.

For more information, please contact Ms. Merrie Smith, P.G., VCP-CA Section, Remediation Division, Texas Commission on Environmental Quality, MC 221, 12100 Park 35 Circle, Austin, Texas 78753, or call (512) 239-5051, or email *merrie.smith@tceq.texas.gov.*

TRD-202203068
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: August 16, 2022

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Notice of District Petition

Notice issued August 15, 2022

TCEQ Internal Control No. D-07122022-014; Gateway Core Equity, Ltd., a Texas limited partnership (Petitioner) filed a petition for creation of Gateway Municipal Utility District No. 1 (District) of Webb County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Commerce Bank, on the property to be included in the proposed District and application material indicates that the lienholder consents to the creation of the proposed District); (3) the proposed District will contain approximately 647.347 acres located within Webb County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, enterprises, and road facilities as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $20,410,000 ($11,110,000 for water, wastewater, and drainage and $9,300,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website 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 website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the

Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202203047
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 16, 2022

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Notice of District Petition

Notice issued August 15, 2022

TCEQ Internal Control No. D-03292022-058; Denton Oliver Creek, LP, a Texas limited partnership and Astra Investments GP, LLC, a Texas limited liability company, its General Partner (Petitioners) filed a petition for creation of Oliver Creek Ranch Municipal Utility District of Denton County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land in the proposed District; (2) there is no lienholder on the property to be included in the proposed District; (3) the proposed District will contain approximately 570.976 acres located within Denton County, Texas; and (4) the District is located partially within the extraterritorial jurisdiction of the Town of Northlake, Texas, partially within the extraterritorial jurisdiction of the City of Justin, Texas (collectively, the Cities), and is not located within the corporate limits or extraterritorial jurisdiction of any other city, town, or village. Pursuant to Texas Water Code §54.016, the Petitioners filed petitions for consent on October 14, 2020 (Town of Northlake) and February 4, 2021 (City of Justin). A petition for water and sanitary sewer services was filed on July 27, 2021 with the City of Justin. Based on the application material, the City of Justin has not responded to the request for consent or water utility services. By Resolution No. 20-36, passed and approved on December 10, 2020, the Town of Northlake, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The City of Justin has not consented to the creation of the District and the Cities have failed to execute a contract providing for the water or sanitary sewer services requested by the Petitioners within the time limits prescribed by the Texas Local Government Code §42.042. Pursuant to the Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioners to initiate proceedings to include the land within the District. The petition further states that the work proposed to be done by the District at the present time is: (1) the construction of a water distribution system for domestic purposes; (2) the construction of a sanitary sewer system; (3) the control, abatement, and amendment of the harmful excess of waters and the reclamation and drainage of overflowed lands within the District; (4) the construction and financing of macadamized, graveled, or paved roads, or improvements in aid of those roads; and (5) such other construction, installation, maintenance, purchase, and operation of such additional facilities, systems, plants, and enterprises as shall be consistent with the purposes for which the District is organized, all to the extent authorized by law from time to time. It is specifically proposed that the District be granted the authority to design, acquire, construct, finance, issue bonds for, operate, maintain, and convey to this state, a county, or a municipality for operation and maintenance, a road or any improvement in aid of the road, pursuant to Texas Water Code §54.234. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $110,655,000 including ($67,500,000 for water, wastewater, and drainage plus $43,155,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website 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 website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202203048
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 16, 2022

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Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 27, 2022.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about 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 September 27, 2022.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: SADDLE MOUNTAIN WATER COOPERATIVE, INC.; DOCKET NUMBER: 2020-1387-PWS-E; TCEQ ID NUMBER: RN110035979; LOCATION: 171 Saddle Mountain Trail near Kerrville, Kerr County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility's Wells Numbers 1 and 2; Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.45(b)(1)(B)(iii), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; and THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(B)(iv), by failing to provide a pressure tank capacity of 20 gallons per connection; PENALTY: $3,100; STAFF ATTORNEY: Clayton Smith, Litigation, MC 175, (512) 239-6224; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202203069
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: August 16, 2022

