TEXAS REGISTER

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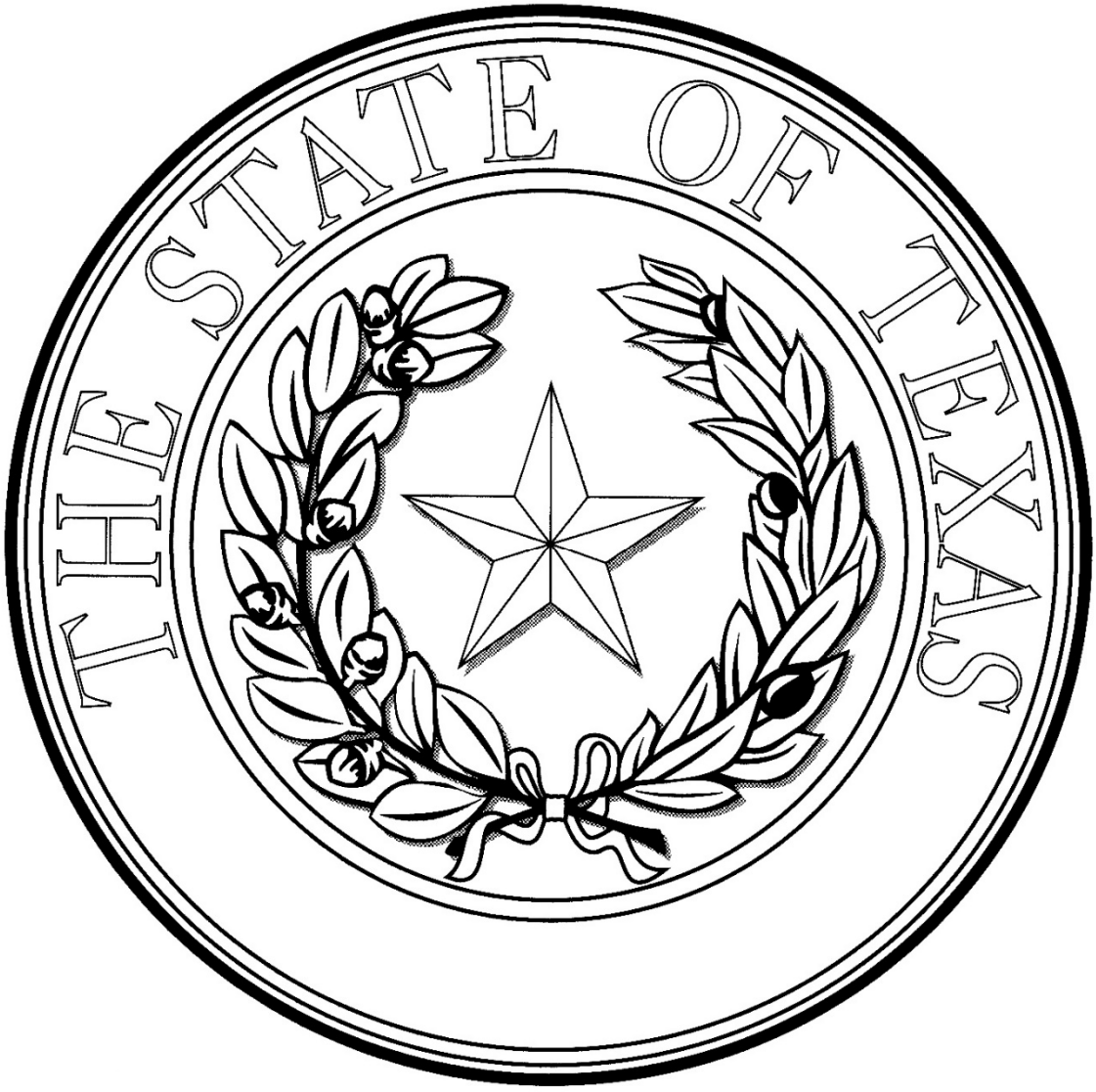

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In This Issue

Texas Parks and Wildlife Department

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 December 20, 2023

Pursuant to SB 2592, 88th Legislature, Regular Session, six members of the Lavaca-Navidad River Authority drew lots and the board member terms are as follows:

To Expire May 1, 2024:

Terri Lynn Parker of Ganado, Texas

Charles D. "Charlie" Taylor of Palacios, Texas

To Expire May 1, 2025:

Callaway V. Aimone of Edna, Texas

Leonard A. Steffek of Edna, Texas

To Expire May 1, 2026:

Jerry L. Adelman of Palacios, Texas

Lee M. Kucera of Edna, Texas

Greg Abbott, Governor

TRD-202304984

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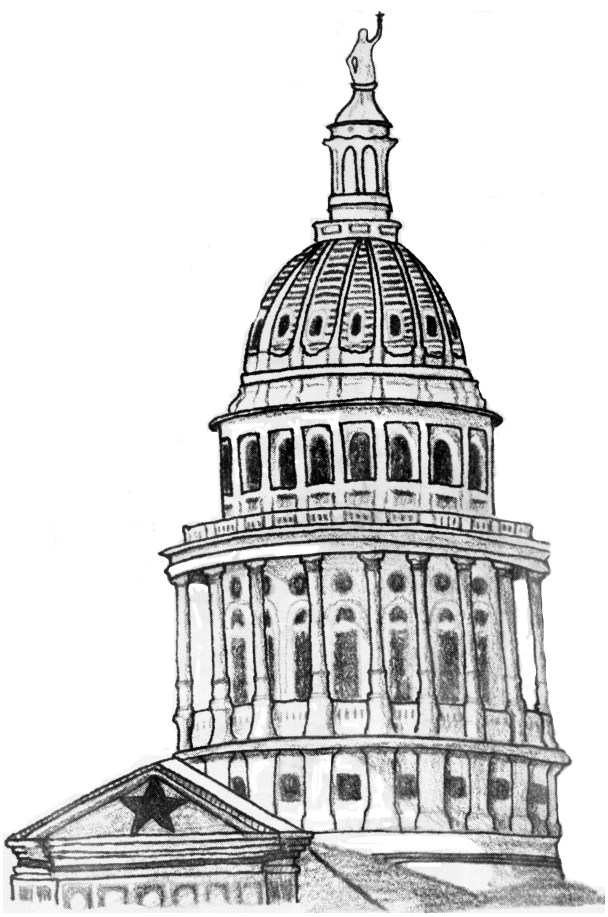

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views,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

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

TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 279. INTERPRETATIONS

22 TAC §279.1

The Texas Optometry Board proposes amendments to 22 TAC Title 14 Chapter 279, §279.1 - Contact Lens Examination.

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code §2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 279. The Board has also determined that changes to §279.1 as currently in effect are necessary to clarify the statute.

Overview and Explanation of the Proposed Rule. This section of the Board's rules clarifies Texas Optometry Act §351.353 which requires ten specific findings to be made and recorded during an initial examination of a patient in which an ophthalmic contact lens prescription is to be made. As outlined in statute, these ten findings are to ensure the adequate examination of a patient. The rule does not set guidance for medical or routine refraction visits between a patient and an optometrist - only the initial visit for a prescription for contacts. The rule as currently written sets out that three of the ten findings during an initial visit must be performed by the licensed optometrist while the other seven findings may be delegated to an assistant with oversight by the licensed optometrist. Additionally, Texas Optometry Act §351.453 states "an optometrist or therapeutic optometrist may not sign, or cause to be signed, an ophthalmic lens prescription without first personally examining the eyes of the person for whom the prescription is made."

On November 3, 2023, the Board proposed clarifications to the rules as follows:

- The proposal will clarify that the optometrist or therapeutic optometrist is to "examine in-person" instead of "personally make" three of the ten findings during an initial visit for a contact lens prescription. The other seven required findings may continue to be delegated to an assistant.

- It states that the findings must be made unless prohibited by the patient's unique condition instead of "if possible." It requires the optometrist or therapeutic optometrist to personally notate why it is not possible to record the required findings. This language is affirmed in a recent decision from the State Office of Administrative Hearings.

- It clarifies that for discipline purposes, the charges must state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule.

- Finally, the amendment makes non-substantive capitalization changes to ensure consistency across the Board's rules.

Government Growth Impact Statement. The rule clarifies the Board's long-standing interpretation of statute (see Tex. Occ. Code §§351.353 and 351.453) to ensure the public health is protected. Therefore, for the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Small Business, Micro-Business, and Rural Community Impact Statement. Ms. McCoy has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities as the amendment is a clarification of the Board's long-standing interpretation of statute and does not positively or adversely impact the state's economy.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. The proposed rule clarifies the Board's long-standing interpretation of statute (see Tex. Occ. Code §§351.353 and 351.453) to ensure the public health is protected. Therefore, Ms. McCoy has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities as the amendment is a clarification of the Board's long-standing interpretation of statute and does not positively or adversely impact the state's economy. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Takings Impact Assessment. Ms. McCoy has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Local Employment Impact Statement. Ms. McCoy has determined that the proposed rule will have no impact on local employment or a local economy as the amendment is a clarification of the Board's long-standing interpretation of statute. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.024 of the Tex. Gov't Code.