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 27, 2022.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 27, 2022.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Jeremy Davis; DOCKET NUMBER: 2021-0316-PST-E; TCEQ ID NUMBER: RN102848603; LOCATION: 3702 Avenue A, Lubbock, Lubbock County; TYPE OF FACILITY: temporarily out-of-service underground storage tank (UST) system; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C), by failing to inspect the impressed cathodic protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; and 30 TAC §334.7(d)(1)(A) and (3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of occurrence of the change or addition; PENALTY: $6,666; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: Raymond W. Blair, Jr. dba Last Resort Properties; DOCKET NUMBER: 2019-1359-PWS-E; TCEQ ID NUMBER: RN102689452; LOCATION: 423 Buladora Drive near Lakewood Village, Little Elm, Denton County; TYPE OF FACILITY: public water system; RULE VIOLATED: TCEQ Agreed Order Docket Number 2017-1133-PWS-E, Ordering Provision Number 2.a.ii, by failing to provide public notification to the executive director regarding the failure to submit a Disinfectant Level Quarterly Operating Report, and regarding the failure to collect lead and copper tap samples; PENALTY: $910; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202203070
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: August 16, 2022

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Blue Cereus, LLC dba La Caleta Estates and Blue Cereus, LLC dba San Pedro Village: SOAH Docket No. 582-22-07515; TCEQ Docket No. 2022-0010-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - September 8, 2022

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed June 1, 2022 concerning assessing administrative penalties against and requiring certain actions of Blue Cereus, LLC dba La Caleta Estates and Blue Cereus, LLC dba San Pedro Village, for violations in Val Verde County, Texas, of: 30 Texas Administrative Code §290.45(f)(1).

The hearing will allow Blue Cereus, LLC dba La Caleta Estates and Blue Cereus, LLC dba San Pedro Village, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Blue Cereus, LLC dba La Caleta Estates and Blue Cereus, LLC dba San Pedro Village, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Blue Cereus, LLC dba La Caleta Estates and Blue Cereus, LLC dba San Pedro Village to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Blue Cereus, LLC dba La Caleta Estates and Blue Cereus, LLC dba San Pedro Village, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Health & Safety Code ch. 341 and 30 Texas Administrative Code chs. 70 and 290; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Megan L. Grace, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363. **Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at** www.tceq.texas.gov/goto/efilings **or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, **or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: August 10, 2022

TRD-202202993
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 11, 2022

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Notice of Water Quality Application

The following notice was issued on August 16, 2022

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 30 DAYS OF THE NOTICE BEING PUBLISHED IN THE TEXAS REGISTER.

INFORMATION SECTION

The Texas Commission on Environmental Quality (TCEQ) has initiated an amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005143000 issued to Natgasoline LLC, which operates Beaumont Gas to Gasoline Plant, a produces methanol from natural gas facility, to change the single grab concentrations for benzo(a)anthracene and benzo(a)pyrene from 0.050 mg/L to 0.005 mg/L. The facility is located at 2366 Sulphur Plant Road, in the City of Beaumont, Jefferson County, Texas 77705.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202203071
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 16, 2022

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Notice of Water Rights Application

Notices Issued August 17, 2022

APPLICATION NO. 14-2553B; The City of Goldthwaite, 1219 Fisher Street, Goldthwaite, Texas 76844, Applicant, seeks to sever its water rights (1,000 acre-feet of water per year), authorized by Certificate of Adjudication No. 14-2546 and combine those rights with the 1,500 acre-feet of water per year, authorized by Certificate of Adjudication No. 14-2553. The City of Goldthwaite further seeks to amend the combined Certificate of Adjudication No. 14-2553 to change the purpose of use of all 2,500 acre-feet of water to municipal and industrial purposes, to store all of the authorized water in three existing off-channel reservoirs, and to add an additional off-channel reservoir, to authorize diversion of the 1,000 acre-feet of water from the City's authorized diversion point, and to add a place of use for all of the authorized water within the City's service area in Mills County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on July 2, 2020. Additional information and fees were received on October 6, and November 9, 2020. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 30, 2021. The Executive Director completed the technical review of the application and prepared a draft amendment. The draft amendment if granted, would include special conditions including, but not limited to, streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-pending-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by September 06, 2022. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by September 06, 2022. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by September 06, 2022.

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;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the TCEQ will not issue the permit and will 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 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering ADJ 2553 in the search field. 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 website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202203076
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 17, 2022

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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, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Scarlett Scalzo at (512) 463-5800.