Public Benefit. Ms. McCoy has determined for the first five-year period the proposed rule is in effect there will be a benefit to the general public because the proposed rule will provide greater clarity, consistency, and efficiency in how licensed optometrists and therapeutic optometrists fully comply with §351.353 of the Act during an initial patient visit for a contact lens prescription. The Board determined it was necessary to update the rule to clarify the existing Board interpretation that personally means the three tests during the initial patient visit are done in person by the optometrist. According to the Board, this interpretation furthers its mission to protect the public health and safety by ensuring that the eyes of Texas patients during an initial visit are being examined by licensed optometrists and not by unlicensed staff.

Fiscal Note. Janice McCoy, Executive Director of the Board, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Ms. McCoy has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Even without the clarifying amendment, long-standing Board actions and policy assumes compliance with Tex. Occ. Code §351.353 that all initial patient visits must contain the ten findings and with Tex. Occ. Code §351.453 that states "An optometrist or therapeutic optometrist may not sign, or cause to be signed, an ophthalmic lens prescription without first personally examining the eyes of the person for whom the prescription is made."

PUBLIC COMMENTS: Comments on the amended rule may be submitted electronically to: janice.mccoy@tob.texas.gov or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register.* The Board requests that if you have previously submitted comments on similar rules that have been withdrawn to resubmit your comments.

Statutory Authority. The Board proposes this rule pursuant to the authority found in §351.151 of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and implement Chapter 351 of the Tex. Occ. Code.

The Board also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Lastly, the Board proposes this rule pursuant to Texas Occupations Code §351.353 and §351.453.

No other sections are affected by the amendments.

§279.1. Contact Lens Examination.

(a) The optometrist or therapeutic optometrist shall, in the initial examination of the patient for whom contact lenses are prescribed:

(1) Examine in-person [~~Personally make~~] and record, unless prohibited by the patient's unique condition [~~if possible~~], the following findings of the conditions of the patient as required by §351.353 of the Act:

(A) biomicroscopy examination (lids, cornea, sclera, etc.), using a binocular microscope;

(B) internal ophthalmoscopic examination (media, fundus, etc.), using an ophthalmoscope or biomicroscope with fundus condensing lenses; videos and photographs may be used only for documentation and consultation purposes but do not fulfill the internal ophthalmoscopic examination requirement; and

(C) subjective findings: [~~,~~] far point and near point;

(2) Either personally make and record or authorize an assistant present in the same office with the optometrist or therapeutic optometrist to make and record the following findings required by §351.353 of the Act. The authorization for assistants to make and record the following findings does not relieve the optometrist or therapeutic optometrist of professional responsibility for the proper examination and recording of each finding required by §351.353 of the Act:

(A) case history (ocular, physical, occupational, and other pertinent information);

(B) visual acuity;

(C) static retinoscopy O.D., O.S., or autorefractor;

(D) assessment of binocular function;

(E) amplitude or range of accommodation;

(F) tonometry; and

(G) angle of vision: [~~,~~] to right and to left; [~~.~~]

(3) The optometrist or therapeutic optometrist shall personally [~~Personally~~] notate in the patient's record the reasons why it is not possible to make and record the findings required in subsection (a) of this section;

(4) When a follow-up visit is medically indicated, schedule the follow-up visit within 30 days of the contact lens fitting, and inform the patient on the initial visit regarding the necessity for the follow-up care; and

(5) Personally or authorize an assistant to instruct the patient in the proper care of lenses.

(b) The optometrist or therapeutic optometrist and assistants shall observe proper hygiene in the handling and dispensing of the contact lenses and in the conduct of the examination. Proper hygiene includes sanitary office conditions, running water in the office where contact lenses are dispensed, and proper sterilization of diagnostic lenses and instruments.

(c) The fitting of contact lenses may be performed only by a licensed physician, optometrist, or therapeutic optometrist. Ophthalmic dispensers may make mechanical adjustments to contact lenses and dispense contact lenses only after receipt of a fully written contact lens prescription from a licensed optometrist, therapeutic optometrist, or a licensed physician. An ophthalmic dispenser shall make no measurement of the eye or the cornea or evaluate the physical fit of the contact lenses, by any means whatever, subject solely and only to the exception contained in the §351.005 of the Act.

(d) The willful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with any of the requirements in the Act, §351.353 and §351.359, shall be considered by the Board [~~board~~] to constitute prima facie evidence that the licensee is unfit or

incompetent by reason of negligence within the meaning of the Act, §351.501(a)(2), and shall be sufficient ground for the filing of charges to cancel, revoke, or suspend the license. The charges shall state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule [~~was not complied with~~]. After the Board [~~board~~] has produced evidence of the omission of a finding required by §351.353, the burden shifts to the licensee to establish that the making and recording of the findings was not possible.

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

Filed with the Office of the Secretary of State on December 18, 2023.

TRD-202304877
Janice McCoy
Executive Director
Texas Optometry Board
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 305-8500

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22 TAC §279.3

The Texas Optometry Board proposes amendments to 22 TAC Title 14 Chapter 279, §279.3 - Spectacle Examination.

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code §2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 279. The Board has also determined that changes to §279.3 as currently in effect are necessary to clarify the statute.

Overview and Explanation of the Proposed Rule. This section of the Board's rules clarifies Texas Optometry Act §351.353 which requires ten specific findings to be made and recorded during an initial examination of a patient in which an ophthalmic spectacle prescription is to be made. As outlined in statute, these ten findings are to ensure the adequate examination of a patient. The rule does not set guidance for medical or routine refraction visits between a patient and an optometrist - only the initial visit for a prescription for spectacles (glasses). The rule as currently written sets out that three of the ten findings during an initial visit must be performed by the licensed optometrist while the other seven findings may be delegated to an assistant with oversight by the licensed optometrist. Additionally, Texas Optometry Act §351.453 states "an optometrist or therapeutic optometrist may not sign, or cause to be signed, an ophthalmic lens prescription without first personally examining the eyes of the person for whom the prescription is made."

On November 3, 2023, the Board proposed changes to the rules as follows:

- The proposal will clarify that the optometrist or therapeutic optometrist is to "examine in-person" instead of "personally make" three of the ten findings during an initial visit for a spectacle prescription. The other seven required findings may continue to be delegated to an assistant.

- It states that the findings must be made unless prohibited by the patient's unique condition instead of "if possible." It requires the optometrist or therapeutic optometrist to personally notate why it is not possible to record the required findings. This language is affirmed in a recent decision from the State Office of Administrative Hearings.

- It clarifies that for discipline purposes, the charges must state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule.

- Finally, the amendment makes non-substantive capitalization changes to ensure consistency across the Board's rules.

Government Growth Impact Statement. The rule clarifies the Board's long-standing interpretation of statute (see Tex. Occ. Code §§351.353 and 351.453) to ensure the public health is protected. Therefore, for the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Small Business, Micro-Business, and Rural Community Impact Statement. Ms. McCoy has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities as the amendment is a clarification of the Board's long-standing interpretation of statute and does not positively or adversely impact the state's economy.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. The proposed rule clarifies the Board's long-standing interpretation of statute (see Tex. Occ. Code §§351.353 and 351.453) to ensure the public health is protected. Therefore, Ms. McCoy has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities as the amendment is a clarification of the Board's long-standing interpretation of statute and does not positively or adversely impact the state's economy. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Takings Impact Assessment. Ms. McCoy has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Local Employment Impact Statement. Ms. McCoy has determined that the proposed rule will have no impact on local employment or a local economy as the amendment is a clarification of the Board's long-standing interpretation of statute. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.024 of the Tex. Gov't Code.

Public Benefit. Ms. McCoy has determined for the first five-year period the proposed rule is in effect there will be a benefit to the general public because the proposed rule will provide greater clarity, consistency, and efficiency in how licensed optometrists and therapeutic optometrists fully comply with §351.353 of the

Act during an initial patient visit for a spectacles (glasses) prescription. The Board determined it was necessary to update the rule to clarify the existing Board interpretation that personally means the three tests during the initial patient visit are done in person by the optometrist. According to the Board, this interpretation furthers its mission to protect the public health and safety by ensuring that the eyes of Texas patients during an initial visit are being examined by licensed optometrists and not by unlicensed staff.

Fiscal Note. Janice McCoy, Executive Director of the Board, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Ms. McCoy has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Even without the clarifying amendment, long-standing Board actions and policy assumes compliance with Tex. Occ. Code §351.353 that all initial patient visits must contain the ten findings and with Tex. Occ. Code §351.453 that states "An optometrist or therapeutic optometrist may not sign, or cause to be signed, an ophthalmic lens prescription without first personally examining the eyes of the person for whom the prescription is made."

PUBLIC COMMENTS: Comments on the amended rule may be submitted electronically to: janice.mccoy@tob.texas.gov or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register.* The Board requests that if you have previously submitted comments on similar rules that have been withdrawn to resubmit your comments.

Statutory Authority. The Board proposes this rule pursuant to the authority found in §351.151 of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and implement Chapter 351 of the Tex. Occ. Code.

The Board also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Lastly, the Board proposes this rule pursuant to Texas Occupations Code §351.353 and §351.453.

No other sections are affected by the amendments.

§279.3. Spectacle Examination.

(a) The optometrist or therapeutic optometrist shall, in the initial examination of the patient for whom ophthalmic lenses are prescribed:

(1) Examine in-person [~~Personally~~ ~~make~~] and record, unless prohibited by the patient's unique condition [~~if~~ ~~possible~~], the following findings of the conditions of the patient as required by §351.353 of the Act:

(A) biomicroscopy examination (lids, cornea, sclera, etc.), using a binocular microscope;

(B) internal ophthalmoscopic examination (media, fundus, etc.), using an ophthalmoscope or biomicroscope with fundus condensing lenses; videos and photographs may be used only for documentation and consultation purposes but do not fulfill the internal ophthalmoscopic examination requirement; and

(C) subjective findings: [~~,~~] far point and near point; [~~.~~]

(2) Either personally make and record or authorize an assistant present in the same office with the optometrist or therapeutic optometrist to make and record the following findings required by §351.353 of the Act. The authorization for assistants to make and record the following findings does not relieve the optometrist or therapeutic optometrist of professional responsibility for the proper examination and recording of each finding required by §351.353 of the Act:

(A) case history (ocular, physical, occupational, and other pertinent information);

(B) visual acuity;

(C) static retinoscopy O.D., O.S., or autorefractor;

(D) assessment of binocular function;

(E) amplitude or range of accommodation;

(F) tonometry; and

(G) angle of vision: [~~,~~] to right and to left; and [~~.~~]

(3) The optometrist or therapeutic optometrist shall personally [~~Personally~~] notate in the patient's record the reasons why it is not possible to make and record the findings required in this section.

(b) The willful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with any of the requirements in the Act, §351.353 and §351.359, shall be considered by the Board [~~board~~] to constitute prima facie evidence that the licensee is unfit or incompetent by reason of negligence within the meaning of the Act, §351.501(a)(2), and shall be sufficient ground for the filing of charges to cancel, revoke, or suspend the license. The charges shall state the specific instances in which it is alleged that optometrist or therapeutic optometrist did not comply with the rule [~~was not complied with~~]. After the Board [~~board~~] has produced evidence of the omission of a finding required by §351.353, the burden shifts to the licensee to establish that the making and recording of the findings was not possible.

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

Filed with the Office of the Secretary of State on December 18, 2023.

TRD-202304878
Janice McCoy
Executive Director
Texas Optometry Board
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 305-8500

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER K. ARBITRATION OF APPRAISAL REVIEW BOARD DETERMINATIONS

34 TAC §§9.4251 - 9.4266

The Comptroller of Public Accounts proposes the repeal of §9.4251, concerning definitions; §9.4252, concerning request for arbitration; §9.4253, concerning agent representation in arbitration; §9.4254, concerning appraisal district responsibility for request; §9.4255, concerning comptroller processing of request, online arbitration system, and 45 calendar-day settlement period; §9.4256, concerning comptroller appointment of arbitrators; §9.4257, concerning application for inclusion in comptroller's registry of arbitrators; §9.4258, concerning qualifications for inclusion in the comptroller's registry of arbitrators; §9.4259, concerning arbitrator eligibility for a particular appointment; §9.4260, concerning arbitrator duties; §9.4261, concerning provision of arbitration services; §9.4262, concerning removal of arbitrator from the registry of arbitrators; §9.4263, concerning arbitration determination and award; §9.4264, concerning payment of arbitrator fee, refund of property owner deposit, and correction of appraisal roll; §9.4265, concerning prohibited communications regarding pending arbitration; and §9.4266, concerning forms. The legislation enacted within the last four years that provides the statutory authority for the repeals is House Bill 988, 87th Legislature, R.S., 2021; Senate Bill 1854, 87th Legislature, R.S., 2021; House Bill 4101, 88th Legislature, R.S., 2023; and Senate Bill 2355, 88th Legislature, R.S., 2023.

The comptroller proposes to repeal all sections included in Subchapter K (Arbitration of Appraisal Review Board Determinations). New sections concerning arbitration of appraisal review board determinations will be proposed in a separate rulemaking to add rules concerning limited binding arbitration and to update the current rules concerning regular binding arbitration and the comptroller's registry of arbitrators.

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

Ms. Melnyk also has determined that the proposed rules repeal would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed rules repeal would benefit the public by conforming the rules 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 rules repeal would have no significant 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*.

The repeals are proposed under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

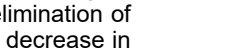
The repeals implement Tax Code, Chapter 41A.

§9.4251. Definitions.
§9.4252. Request for Arbitration.
§9.4253. Agent Representation in Arbitration.
§9.4254. Appraisal District Responsibility for Request.
§9.4255. Comptroller Processing of Request, Online Arbitration System, and 45 Calendar-Day Settlement Period.
§9.4256. Comptroller Appointment of Arbitrators.
§9.4257. Application for Inclusion in Comptroller's Registry of Arbitrators.
§9.4258. Qualifications for Inclusion in the Comptroller's Registry of Arbitrators.
§9.4259. Arbitrator Eligibility for a Particular Appointment.
§9.4260. Arbitrator Duties.
§9.4261. Provision of Arbitration Services.
§9.4262. Removal of Arbitrator from the Registry of Arbitrators.
§9.4263. Arbitration Determination and Award.
§9.4264. Payment of Arbitrator Fee, Refund of Property Owner Deposit, and Correction of Appraisal Roll.
§9.4265. Prohibited Communications Regarding Pending Arbitrations.
§9.4266. Forms.

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

Filed with the Office of the Secretary of State on December 21, 2023.

TRD-202304938
Victoria North
General Counsel, Fiscal and Agency Affairs Legal Services
Comptroller of Public Accounts
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 475-2220



DIVISION 1. GENERAL RULES

34 TAC §§9.4201 - 9.4213

The Comptroller of Public Accounts proposes new §9.4201, concerning scope and construction of rules; computation of time; §9.4202, concerning definitions; §9.4203, concerning prohibited communications regarding pending arbitrations; §9.4204, concerning filing requests for binding arbitration and deposit payments; §9.4205, concerning agent representation in binding arbitration; §9.4206, concerning appraisal district responsibility for processing request; §9.4207, concerning comptroller processing of request; §9.4208, concerning withdrawing a request; §9.4209, concerning refund and arbitrator fee processing; §9.4210, concerning forms; §9.4211, concerning communication with property owner, property owner's agent,

ARB, appraisal district, and arbitrator; §9.4212, concerning arbitration proceedings; and §9.4213, concerning substitution of arbitrator assigned to arbitration hearing. The new sections will be located in Subchapter K, in new Division 1 (General Rules). The comptroller will propose to repeal all current sections in Subchapter K in a separate rulemaking.

The new sections establish rules concerning limited binding arbitration for certain alleged procedural violations during the local protest process under Tax Code, §41A.015, and update current rules concerning regular binding arbitration to appeal values determined by local appraisal review boards under Tax Code, §41A.01, and current rules concerning the comptroller's registry of arbitrators. The legislation enacted within the last four years that provides the statutory authority for the new sections is House Bill 988, 87th Legislature, R.S., 2021; Senate Bill 1854, 87th Legislature, R.S., 2021; House Bill 4101, 88th Legislature, R.S., 2023; and Senate Bill 2355, 88th Legislature, R.S., 2023.

Section 9.4201 describes the scope and construction of the rules and the computation of time.

Section 9.4202 provides definitions.

Section 9.4203 prohibits parties to an arbitration and arbitrators assigned to an arbitration from seeking the comptroller's advice or direction on a matter relating to a pending arbitration.

Section 9.4204 details the requirements for the filing of requests for binding arbitration and deposit payments using electronic filing or paper-based filing, and the requirements for refund recipients.

Section 9.4205 addresses the qualifications, certifications, responsibilities, and appointment of an agent authorized to represent a party in a binding arbitration. This section also addresses the duration and verification of an agent's appointment.

Section 9.4206 sets forth the appraisal district's responsibility for processing requests for binding arbitration.

Section 9.4207 addresses the comptroller's responsibility for processing requests for binding arbitration.

Section 9.4208 describes the requirements for withdrawing a request for binding arbitration.

Section 9.4209 explains the process for deposit refunds and the payment of administrative fees and arbitrator fees.

Section 9.4210 lists the forms that are adopted by reference and provides that the comptroller may revise other forms at the comptroller's discretion and may prescribe additional forms for the administration of binding arbitration.

Section 9.4211 sets forth the methods by which the property owner, property owner's agent, appraisal review board, appraisal district, and arbitrator may communicate with one another.

Section 9.4212 addresses the process and requirements for conducting arbitration proceedings.