Deadline: Lobby Activities Report due May 10, 2022

Richard J. Ybarra, 1902 Pease, Harlingen, Texas 78550

Timothy C. Ottinger, 3100 Main Street Ste. 600, Houston, Texas 77004

Deadline: Lobby Activities Report due April 11, 2022

Patrick R. Tarlton, 6300 Lohman Ford Rd. Ste. B., Lago Vista, Texas 78645

Deadline: Lobby Activities Report due March 10, 2022

John Kroll, 1212 Guadalupe St. Ste. 1003, Austin, Texas 78701

Patrick R. Tarlton, 6300 Lohman Ford Rd. Ste. B., Lago Vista, Texas 78645

Deadline: Lobby Activities Report due February 10, 2022

John Kroll, 1212 Guadalupe St. Ste. 1003, Austin, Texas 78701

Deadline: Lobby Activities Report due January 10, 2022

Frank R. Santos, 6905 Crosby Cir. #31, Austin, Texas 78746

Deadline: Lobby Activities Report due April 12, 2021

Patrick R. Tarlton, 6300 Lohman Ford Rd. Ste. B., Lago Vista, Texas 78645

Deadline: Lobby Activities Report due January 11, 2021

Frank R. Santos, 4014 6905 Crosby Cir. #31, Austin, Texas 78746

Deadline: Lobby Activities Report due July 10, 2020

Frank R. Santos, 46905 Crosby Cir. #31, Austin, Texas 78746

Deadline: Lobby Activities Report due May 11, 2020

Frank R. Santos, 6905 Crosby Cir. #31, Austin, Texas 78746

TRD-202202995
Anne T. Peters
Executive Director
Texas Ethics Commission
Filed: August 11, 2022

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Texas Health and Human Services Commission

Public Notice - DBMD Waiver

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS)

for the renewal of the waiver application for the Deaf Blind with Multiple Disabilities (DBMD) Program. HHSC administers the DBMD Program under the authority of Section 1915(c) of the Social Security Act. CMS has approved the DBMD waiver application through February 28, 2023. The proposed effective date for the renewal is March 1, 2023.

The DBMD Program serves individuals with legal blindness, deafness, or a condition that leads to deaf blindness, and at least one additional disability that limits functional abilities. The program serves individuals in the community who would otherwise require care in an intermediate care facility for individuals with intellectual disability or a related condition.

The renewal request proposes to make the following changes:

Corrects acronyms, unit names, and other terminology to ensure accurate terms are used.

Updates the unduplicated number of participants, point-in-time numbers, and reserve capacity numbers, as well as the service projections, projections for consumer-directed services participants, and projections for annual average per capita Medicaid costs for all non-waiver institutional services (Factor G) and other Medicaid costs for the institutional population (Factor G') for all five waiver years in Appendices B, E, and J.

Updates certain Texas Administrative Code (TAC) references from Title 40 to Title 26 for accuracy.

Removes the phrase "legal entity and entities" when referencing financial management services agencies.

Updates references to the "Sanctions Action Review Committee" to "Adverse Action Review Committee" for accuracy.

Main Attachment #1: Transition Plan

HHSC includes a transition plan to address the discontinuation of day habilitation and the implementation of individualized skills and socialization, a new service, to comply with the Home and Community-Based Services (HCBS) settings requirements. The renewal request removes day habilitation as a service in the DBMD Program.

Appendix A

Adds an Administrative Authority Performance Measure as requested by the Centers for Medicare and Medicaid Services (CMS) as follows: A.a.1 Number and percent of individuals on the DBMD interest list who are offered waiver services on a first-come, first served basis by HHSC. N: Number of individuals on the DBMD interest list who are offered waiver services on a first come, first-served basis. D: Number of individuals who are offered enrollment from the interest list.

Appendix B

Updates the Unduplicated Number of Participants, point-in-time, and reserved capacity numbers for all five waiver years.

Adds a case manager and as requested by the individual or legally authorized representative, other persons as members of the service planning team.

In the "selection to entrance in the waiver" section, clarifies that when an individual is placed on the interest list the individual's name, mailing address, and date of birth is required.

Adds that submission of the level of care ID/RC assessment may be by fax or mail.

Adds in B-4 under the "Other specified groups," the following eligibility group to the waiver: Deemed Newborn Children (§1902(e)(4) and 2112(e), 42 CFR §435.117).

No revisions were made to the performance measures in appendix B.

Appendix C

Removes the day habilitation service and adds a new service, individualized skills and socialization, describes the service provider qualifications for the service, and identifies services that cannot be provided at the same time as individualized skills and socialization.