Section 9.4213 discusses the process of removing an arbitrator assigned to an arbitration hearing and substituting another arbitrator to replace the initial arbitrator.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by conforming the rules 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 new rules 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.*

The new sections are proposed under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

§9.4201. Scope and Construction of Rules; Computation of Time.

(a) Scope of rules. The rules in this subchapter shall govern:

(1) the procedures concerning regular binding arbitration to appeal values determined by local appraisal review boards under Tax Code, §41A.01;

(2) the procedures concerning limited binding arbitration for certain alleged procedural violations during the local protest process under Tax Code, §41A.015; and

(3) the comptroller's registry of arbitrators.

(b) Construction of rules. Unless otherwise provided, this subchapter shall be construed in accordance with the Code Construction Act, Government Code, Chapter 311.

(c) Computation of time. Computation of time shall be consistent with the Code Construction Act, Government Code, §311.014, and Tax Code, §1.06.

§9.4202. Definitions.

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

(1) Agent--An individual, authorized under Tax Code, §41A.08(b) or §41A.015(h), and §9.4205 of this title, as applicable, to represent a party in arbitration.

(2) Appraisal district--A political subdivision established in each county responsible for appraising property in the county for ad valorem tax purposes for each taxing unit that imposes such taxes on property in the county.

(3) Appraisal review board (ARB)--The board established in a county's appraisal district pursuant to Tax Code, §6.41, authorized to hear and resolve disputes between property owners and the appraisal district.

(4) Appraised value--The value of property determined under the appraisal methods and requirements of Tax Code, Chapter 23.

(5) Arbitration--A form of conflict resolution in which all parties agree that an arbitrator will consider the evidence and render a binding decision. This term includes the two types of arbitration governed by this subchapter: regular binding arbitration and limited binding arbitration. The terms "arbitration," "binding arbitration," and "arbitration proceeding" are synonymous as used in this subchapter and include the term "arbitration hearing," the specific event at which evidence is presented to an arbitrator.

(6) ARB order--An ARB's written decision regarding a property owner's protest.

(7) Authorized individual--An individual with the legal authority to act on behalf of the property owner, a legal guardian, or one who holds a valid power of attorney. Where the property owner is a business entity, this term includes the designated employee of that entity. This term does not include an individual appointed as an agent for binding arbitration under §9.4205 of this title or under Tax Code, §1.111.

(8) Chief Appraiser--the chief administrator of the appraisal district.

(9) Comptroller--The Texas Comptroller of Public Accounts and employees and designees of the comptroller.

(10) Division director--The director of the Property Tax Assistance Division of the Texas Comptroller of Public Accounts or the division director's designee.

(11) Individual--A single human being.

(12) Limited Binding Arbitration (LBA)--A process that allows a property owner through binding arbitration to request an arbitrator to compel the ARB or the chief appraiser to take certain actions under Tax Code, §41A.015.

(13) LBA award--A final decision rendered by an arbitrator resolving the matter submitted for their consideration in an LBA case.

(14) Market value--Has the meaning assigned by Tax Code, §1.04(7).

(15) Online arbitration system--A web-based software application designed to electronically administer the binding arbitration program consistent with this subchapter.

(16) Party--The property owner, property owner's agent, ARB, or appraisal district.

(17) Property owner--The authorized individual or a person having legal title to property. The term does not include lessees who have the right to protest property valuations before ARBs.

(18) Regular Binding Arbitration (RBA)--A process under Tax Code, §41A.01, that allows a property owner to contest an ARB order determining a protest through binding arbitration.

(19) RBA award--A final decision rendered by an arbitrator resolving the matter submitted for their consideration in an RBA case.

§9.4203. Prohibited Communications Regarding Pending Arbitrations.

(a) Prohibited communications. Parties to an arbitration and arbitrators assigned to an arbitration shall not seek the comptroller's advice or direction on a matter relating to a pending arbitration under Tax Code, Chapter 41A.

(b) Pending arbitration. An arbitration is pending from the date a request for binding arbitration is filed until the date of delivery of the LBA or RBA award pursuant to Tax Code, §41A.09.

(c) Exception. The prohibition in subsection (a) of this section shall not apply to the comptroller's processing and curing of requests for binding arbitration and deposits or other administrative matters.

§9.4204. Filing Requests for Binding Arbitration and Deposit Payments.

(a) Electronic filing.

(1) This subsection applies to requests for binding arbitration filed on or after the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available for the administration of the binding arbitration program. Requests for binding arbitration filed before the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available, must use paper-based filing under subsection (b) of this section.

(2) Arbitrators, appraisal districts, ARBs, agents, and property owners who are working with an agent are required to register with the online arbitration system and use the online arbitration system to complete required forms referenced in this subchapter, pay required arbitration deposits online, and receive notifications by email under this subchapter.

(3) A property owner who does not appoint an agent may:

(A) register with the online arbitration system and use the online arbitration system to complete required forms referenced in this subchapter, pay required arbitration deposits online, and receive notifications by email under this subchapter; or

(B) use the paper-based filing method described in subsection (b) of this section.

(4) Use of an email address or other information to access the online arbitration system is a voluntary disclosure constituting consent to the collection and disclosure of the information for the purposes for which it was requested. This information may be subject to disclosure under the Texas Public Information Act.

(b) Paper-based filing. The following parties must mail the applicable request form pursuant to the instructions provided on the form and include a check or money order for the required arbitration deposit payable to the comptroller:

(1) a property owner or property owner's agent, if the request for binding arbitration is filed before the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available; and

(2) a property owner who does not appoint an agent and who chooses not to use the online arbitration system.

(c) Deposit payments. A request for binding arbitration is not officially submitted until the required deposit is paid. If the request is filed using electronic filing under subsection (a) of this section, the deposit must be paid through the online arbitration system. If the request is filed using paper-based filing under subsection (b) of this section, the deposit must be paid by including a check or money order with the request for binding arbitration form.

(d) Requirements for refund recipient.

(1) Except as provided in paragraphs (2) and (3) of this subsection, the property owner shall designate the refund recipient on the request for binding arbitration.

(2) If the property owner appoints an agent under §9.4205 of this title, the agent may designate the refund recipient on the request for binding arbitration by designating the refund recipient that the property owner designated in the appointment of agent for binding arbitration form.

(3) The refund recipient's name, mailing address, phone number, and one of the following Internal Revenue Service identification numbers for the refund recipient, must be provided on the request for binding arbitration:

(A) Social Security Number (SSN);

(B) Individual Taxpayer Identification Number (ITIN) issued by the Internal Revenue Service to individuals not eligible to obtain an SSN; or

(C) Federal Employer Identification Number (FEIN).

(4) To protect the confidentiality of the refund recipient's identification number, the comptroller shall assign a Texas Identification Number (TIN) to serve as the payee account number on any warrants issued by the comptroller.

§9.4205. Agent Representation in Binding Arbitration.

(a) Professional qualifications. Property owners may represent themselves or choose to be represented by an agent. An agent must hold a current and active license, certification, or registration in one of the following fields:

(1) an attorney licensed to practice in Texas;

(2) a real estate broker or sales agent licensed under Occupations Code, Chapter 1101;

(3) a real estate appraiser licensed under Occupations Code, Chapter 1103;

(4) a property tax consultant registered under Occupations Code, Chapter 1152; or

(5) a certified public accountant licensed under Occupations Code, Chapter 901.

(b) Required documentation.

(1) The property owner must complete and sign the appointment of agent for binding arbitration form. No other agent appointment, authorization form, or document will be accepted.

(2) Neither the individual being appointed as an agent under this subsection, nor an agent appointed under Tax Code, §1.111, may sign the form described in paragraph (1) of this subsection on behalf of the property owner.

(3) For requests for binding arbitration filed with the comptroller on or after January 1, 2024, the agent shall retain the form and shall produce the form immediately upon request from the property owner, appraisal district, ARB, arbitrator assigned to the arbitration, or comptroller under Tax Code, §41A.08(d).

(4) Failure of the agent to produce the form immediately upon request as required by Tax Code, §41A.08(d), or production of an invalid form, shall result in dismissal of the request for binding arbitration and may result in loss of the arbitration deposit.

(c) Agent responsibilities. Authorized agents may take the following actions in an arbitration on a property owner's behalf:

(1) file online requests for binding arbitration and pay the required arbitration deposit through the online arbitration system;

(2) receive a potential refund of an arbitration deposit, if the agent is designated as a refund recipient under §9.4204(d) of this title;

(3) send and receive communications regarding the arbitration;

(4) negotiate with the appraisal district to try to settle the case before the arbitration hearing;

(5) execute a settlement agreement with the appraisal district to resolve the case;

(6) withdraw a request for binding arbitration; and

(7) appear and represent the property owner at the arbitration hearing.

(d) Designation of specific individual.

(1) The property owner must identify on the appointment of agent for binding arbitration form a specific individual to act as an agent and provide the agent's license number for the specific type of license, certification, or registration that qualifies the individual to act as an agent under subsection (a) of this section.

(2) The property owner may also appoint an alternate agent on the appointment of agent for binding arbitration form. Unless the alternate agent is with the same organization as the first agent, the alternate agent shall not be authorized to act on a property owner's behalf unless the alternate agent provides written notice to the appraisal district and the appointed arbitrator that the first agent is not available. For LBA, a copy of the notice must also be provided to the ARB.

(3) A company or business entity does not qualify to act as an agent.

(e) Agent representation at arbitration hearing. Only the individual(s) identified on the appointment of agent for binding arbitration form may undertake representation of the property owner in the arbitration for which the request for binding arbitration was submitted. No other individual, including a licensed attorney, may act on the property owner's behalf in that proceeding unless another subsequently executed appointment of agent for binding arbitration form is completed and signed.

(f) Agents for non-individual property owners. The property owner's name, current mailing address, phone number, and email address, if available, must be provided on the appointment of agent for binding arbitration form. If the property owner is not an individual, an authorized individual shall complete and sign the form on behalf of the property owner. The authorized individual's name and contact information must be provided on the form, as well as the basis for the authorized individual's authority.

(g) Duration of agent appointment. The appointment of agent for binding arbitration form is valid for three years from the date of execution, unless revoked. The property owner may revoke the appointment of an agent or alternate agent at any time by delivery of written notice to the agent, and all alternate agents, if any are appointed, to the address provided on the form or the agent's last known address. A copy of the revocation notice must also be provided to the comptroller, appraisal district, and the arbitrator assigned to the case, if an arbitrator is assigned. For LBA, a copy of the revocation notice must also be provided to the ARB.

(h) Agent certifications. In undertaking representation of the property owner pursuant to Tax Code, §41A.08(b), each agent must certify that:

(1) they are acting as a fiduciary on behalf of the property owner in the specific arbitration proceeding for which the request for binding arbitration was filed and agree to undertake the responsibilities specified in subsection (c) of this section; and

(2) the property owner knowingly authorized the agent's filing of the request for binding arbitration and the agent's representation of the property owner in the arbitration.

§9.4206. Appraisal District Responsibility for Processing Request.

(a) Appraisal district responsibilities.

(1) If a request for RBA is filed before the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available, within 10 calendar days of receipt of each request for binding arbitration under Tax Code, §41A, the appraisal district shall:

(A) assign a unique arbitration number to each request for RBA;

(B) complete and sign that portion of the request for RBA form applicable to the appraisal district, based on examination of the documentation submitted;

(C) deliver each request for RBA form, the accompanying deposit, the ARB order (as well as the appointment of agent for binding arbitration form, if provided), and supporting documentation for any items not checked in the appraisal district portion of the request for RBA form, if applicable, to the comptroller's office by certified first-class mail, and simultaneously deliver a copy of the submission to the property owner or property owner's agent, as appropriate, by regular first-class mail or email; and

(D) provide promptly any additional information the comptroller's office requests to process the request for binding arbitration submission.

(2) If a request for RBA or LBA is filed on or after the later of January 1, 2024, or the first day the comptroller makes the online system available, within 10 calendar days of receipt of each request for binding arbitration under Tax Code, §41A, the appraisal district shall, using the online arbitration system:

(A) review each request for binding arbitration;

(B) verify property account details;

(C) assign an appraisal district representative for the arbitration hearing;

(D) enter the contact information for an ARB representative for LBA cases;

(E) indicate any potential defects, including any discrepancies or jurisdictional issues, that affect the deposit amount or the eligibility of a property to be included on the request for binding arbitration; and

(F) upload supporting documentation for any potential defects, including any discrepancies or jurisdictional issues, identified in the review process.

(b) Comptroller's request for additional information. The appraisal district shall provide to the comptroller any additional information the comptroller requests to process the request for binding arbitration within 15 calendar days of the comptroller's request.

(c) Notification if new ARB hearing is mandated. Where an LBA award mandates a new ARB hearing associated with a pending request for RBA, the appraisal district shall promptly notify the comptroller.

§9.4207. Comptroller Processing of Request.

(a) No defects identified. If no defects are identified by the comptroller or by the appraisal district under §9.4206(a)(2)(E) of this title, the comptroller shall notify the appraisal district and the property owner or the property owner's agent that the request for binding arbitration has been processed and provide the arbitration number assigned by the comptroller. For LBA, a copy of the notice must also be provided to the ARB.

(b) Defects identified. If the appraisal district or the comptroller identifies defects on the request for binding arbitration that affect the deposit or property eligibility, the comptroller shall review the request to determine whether it can be processed or requires a cure under subsection (d) of this section.

(c) Deposit not honored or insufficient. If a property owner using paper-based filing under §9.4204(b) of this title pays the deposit with a check that is not honored, the property owner shall submit to the comptroller a check issued and guaranteed by a banking institution (i.e., a cashier's or teller's check) or money order. If a property owner using paper-based filing under §9.4204(b) of this title pays the deposit with a check or money order that is for less than the required deposit amount under §9.4221 or §9.4241 of this title, the property owner shall submit to the comptroller a supplemental check or money order sufficient to pay the full deposit. If a property owner or the property owner's agent using the online arbitration system pays the deposit with a credit card or electronic funds transfer (eCheck) that is not honored, the property owner or the property owner's agent shall submit another electronic payment to the comptroller. Such payments must be received no later than 15 calendar days after the notice of the defect is delivered under subsection (d) of this section.

(d) Cure period. If a request for binding arbitration is defective, the comptroller shall notify the property owner or the property owner's agent of the defect, the process to file a cure for the defect, and the date the cure is due. Mailed notices are deemed delivered when deposited in the mail. If notified by email or on the online arbitration system, the notification is deemed delivered on the date the comptroller transmits the email or notice.

(e) Cure resolution. If the property owner or the property owner's agent provides documentation, payment, or information that cures the defect within 15 calendar days of the comptroller's notice, the comptroller shall process the request for binding arbitration and notify the appraisal district and property owner or the property owner's agent. For LBA, a copy of the notice must also be provided to the ARB.

(f) Failure to cure. If the property owner or the property owner's agent fails to cure any defect that the comptroller determines to be curable within 15 calendar days of the comptroller's notice, the request for binding arbitration shall not be processed any further and shall be closed, the comptroller shall notify the parties of the comptroller's action, and the comptroller shall refund the deposit pursuant to §9.4209 of this title.

(g) Processing is not certification of requirements. The comptroller's processing of a request does not certify that the request meets all statutory requirements and requests may still be dismissed by an arbitrator for lack of jurisdiction.

(h) Dispute. If there is a dispute regarding whether there is jurisdiction for an arbitration under §9.4223 or §9.4244 of this title, the request for binding arbitration shall be forwarded to the arbitrator and the arbitrator shall render a determination on jurisdiction. Arbitrators shall determine whether a request meets all statutory criteria and shall dismiss the request if it satisfies the criteria for dismissal under §9.4223 or §9.4244 of this title. Dismissal of the request may result in the loss of the requestor's deposit.

§9.4208. Withdrawing a Request.

(a) Notice of withdrawal. A property owner or the property owner's agent using the online arbitration system under §9.4204(a) of this title must withdraw a request for binding arbitration using the online arbitration system. A property owner or the property owner's agent using paper-based filing under §9.4204(b) of this title must deliver a written notice of the withdrawal to all parties and the comptroller.

(b) Timely withdrawal. If the comptroller receives the notice of withdrawal before an arbitrator accepts the case, the notice is considered timely, and the deposit will be refunded pursuant to §9.4209 of this title.

(c) Untimely withdrawal. If the comptroller receives the notice of withdrawal after an arbitrator accepts the case, the notice is considered untimely and the arbitrator is entitled to charge a fee, up to the amount allowed in §9.4226 or §9.4247 of this title, as applicable, out of the deposit.

§9.4209. Refund and Arbitrator Fee Processing.

(a) Administrative costs. The comptroller shall retain $50 of every arbitration deposit to cover the comptroller's administrative costs.

(b) Refund recipients. Any deposit refunds will be issued to the refund recipient designated on the request for binding arbitration.

(c) Refund amounts.

(1) A deposit refund shall be issued to the property owner or property owner's agent in the amount of the deposit less the $50 comptroller administrative fee if:

(A) the request for binding arbitration is closed due to a defect that could not be cured or due to a defect that was not cured;

(B) the request for binding arbitration is timely withdrawn;

(C) the arbitration is dismissed in its entirety due to delinquent property taxes;

(D) the LBA award found a procedural violation in accordance with §9.4226 of this title; or

(E) the RBA award is in favor of the property owner in accordance with §9.4247(b) of this title.

(2) A deposit refund, if any, shall be issued in the amount of the deposit less the arbitrator's fee and the $50 comptroller administrative fee if:

(A) the request for binding arbitration is not timely withdrawn;

(B) the arbitration is dismissed in its entirety for lack of jurisdiction under §9.4223(a)(2)-(9) or §9.4244(a)(2)-(8) of this title;

(C) the LBA award did not find a procedural violation in accordance with §9.4226 of this title; or

(D) the RBA award is not in favor of the property owner in accordance with §9.4247(b) of this title.