In the "entity responsible for verification" sections, HHSC deleted the following language, "HHSC verifies provider qualifications prior to awarding a provider agreement and on an ongoing basis." HHSC added, "the provider agency verifies service provider qualifications prior to hiring a service provider. HHSC verifies provider agency qualifications during initial contract monitoring reviews and during routine follow up reviews."

In the Financial Management Service section, to be consistent with current policy, adds language to clarify that an individual employer and financial management services agency (FMSA) are both required to verify that a service provider meets the qualifications before being hired and that the FMSA is required to obtain and retain documentation that a service provider continues to meet the qualifications.

Adds language to clarify that the FMSA may have multiple consumer directed services (CDS) program contracts and that a CDS DBMD contract may not be included in the sample of contracts reviewed by HHSC.

Clarifies that respite is not provided at the same time as the new service, individualized skills and socialization.

Clarifies that HHSC will conduct recertification health and life safety code surveys of Intermediate Care Facilities for Individuals with Intellectual Disabilities that provide respite, every 12-15 months and that CMS will conduct recertification surveys of these facilities in accordance with the State Operations Manual, chapter 2, section 2141.

Clarifies the definition of "Support Consultation" to state that it is an optional service for individuals self-directing their services, varies depending on an individual's needs, and is provided by a certified support advisor; to include the activities involved in practical skills training and assistance to enable an individual or his/her legally authorized representative to successfully direct those services the individual or the legally authorized representative elect for self-direction; to describe the role of the support advisor; and to state that the level of assistance and training provided through support consultation is beyond that provided by the FMSA.

Removes "Provider must have a Support Advisor certificate issued by HHSC" and added clarification that the support consultation service provider must have certification of successful completion of required training conducted or approved by HHSC.

Clarifies, to be consistent with current policy, that the provision of support consultation does not include the provision of service coordination or any other waiver service to the individual; that the support consultation service provider cannot be the individual's legally authorized representative, the spouse of the individual's legally authorized representative, the individual's designated representative, or the spouse of the individual's designated representative; and that upon the request of an individual or an individual's legally authorized representative, the financial management services agency must have support consultation services available.

Adds the statements that an individual employer and FMSA are both required by 40 Texas Administrative Code Chapter 41 Consumer Directed Services Option to verify that a service provider meets the qualifications required by the individual's program rules before being hired; and that a FMSA is required to obtain and retain documentation on file that a service provider continues to meet the qualifications required by

the individual's program rules, policies, and manuals, and other state and federal regulations.

Adds a statement that HHSC verifies qualifications of service providers were met prior to service delivery during reviews that are completed at least every three years.

Removes the phrase "or state plan Community First Choice Personal Assistance Services/Habilitation" from the limits section because, Community First Choice Personal Assistance/Habilitation is not a waiver service.

Removes the statement that HHSC verifies provider qualifications prior to awarding a provider agreement and on an ongoing basis. Clarifies that the provider agency verifies service provider qualifications prior to hiring and that HHSC verifies provider agency qualifications during initial contract monitoring reviews at least every three years.

Revises performance measure C.a.3 to read as follows: "Number and percent of licensed providers monitored according to the schedule required by policy, to ensure that providers are meeting all standards. N: Number of licensed providers monitored according to the schedule required by policy, to ensure that providers are meeting all standards. D: All licensed providers meeting the requirements for a scheduled monitoring."

Revises performance measure C.b.1 to read as follows: "Number and percent of newly enrolled financial management services agencies that initially met contract requirements. N: Number of newly enrolled financial management services agencies that initially met contract requirements D: Number of newly enrolled financial management services agencies reviewed." HHSC also revises the sampling to be less than 100% review.

Revises performance measure C.b.2 to read as follows: "Number and percent of monitored FMSAs that met program contract requirement. N: Number of monitored FMSAs that met program contract requirements. D: Number of FMSAs reviewed."

Revises performance measure C.b.3 to read as follows: "Number and percent of individuals/employers using the CDS option that had a service provider agreement for each employee hired. N: Number of employers using the CDS option that had a service provider agreement for each employee hired. D: Number of individuals/employers reviewed who had a new employee hired during the monitoring period."