§9.4210. Forms.

(a) Adoption by reference. The comptroller adopts by reference:

(1) the request for RBA form; and

(2) the RBA award form.

(b) Revision and addition of forms. Except as provided by subsection (a) of this section, all comptroller forms regarding binding arbitration under Tax Code, Chapter 41A, may be revised at the discretion of the comptroller. The comptroller may also prescribe additional forms for the administration of binding arbitration.

§9.4211. Communication with Property Owner, Property Owner's Agent, ARB, Appraisal District, and Arbitrator.

Except as otherwise provided in Tax Code, §41A.015(b)(1) or §41A.015(i), these rules, or other law, as applicable, the property owner, property owner's agent, ARB, appraisal district, and arbitrator, as applicable, may provide written communications, notifications, and materials to each other using email, first-class mail, or any other method acceptable to the intended recipient of the communication, notification, or materials. Any written communications, notifications, and materials provided to the arbitrator shall also be provided to all other parties to the arbitration.

§9.4212. Arbitration Proceedings.

(a) Necessary Parties. Necessary parties to LBA under Tax Code, §41A.015, include the property owner or the property owner's agent, the chief appraiser, and the ARB. Necessary parties to RBA under Tax Code, §41A.01, include the property owner or the property owner's agent and the appraisal district.

(b) Requirements. An arbitrator who accepts an appointment shall conduct each arbitration proceeding pursuant to the terms of Tax Code, Chapter 41A, and this subchapter, and for a fee that is not more than the applicable amount stated in Tax Code, §41A.015(p)(2) or §41A.06(b)(4), as applicable.

(c) Arbitrator professionalism. The arbitrator shall determine the level of formality or informality of arbitration proceedings; however, the arbitrator must behave professionally while rendering arbitration services. The arbitrator shall not engage in conduct that creates a conflict of interest.

(d) Arbitration hearing types. Arbitrations may be conducted in person or by telephone or video conference call. The arbitrator may decide the manner of the arbitration hearing unless the property owner or the property owner's agent selects a specific format on the request for binding arbitration.

(e) In-person arbitration hearing requirements. Unless all necessary parties agree otherwise, if the arbitration is conducted in person, the arbitrator and all necessary parties shall appear in person for the arbitration hearing. If the arbitration is in person, the arbitration hearing must be held in the county where the subject property is located, unless all necessary parties agree to another location. The selected location must be in an office-like setting generally open to the public or to the arbitrator. The arbitrator is responsible for identifying and reserving the arbitration hearing location and is responsible for any location costs incurred. Neither the property owner, the appraisal district, nor the ARB, may be charged an additional fee or requested to provide additional monies to participate in an in-person arbitration.

(f) Arbitrator initiation of arbitration hearing. Promptly upon acceptance of an appointment, the arbitrator shall contact all necessary parties by telephone or email to notify the parties of the arbitrator's appointment, propose one or more dates for the arbitration hearing, and request alternate arbitration hearing dates from the parties if the date(s) proposed is not acceptable. The arbitrator should cooperate with all necessary parties in scheduling the arbitration hearing.

(g) Notice of arbitration hearing. The arbitrator shall set the arbitration hearing date and serve written notice of the arbitration hearing under subsection (h) of this section as follows:

(1) where the arbitrator received written agreement from all necessary parties on an arbitration hearing date, the arbitrator shall serve the written notice of arbitration hearing to all necessary parties in the method acceptable to each party; or

(2) where written agreement from all necessary parties is not obtained after 14 calendar days of the arbitrator's initial contact attempt under subsection (f) of this section, the arbitrator shall set the arbitration hearing date, providing a minimum of 21 calendar days' notice before the arbitration hearing, and shall serve the notice of arbitration hearing by:

(A) serving a copy of the notice to all necessary parties by email, if available; and

(B) providing a paper copy of the notice to the property owner through the U.S. Postal Service or a private third-party service such as FedEx or United Parcel Service (UPS) as long as proof of delivery is provided.

(h) Contents of arbitration hearing notice. The arbitrator shall include the following information in the written notice of arbitration hearing:

(1) the arbitration number;

(2) the date and time of the arbitration hearing;

(3) the physical address of the arbitration hearing location if the arbitration hearing is in person, or instructions concerning how to participate in the arbitration hearing if the hearing is by telephone or video conference call;

(4) the date by which the parties must exchange evidence before the arbitration hearing;

(5) the arbitrator's contact information, including email address, phone number, and mailing address, as well as a fax number, if available;

(6) a copy of the arbitrator's written procedures for the arbitration hearing;

(7) the methods by which the parties are to communicate and exchange materials, including email, U.S. first-class mail, or overnight or personal delivery; and

(8) any other matter about which the arbitrator wishes to advise the parties before the arbitration hearing.

(i) Continuance. The arbitrator may continue an arbitration hearing:

(1) for reasonable cause; or

(2) if all necessary parties agree to the continuance.

(j) Failure to appear and waiver of defective notice. The arbitrator may hear and determine the controversy on the evidence produced at the arbitration hearing as long as notice was provided pursuant to subsection (g) of this section. Appearance at the arbitration hearing waives any defect in the notice.

(k) Evidence. Each party at the arbitration hearing is entitled to be heard, present evidence material to the controversy, and cross-examine witnesses. The arbitrator shall ask each witness testifying to swear or affirm that the testimony they are about to give shall be the truth, the whole truth, and nothing but the truth. The arbitrator's decision is required to be based solely on the evidence provided at the arbitration hearing.

(l) Availability of arbitration hearing procedures. The arbitrator shall have a written copy of the arbitrator's hearing procedures available at the arbitration hearing.

(m) Recording proceedings. The parties shall be allowed to record audio of the proceedings. Video recordings require the consent of the arbitrator.

(n) Confidentiality. The confidentiality provisions of Tax Code, §22.27, concerning information provided to an appraisal office, apply to confidential information provided to arbitrators. The information may not be disclosed except as provided by law.

(o) Ex parte communications. The arbitrator shall not initiate, permit, or consider an ex parte communication made to the arbitrator by a party outside the presence of the other parties at any time before the LBA or RBA award is issued, concerning specific evidence, argument, facts, or the merits of the arbitration. Such ex parte communications may be grounds for the removal of the arbitrator from the comptroller's registry of arbitrators.

(p) Processing time. The arbitrator must complete an arbitration proceeding in a timely manner and must make every effort to complete the proceeding within 120 calendar days after the arbitrator's acceptance of the appointment. Failure to timely complete arbitration proceedings may constitute good cause for removal from the comptroller's registry of arbitrators.

§9.4213. Substitution of Arbitrator Assigned to Arbitration Hearing.

(a) Substitution prior to arbitration hearing. The comptroller shall remove an arbitrator from an arbitration and substitute a different arbitrator prior to the arbitration hearing taking place if the division director determines by clear and convincing evidence there is good cause for such removal.

(b) Substitution prior to award. After an arbitration hearing is held and prior to issuance of the award, an arbitrator may be removed from an arbitration and a substitute arbitrator appointed where a disaster or emergency, as defined by Government Code, §418.004 or §433.001, impacts the arbitrator's ability to complete the arbitration in compliance with this subchapter. Substitution may also take place if, as determined by the division director in the exercise of the division director's discretion, the arbitrator experiences a personal emergency, rendering them incapable of completing the arbitration in compliance with this subchapter.

(c) Good cause for substitution. Good cause for substitution under subsection (a) of this section includes the following:

(1) the individual is not eligible or becomes ineligible under the terms of §9.4260 or §9.4263 of this title, as applicable;

(2) the individual violates one or more provisions of this subchapter;

(3) there is a pending request for the arbitrator's removal from the registry of arbitrators and the division director, in the exercise of the division director's discretion, believes the request could impact the arbitrator's ability to conduct a fair and impartial arbitration hearing; or

(4) the division director determines, in the exercise of the division director's discretion, that substitution is in the interests of providing for a fair, impartial arbitration hearing.

(d) Clear and convincing evidence. For purposes of this section, clear and convincing evidence means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations.

(e) Filing of substitution request. A party to an arbitration may request the substitution of an arbitrator by filing a written request with the division director. Requests must be received with sufficient time to process and investigate the request prior to the arbitration hearing if filed under subsection (a) of this section or prior to the award being issued if filed under subsection (b) of this section. If the arbitration hearing is held prior to resolution of a request under subsection (a) of this section, or an award is issued prior to resolution of a request under subsection (b) of this section, the request will be dismissed. All requests must contain the following:

(1) a letter, addressed to the division director and signed by the requestor, that identifies the arbitration, arbitrator, and the grounds for substitution under subsection (b) or (c) of this section; and

(2) copies of all available communications exchanged between the arbitrator and the parties, as applicable, that support the request.

(f) Confidentiality. The confidentiality provisions of Tax Code, §22.27, concerning information provided to an appraisal office, apply to information reviewed or submitted under this section and may not be disclosed except as provided by law. That portion of the materials considered confidential must be designated as such to protect it from disclosure.

(g) Dismissals. Requests for substitution shall be dismissed if:

(1) the conduct complained of does not meet the requirements of subsection (b) or (c) of this section; or

(2) the complaint is not timely or otherwise fails to meet the requirements of subsection (e) of this section.

(h) Processing time. The comptroller shall examine the request for substitution in a timely manner.

(i) Cure period. If good cause for substitution is found, the arbitrator shall be notified by the comptroller and, where applicable, given the chance to cure the violation by the deadline established in the comptroller's notice. If the arbitrator does not cure the violation by the deadline established in the comptroller's notice, the arbitrator shall be removed and a new arbitrator substituted. The comptroller shall keep a record of any removals under subsection (a) of this section in the arbitrator's file.

(j) No appeal. The determination of a request for substitution, including dismissal of the request, or the removal of an arbitrator under this section is final and may not be appealed.

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

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DIVISION 2. LIMITED BINDING ARBITRATION FOR PROCEDURAL VIOLATIONS

34 TAC §§9.4220 - 9.4226

The Comptroller of Public Accounts proposes new §9.4220, concerning request for LBA; §9.4221, concerning LBA deposit; §9.4222, concerning comptroller appointment of arbitrators for LBA; §9.4223, concerning dismissal for lack of jurisdiction; §9.4224, concerning LBA award; §9.4225, concerning correction of procedure violations; and §9.4226, concerning payment of arbitrator fees. The new sections will be located in Subchapter K, in new Division 2 (Limited Binding Arbitration for Procedural Violations). The comptroller will propose to repeal all current sections in Subchapter K in a separate rulemaking.

The new sections establish procedures concerning limited binding arbitration for certain alleged procedural violations during the local protest process under Tax Code, §41A.015. The legislation enacted within the last four years that provides the statutory authority for the new sections is House Bill 988, 87th Legislature, R.S., 2021; Senate Bill 1854, 87th Legislature, R.S., 2021; House Bill 4101, 88th Legislature, R.S., 2023; and Senate Bill 2355, 88th Legislature, R.S., 2023.

Section 9.4220 describes the process for requesting LBA to compel the appraisal review board (ARB) or the chief appraiser to take certain actions under Tax Code, §41A.015.

Section 9.4221 requires a deposit to be submitted with each LBA and details the amount of deposit that must be submitted.

Section 9.4222 describes the comptroller's process for appointing arbitrators for LBA.

Section 9.4223 addresses the reasons for which an arbitrator shall dismiss a pending request for LBA with prejudice, for lack of jurisdiction, and the effect of a dismissal on the deposit submitted for the LBA.

Section 9.4224 provides the process and requirements for the issuance of an LBA award by an arbitrator.

Section 9.4225 sets forth the process of correcting procedural violations committed by the chief appraiser or ARB following the issuance of an LBA award.

Section 9.4226 describes the payment and processing of arbitrator fees in an LBA.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by conforming the rule to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed new rules 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.*

The new sections are proposed under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

§9.4220. Request for LBA.

(a) Actions reviewable in LBA. A property owner who has filed a notice of protest under Tax Code, Chapter 41, may file a re-

quest for LBA to compel the ARB or the chief appraiser to take certain actions under Tax Code, §41A.015(a).

(b) Waiver of right to seek LBA. A property owner waives their right to seek LBA under Tax Code, §41A.015, if:

(1) under Tax Code, §41A.015(a)(5), there was no request that the ARB hearing be postponed, or the property owner or the property owner's agent was offered a postponement and chose to proceed with the ARB protest; or

(2) under Tax Code, §41A.015(a)(7), there was an offer to postpone the ARB hearing upon the objected-to evidence being provided and the property owner or the property owner's agent chose to proceed with the ARB protest.

(c) Requirements for processing. A request for LBA that meets the following terms and conditions will be processed by the comptroller:

(1) The request was submitted in accordance with Tax Code, §41A.015, §9.4204 of this title, and this section.

(2) The request includes a deposit that meets the requirements of §9.4204 and §9.4221 of this title.

(d) Multiple alleged violations or properties. LBA requests are confined to a single tax year and a single property owner. The property owner may file for multiple alleged procedural violations for a single property or for multiple properties owned by a single property owner. If the request involves multiple alleged procedural violations or multiple properties, each individual allegation and property must separately meet the requirements of this section, except that a single deposit is required.

§9.4221. LBA Deposit.

(a) Deposit amount. A deposit shall be submitted with each request for LBA in the following amount, as applicable:

(1) $450 if the property qualifies as the property owner's residence homestead under Tax Code, §11.13, and the appraised or market value, as applicable, is $500,000 or less as determined by the appraisal district for the most recent tax year.

(2) $550 for all property not subject to paragraph (1) of this subsection.

(b) Multiple properties. Where the property owner has appealed multiple properties, with one or more qualifying under subsection (a)(1) of this section and one or more qualifying under subsection (a)(2) of this section; the deposit must be made in the amount of subsection (a)(2) of this section.

§9.4222. Comptroller Appointment of Arbitrators for LBA.

(a) Qualifications. The comptroller shall appoint to a pending request for LBA an individual who meets the requirements of Tax Code, §41A.015(p) and is included in the registry of arbitrators under §9.4260 of this title.

(b) Use of computer system for appointment. The comptroller shall use a computer system that distributes the arbitration appointments as evenly as possible among qualified and eligible arbitrators included in the registry of arbitrators.

§9.4223. Dismissal for Lack of Jurisdiction.

(a) Reasons for dismissal. The arbitrator shall dismiss a pending request for LBA with prejudice, for lack of jurisdiction, if:

(1) except as allowed by Tax Code, §41A.10, taxes on the property subject to the appeal are delinquent because, for any prior year, all property taxes due have not been paid or because, for the year at issue, the undisputed tax amount was not paid before the delinquency date set by the applicable section of Tax Code, Chapter 31;

(2) no notice of protest under Tax Code, Chapter 41, was filed prior to the request for LBA being filed under Tax Code, §41A.015(a);

(3) the requestor seeks to compel the ARB or chief appraiser to take an action that is not authorized by Tax Code, §41A.015(a);

(4) the requestor failed to timely provide written notice to the chair of the ARB, the chief appraiser, and the taxpayer liaison officer for the applicable appraisal district by certified mail, return receipt requested, of the procedural requirement(s) with which the property owner alleges the ARB or chief appraiser was required to comply under Tax Code, §41A.015(b)(1);

(5) the requestor failed to timely file the request for LBA under Tax Code, §41A.015(d), which requires filing it no earlier than the 11th day and no later than the 30th day after the date the property owner delivered the notice required by Tax Code, §41A.015(b)(1);

(6) the chief appraiser or ARB chair delivered a written statement to the property owner on or before the 10th day after the notice described by Tax Code, §41A.015(b)(1), was delivered confirming that the ARB or chief appraiser would comply with the requirement or cure a failure to comply with the requirement;

(7) a lawsuit was filed in district court regarding the same issues, for the same properties, and for the same tax year for which the request was filed;

(8) the property owner or the property owner's agent and the appraisal district have executed a written agreement resolving the matter; or

(9) the request for LBA was filed by an agent who does not have proper authority to act as an agent for the property owner under Tax Code, §41A.08 and §9.4205 of this title.

(b) An arbitrator shall dismiss any individual properties for which subsection (a) of this section applies and the case will move forward with only the remaining properties.

§9.4224. LBA Award.

(a) Questions of jurisdiction. In all arbitrations, the arbitrator shall first determine any questions of jurisdiction.

(b) Arbitrator's determination. If jurisdiction exists, the arbitrator shall render a determination on whether there was a violation of the procedural requirements submitted for review. A separate determination must be made for each individual alleged procedural violation and each individual property. If a violation is found, the arbitrator shall direct the ARB or chief appraiser, as applicable, to either comply with the procedural requirement or, if the ARB determination has been issued, to rescind the ARB order and hold a new ARB hearing that complies with the procedural requirements.

(c) Arbitrator's award. Within 20 calendar days of the conclusion of the arbitration hearing, the arbitrator shall render and issue an LBA award in the online arbitration system. The arbitrator shall deliver a copy of the LBA award by first class mail to any property owner not participating in the online arbitration system.

(d) No appeal of LBA award. An LBA award is final and may not be appealed.

§9.4225. Correction of Procedural Violations.

Upon receipt of the LBA award, the chief appraiser or ARB, as applicable, shall:

(1) Take any action required to comply with the requirements of the LBA award;

(2) Rescind the ARB order and schedule and conduct a new ARB hearing, as applicable; and

(3) Notify the comptroller if there is a pending request for RBA under Tax Code, §41A.01, involving the same tax year, property owner, and properties.

§9.4226. Payment of Arbitrator Fees.

(a) Amount of arbitrator fee. The arbitrator fee for LBA shall not exceed the applicable amount specified in Tax Code, §41A.015(p)(2).