Revises performance measure C.c.3 to read as follows: "Number and percent of provider staff meeting state training requirements by receiving a score of at least 80% on the HHSC DBMD Computer Based Training. N: Number of provider staff receiving a score of at least 80% on the HHSC DBMD Computer Based Training. D: Number of provider staff required to complete training during the reporting period." HHSC also revises the data source to the HHSC Provider Learning Portal and revises the sampling from 100 percent review to less than 100% review.

HHSC removes the following performance measure:

C.b.4 Number and percent of individuals/employers using the CDS option that had a Medicaid provider service agreement for each employee. N: Number of employers using the CDS option that had a Medicaid provider service agreement for each employee. D: Total number of individuals/employers reviewed.

Appendix D

In the "service plan development safeguards" section, updates the total number of DBMD providers across the state and the percentage of individuals that utilize the consumer directed services option.

No revisions were made to the performance measures in appendix D.

Appendix E

Updates the projections for the total number of participants utilizing the consumer directed services option

Appendix F

In the "Opportunity to Request a Fair Hearing" section, clarifies that HHSC staff sends a letter to the provider that describes the action HHSC has taken or will take and explains the right to request a fair hearing in accordance with Title 40 of the Texas Administrative Code, Part 15, § 357.3 and § 357.11 and 42 CFR §431.210. Clarifies that the provider gives a copy of the letter to the individual or legally authorized representative at least 10 days prior to the effective date of certain actions.

Clarifies that when an individual receives a letter in advance of the date of action, the individual will continue to receive the authorized amount of the service(s) in question while the fair hearing process is pending if the individual requests a fair hearing before the effective date of action.

Appendix G

Clarifies that reports of abuse, neglect or exploitation are reported to the Department of Family and Protective Services Statewide Intake Abuse Hotline.

Clarifies that allegations of abuse, neglect, and exploitation in Assisted Living Facilities are reported to the HHS Complaint and Incident Intake (CII).

Clarifies the role of HHSC Provider Investigations and the Department of Family and Protective Services Statewide Intake and where abuse, neglect and exploitation allegations must be reported.

Clarifies that priority one cases require contact by HHSC Provider Investigations with the alleged victim within 24 hours.

Clarifies that priority two cases require contact by HHSC Provider Investigations with the alleged victim within three calendar days.

Clarifies that priority three cases, require contact by HHSC Provider Investigations with the alleged victim within seven calendar days.

Revises G.a.9 to read as follows: "Number and percent of provider-reported deaths reviewed during the required timeframe. N: Number of provider-reported deaths reviewed during the required timeframe. D: Number of provider-reported deaths."

Revises G.a.10 to read as follows: "Number and percent of provider-reported deaths of individuals free from previous confirmed allegations of abuse, neglect, or exploitation within the last three months. N: Number of provider-reported deaths of individuals free from previous confirmed allegations of abuse, neglect, or exploitation within the last three months. D: Number of provider-reported deaths received during the reporting period."

For performance measure G.a.11 updates the name of the data source to the "HHSC Provider Learning Portal."

For performance measure G.b.1 updates the name of the data source to the "Critical Incident Management System."

Revises G.c.1 to read as follows: "Number and percent of individuals whose records reflect that the provider was in compliance with requirements related to unauthorized restraint. N: Number of individuals whose records reflect that the provider was in compliance with requirements related to unauthorized restraint. D: Number of individuals with reviewed records."

Appendix H

Replaces the term Quality Oversight Plan with the Quality Improvement Strategy and clarifies that the quality indicators are tracked and reported on a quarterly and annual basis.

Clarifies that the Quality Review Team consists of representatives from several departments within HHSC and meets on a quarterly basis to review comprehensive quality reports generated by the Quality Reporting Unit. Includes statement that these reports include quarterly and annual compliance results as well as remediation activities for each performance measure and that priorities for further scrutiny and follow-up with Quality Improvement Projects are established in the quarterly meetings.

Removes information about the promoting independence advisory committee and adds information about the Intellectual and Developmental Disability System Redesign Advisory Committee and the committee's role in advising HHSC on the implementation of the acute care services and long-term services and supports system redesign for people with intellectual and developmental disabilities.

Updates the information about the Use of a Patient Experience of Care/Quality of Life Survey with the NCI AD to adds that the NCI-AD Adult Consumer Survey is designed to measure outcomes across nineteen broad domains comprising approximately 75 core indicators. Includes statement that indicators are the standard measures used across states to assess the outcomes of services provided to individuals, including respect and rights, service coordination, care coordination, employment, health, safety, person-centered planning, etc.

Appendix I

Clarifies that FMSAs are monitored using the following methods to include the review of timesheets, budgets, and Electronic Visit Verification (EVV) records or other financial records involved in their billing.

Removes the term "desk and on-site reviews" and clarifies that HHSC performs compliance reviews associated with claims the provider submits under a contract.

Clarifies that HHSC contract staff complete monitoring activities including contract and tax reviews.

Updates language related to EVV to align with the requirements of HHSC effective January 1, 2021.

Removes the term "on-site" in reference to monitoring reviews.

Includes information about the rate methodology for the new service, individualized skills and socialization.

Revises performance measure I.a.1 to read as follows: "Total dollar amount and percent of total dollar amount of paid claims, including those from FMSAs, that were coded and paid for according to the reimbursement methodology specified in the approved waiver. N: Total dollar amount of paid claims that were coded and paid for according to the reimbursement methodology specified in the approved waiver. D: Total dollar amount of paid claims."

Revises performance measure I.a.3. to read as follows: "Total dollar amount and percent of total dollar amount of reviewed FMSAs claims free from recoupment. N: Total dollar amount of reviewed FMSA claims free from recoupment. D: Total dollar amount of reviewed Financial Management Services claims; FMSA was added in the performance measure HHSC deleted providers are selected for monitoring based on the contract effective date, previous formal monitoring exit date, overall compliance score of the previous formal monitoring, and expenditures."

Removes the following performance measures in Appendix I:

I.a.2 Number and percent of monitored FMSAs for which claims were paid in accordance with the employee's established rate of pay and the service hours actually worked. N: Number of monitored FMSAs for which claims were paid in accordance with the employee's established rate of pay and the service hours actually worked. D: Total number of monitored FMSAs.

I.a.5 Number and percent of paid claims that reflected only the services listed in the service plan. N: Number of paid claims that reflected only the services listed in the service plan. D: Number of paid claims.

Appendix J

Adds individualized skills and socialization to the waiver service coverage charts and removes day habilitation. Updates the projected utilization for individualized skills and socialization as well as the other waiver services for waiver years one through five.

Updates the unduplicated number of participants, point-in-time numbers, as well as the service projections, and projections for annual average per capita Medicaid costs for all non-waiver institutional services (Factor G) and other Medicaid costs for the institutional population (Factor G') for all five waiver years.

If you want to obtain a free copy of the proposed waiver renewal or if you have questions, need additional information, or want to submit comments regarding this renewal, you may contact Jayasree Sankaran by U.S. mail, telephone, fax or email at the address and numbers listed below. Comments about the proposed waiver renewal must be submitted to HHSC by September 26, 2022.

U.S. Mail

Texas Health and Human Services Commission

Attention: Jayasree Sankaran, Waiver Coordinator, Federal Coordination, Rules, and Committees

John H. Winters Building, East Tower

701 W. 51st Street

Mail Code: H-310

Austin, Texas 78751

Telephone

(512) 438-4331

Fax

(512) 323-1905 Attention: Jayasree Sankaran

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

The HHSC local offices will post this notice for 30 days.

The complete proposed waiver renewal can be found online on the HHSC website at

https://hhs.texas.gov/laws-regulations/policies-rules/waivers.

TRD-202203041
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 15, 2022

♦ ♦ ♦

Public Notice of Stakeholder Engagement Meetings for Medicaid Payment Rates

MEETINGS.

The Texas Health and Human Services Commission (HHSC) will conduct stakeholder engagement meetings on September 14, 2022, to receive comments on Medicaid payment rate topics that may potentially be addressed at the upcoming November 2022 rate hearings. Commentary will be collected solely on the topics listed in this notice. Proposed rates will not be published at this time.

The meetings will be held online only at the following times according to topic areas:

Acute Care Services: September 14, 2022, 9:00 a.m. - 11:00 a.m.

Long-term Services & Supports: September 14, 2022, 11:30 a.m. - 1:30 p.m.

To attend online: The meetings will be held online via GoToWebinar. Visit the following GoToWebinar link to register to attend one or both of the online meetings. After registering, you will receive a confirmation email containing information about joining the webinar.

https://attendee.gotowebinar.com/register/8683184598151895054

Webinar ID: 457-428-283

HHSC will record the meetings. The recording will be archived and can be accessed on-demand at: https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

HHSC may limit speakers' time to ensure all attendees wishing to present public comment are afforded an opportunity to do so. HHSC reserves the right to end an engagement meeting if no participants have registered to present public comments within the first 30 minutes of the meeting.

TOPICS.

Below is a list of topics that HHSC will collect commentary for during the stakeholder engagement meetings. These topics may potentially be presented at the subsequent rate hearing in November 2022. The final list of topics to be presented at the November 2022 rate hearing is at the discretion of HHSC.

Acute Care Services - Calendar Fee Review:

- Anesthesia;

- Ambulatory Surgical Centers/Hospital-based Ambulatory Surgical Centers - Group Rates;

- Clinical Lab;

- Dental Services;

- Diagnostic Radiology;

- Enteral Supplies ("B" Codes);

- Eye and Ocular Adnexa Surgery;

- Female Genital System Surgery;

- General and Integumentary System Surgery;

- Hearing Aid;

- Medical Nutrition Therapy;

- Opthalmological Services;

- Orthotic Procedures and Devices;

- Physician Administered Drugs - NDCX;

- Physician Administered Drugs - Non-Oncology;

- Physician Administered Drugs - Oncology;

- Physician Administered Drugs - Vaccines & Toxoids; and

- Respiratory Therapists.

Acute Care Services - Medical Policy Review:

- Skin Substitute; and

- Texas Health Steps Dental Preventive Services.

Acute Care Services - Healthcare Common Procedure Coding System (HCPCS):

- Quarterly HCPCS Updates.

Long-term Services & Supports:

- Out-of-home Respite (Facility) in the STAR Kids Medically Dependent Children Program (MDCP)

- Prescribed Pediatric Extended Care Center (PPECC) rates in the PPECC program and in STAR Kids; and

- Transition Assistance Services rates in the Home and Community-based Services Adult Mental Health program, in the STAR Kids MDCP program, in the Texas Home Living 1915(c) Waiver program, and in the Youth Empowerment Services 1915(c) Waiver program.

A final agenda for the Stakeholder Engagement Meetings will be made available at https://pfd.hhs.texas.gov/provider-finance-communications by September 1, 2022. Interested parties may also obtain a copy of the agenda on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at ProviderFinanceDept@hhs.texas.gov.

WRITTEN COMMENTS.

Written comments regarding the proposed topics may be submitted in lieu of, or in addition to, oral comments until 5:00 p.m. the day following the meetings, September 15, 2022. Written comments may be sent by U.S. mail, overnight mail, fax, or email.

U.S. Mail:

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail or special delivery mail:

Texas Health and Human Services Commission

Attn: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 Guadalupe St

Austin, Texas 78751

Fax: Attention: Provider Finance at (512) 730-7475

Email: ProviderFinanceDept@hhs.texas.gov

PREFERRED COMMUNICATION.

Email or telephone communication is preferred.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202203072
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 16, 2022

♦ ♦ ♦

Public Notice: Texas State Plan Amendment to Implement Emergency Triage, Treat, and Transport (ET3) Services for Transportation Services.

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 22-0023 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to implement Emergency Triage, Treat, and Transport (ET3) services as required by the 2022-23 General Appropriations Act, H.B. 1, 87th Legislature, Regular Session, 2021, Article II, HHSC, Rider 42. Implementation of ET3 services will allow Medicaid-enrolled emergency medical service providers to be reimbursed for transporting Medicaid beneficiaries to alternative destinations, other than an emergency department, facilitating appropriate treatment in place at the scene, and facilitating appropriate treatment via telemedicine or telehealth. The proposed amendment is effective 9/01/2022.

The proposed amendment is estimated to result in a cost savings of $262,904 for the federal fiscal year (FFY) 2023, consisting of $173,911 cost savings in federal funds and $88,993 cost savings in state general revenue. For FFY 2024, the estimated cost savings is $258,382 consisting of $154,487 cost savings in federal funds and $103,895 cost savings in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Shae James, State Plan Specialist, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 428-2264; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-202203004
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 11, 2022

♦ ♦ ♦

Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The purpose of the amendment is to update the rate methodology and payment rates for Financial Management Services Agencies (FMSA). Provider Finance Department (PFD) staff evaluated the FMSA rate methodology and payment rates as part of the biennial fee review. The proposed amendment is effective September 1, 2022.

The proposed amendment is estimated to result in an annual aggregate expenditure of $8,498 for federal fiscal year 2022, consisting of $6,038 in federal funds and $2,460 in state general revenue. For FFY 2023, the estimated annual aggregate expenditure is $106,601, consisting of $69,808 in federal funds and $36,792 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is $108,723, consisting of $69,419 in federal funds and $39,304 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Provider Finance website under the proposed effective date at http://pfd.hhs.texas.gov/rate-packets.

Rate Hearing. A rate hearing was held on May 16, 2022, at 9:00 a.m. in Austin, Texas. Information about the proposed rate change and the hearing can be found in the April 22, 2022 issue of the *Texas Register* on page 2359 at http://www.sos.state.tx.us/texreg/index.shtml.

Copy of Proposed Amendment(s). Interested parties may obtain additional information or a free copy of the proposed amendments by Kenneth Anzaldua, State Plan Team Lead, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-4326; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of HHSC (formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments. Written comments and requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance, Mail Code H-400

North Austin Complex

4601 West Guadalupe Street

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFD-LTSS@hhsc.texas.gov

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For the quickest response and to help curb the possible transmission of infection, please use email or phone if possible for communication with HHSC related to this rate hearing.

TRD-202203044
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 15, 2022

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for TRM Specialty Insurance Company, a foreign fire and/or casualty company. The home office is in Indianapolis, Indiana.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 333 Guadalupe Street, MC FRD-CL, Austin, Texas 78701.

TRD-202203077
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: August 17, 2022

♦ ♦ ♦

Texas Lottery Commission

Correction of Error

The Texas Lottery Commission published the game procedure for Scratch Ticket Game No. 2432 "SPECIAL EDITION SUPER LOTERIA" in the August 12, 2022, issue of the *Texas Register* (47 TexReg 4872). Due to an error by the Texas Register, the word "PIÑATA" was published incorrectly in a portion of the play instruction in section 1.2.C, Play Symbol.

The affected sentence should have read as follows:

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 COWBOY HAT SYMBOL, THE COWBOY SYMBOL, THE CHILE PEPPER SYMBOL, THE COVERED WAGON SYMBOL, THE CACTUS SYMBOL, THE CHERRIES SYMBOL, THE CORN 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 MOCKINGBIRD SYMBOL, THE MORTAR PESTLE SYMBOL, THE OIL RIG SYMBOL, THE MARACAS SYMBOL, THE MOONRISE SYMBOL, THE NEWSPAPER SYMBOL, THE PIÑATA SYMBOL, THE ROADRUNNER SYMBOL, THE SHOES SYMBOL, THE SPEAR SYMBOL, THE PECAN TREE SYMBOL, THE RATTLESNAKE SYMBOL, THE SADDLE 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.

TRD-202203054

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Public Utility Commission of Texas

Notice of Petition for Rulemaking

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) on August 10, 2022, to initiate a rulemaking to amend 16 Texas Administrative Code (TAC) §25.181 and §25.182.

Project and Number: Petition for Rulemaking of Lone Star Chapter of the Sierra Club to Amend 16 TAC §25.181 (Energy Efficiency Goal) and §25.182 (Energy Efficiency Cost Recovery Factor). Project Number 53971.

Summary of Petition: Lone Star Chapter of the Sierra Club filed a petition for rulemaking to amend 16 TAC §25.181, relating to Energy Efficiency Goal and §25.182, Energy Efficiency Cost Recovery Factor. The petitioner proposes to make substantial changes to the peak demand reduction and energy efficiency goals and related programs, the cost caps and the performance bonuses.

The deadline to file comments in this project is September 16, 2022. At the time of this notice, the commission's rules requiring that comments be physically filed are suspended. *See* Project Number 50664, *Issues Related to the State of Disaster for Coronavirus Disease 2019,* Second Order Suspending Rules filed on July 16, 2020. As long as this suspension remains in effect, comments may be filed through the interchange on the commission's website. If the suspension of these rules is lifted during the pendency of this project, comments may be filed by submitting 16 copies to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Interested persons may contact the commission at (512) 936-7120 or (toll-free) (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Project Number 53971.

TRD-202203074
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 2022

♦ ♦ ♦


TEXAS

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 47 (2022) is cited as follows: 47 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 "47 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 47 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)*

SALES AND CUSTOMER SUPPORT

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