(b) Multiple properties. Where the property owner has appealed multiple properties, some qualifying under Tax Code, §41A.015(p)(2)(A) and some qualifying under Tax Code, §41A.015(p)(2)(B), the fee shall not exceed the amount specified in Tax Code, §41A.015(p)(2)(B).

(c) Processing of arbitrator fees. Payment of arbitrator fees shall be processed in accordance with Tax Code, §41A.015(k) and (l), and §9.4209 of this title.

(d) Multiple ARB hearing procedural violations. Where the property owner alleges more than one ARB hearing procedural violation or alleges the same violation on more than one property, the arbitrator fee shall be paid in accordance with Tax Code, §41A.015(k), unless the arbitrator found no violations of any of the ARB hearing procedural requirements submitted for 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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DIVISION 3. REGULAR BINDING ARBITRATION OF APPRAISAL REVIEW BOARD DETERMINATIONS

34 TAC §§9.4240 - 9.4247

The Comptroller of Public Accounts proposes new §9.4240, concerning request for RBA; §9.4241, concerning RBA deposit; §9.4242, concerning RBA 45-day settlement period; §9.4243, concerning comptroller appointment of arbitrators for RBA; §9.4244, concerning dismissals for lack of jurisdiction; §9.4245, concerning RBA award; §9.4246, concerning correction of appraisal roll; and §9.4247 concerning payment of arbitrator fees. The new sections will be located in Subchapter K, in new Division 3 (Regular Binding Arbitration of Appraisal Review Board Determinations). The comptroller will propose to repeal all current sections in Subchapter K in a separate rulemaking.

The new sections update the procedures concerning RBA to appeal values determined by local appraisal review boards under Tax Code, §41A.01. The legislation enacted within the last four years that provides the statutory authority for the new sections is House Bill 988, 87th Legislature, R.S., 2021; Senate Bill 1854, 87th Legislature, R.S., 2021; House Bill 4101, 88th Legislature, R.S., 2023; and Senate Bill 2355, 88th Legislature, R.S., 2023.

Section 9.4240 explains the process for requesting RBA to contest an appraisal review board (ARB) order determining a protest under Tax Code, §41A.01.

Section 9.4241 requires a deposit to be submitted with each RBA and describes the amount of deposit that must be submitted.

Section 9.4242 describes the 45-day settlement period that allows the parties to try to settle the RBA case or determine that the request for RBA should be withdrawn timely before an arbitrator is appointed. It also sets forth the requirements for waiving the 45-day settlement period.

Section 9.4243 provides the comptroller's process for appointing arbitrators for an RBA.

Section 9.4244 details the reasons for which an arbitrator shall dismiss with prejudice a pending request for RBA for lack of jurisdiction, and the effect of a dismissal on the deposit submitted for the RBA.

Section 9.4245 describes the process and requirements for the issuance of an RBA award by an arbitrator.

Section 9.4246 requires the chief appraiser to correct the appraised or market value, as applicable, of the property as shown on the appraisal roll to reflect an RBA award only where the arbitrator's value is lower than the value determined by the ARB.

Section 9.4247 describes the payment and processing of arbitrator fees in an RBA.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by conforming the rules 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 new rules 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.*

The new sections are proposed under Tax Code, §Sec. 41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

§9.4240. Request for RBA.

(a) Right of appeal in RBA. A property owner or the property owner's agent may appeal an ARB order determining a protest of property value through RBA under the terms and conditions of this section. A single ARB order may be appealed to RBA by only one property owner, even if multiple property owners are listed.

(b) Requirements for processing. A request for RBA will be processed for arbitration under Tax Code, §41A.01, if:

(1) The request for RBA concerns a property with an appraised or market value of $5 million or less as determined by the ARB order, or the property qualifies as the property owner's residence homestead under Tax Code, §11.13;

(2) The only matter in dispute is the determination of a protest filed under either Tax Code, §41.41(a)(1), concerning the property's appraised or market value, or under Tax Code, §41.41(a)(2) concerning unequal appraisal of the property;

(3) The deposit meets the requirements of Tax Code, §41A.03(a)(2), and §9.4204 and §9.4241 of this title;

(4) Except as allowed by Tax Code, §41A.10, taxes on the property subject to the appeal are not delinquent because, for any prior year, all property taxes due have not been paid or because, for the year at issue, the undisputed tax amount was not paid before the delinquency date set by the applicable section of Tax Code, Chapter 31;

(5) No lawsuit has been filed in district court regarding the property for the same issue for the same tax year; and

(6) The request for RBA is timely filed pursuant to Tax Code, §41A.03, using the comptroller-prescribed form.

(c) Contiguous tracts. If the request for RBA involves contiguous tracts of land pursuant to Tax Code, §41A.03(a-1), each tract of land and ARB order must separately meet the requirements of subsection (b) of this section, except that a single arbitration deposit is required. The combined total value of all ARB orders appealed may exceed the $5 million threshold requirement in subsection (b)(1) of this section as long as each individual tract is valued at $5 million or less or has a residence homestead exemption. If the appraisal district indicates two or more tracts are not contiguous during its review of the property accounts subject to the request, the property owner may select the single or contiguous tracts that will be arbitrated during the 45-day settlement period. Otherwise, the arbitrator that accepts the appointment will move forward with the single or contiguous tracts that contain the property with the highest appraised or market value.

(d) Requests for in-county or out-of-county arbitrators. A property owner or the property owner's agent may request that the comptroller appoint an arbitrator for RBA who resides in the county in which the property that is the subject of the appeal is located or an arbitrator who resides outside that county. In appointing an initial arbitrator, the comptroller shall comply with the request of the property owner unless there is not an available arbitrator who resides in the county in which the property that is the subject of the request is located. In appointing a substitute arbitrator, the comptroller shall consider but is not required to comply with the request. This does not authorize a property owner to request the appointment of a specific individual as an arbitrator.

(e) Impact of LBA award on RBA request. If a property owner is granted a new ARB hearing as a result of an LBA award and the property owner has a pending request for RBA based on the same ARB proceedings that were at issue in the LBA, the property owner and appraisal district shall promptly notify the comptroller. The pending request for RBA will be considered withdrawn or dismissed for lack of jurisdiction, depending on its current status. The deposit shall be either paid to the arbitrator or refunded according to §9.4209 or §9.4244 of this title. This shall not impact the property owner's ability to file a new request for RBA based on a subsequent ARB order.

§9.4241. RBA Deposit.

(a) Amount of deposit. A deposit shall be submitted with each request for RBA in the applicable amount specified in Tax Code, §41A.03(a)(2).

(b) Deposit amount for contiguous tracts. The deposit amount required for arbitration of contiguous tracts of land must correspond with the tract on which subsection (a) of this section would require the largest deposit, if filed separately.

§9.4242. RBA 45-Day Settlement Period.

(a) Notice of processing. The parties shall have 45 calendar days after the date that the comptroller provides notice that the request for RBA has been processed under §9.4207 of this title in which to try to settle the case or determine that the request for RBA should be withdrawn timely before an arbitrator is appointed. A notice of withdrawal must be provided in accordance with §9.4208 of this title.

(b) Waiver of settlement period. A property owner or the property owner's agent may request to waive the 45-day settlement period. If the appraisal district agrees to the waiver, the comptroller shall appoint an arbitrator to the request for RBA pursuant to §9.4243 of this title.

§9.4243. Comptroller Appointment of Arbitrators for RBA.

(a) Appointment of arbitrator. After the conclusion of the 45-calendar day settlement period or waiver of the settlement period, the comptroller shall appoint an individual included in the comptroller's registry of arbitrators who is both qualified and eligible for the particular appointment under §§9.4240(d), 9.4260, and 9.4263 of this title.

(b) Use of computer system for appointment. The comptroller shall use a computer system that distributes the arbitration appointments as evenly as possible among qualified and eligible arbitrators included in the comptroller's registry of arbitrators.

§9.4244. Dismissals for Lack of Jurisdiction.

(a) Reasons for dismissal. For requests for RBA filed under Tax Code, §41A.01, the arbitrator shall dismiss with prejudice a pending request for RBA for lack of jurisdiction, if:

(1) except as allowed by Tax Code, §41A.10, taxes on the property subject to the appeal are delinquent because for any prior year, all property taxes due have not been paid or because, for the year at issue, the undisputed tax amount was not paid before the delinquency date set by the applicable section of Tax Code, Chapter 31;

(2) the ARB order(s) appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1), concerning the appraised or market value, or Tax Code, §41.41(a)(2), concerning unequal appraisal of the property;

(3) the appraised or market value of the property as determined in the ARB order was either more than $5 million or the property did not qualify as the property owner's residence homestead under Tax Code, §11.13;

(4) the request for RBA was filed after the deadline established in Tax Code, §41A.03, which requires submission by not later than the 60th calendar day after the date the property owner or the property owner's agent receives the ARB order determining the protest;

(5) the property owner or the property owner's agent filed an appeal with the district court under Tax Code, Chapter 42, concern-

ing the value of the same property in the same tax year that is at issue in the pending RBA;

(6) the property owner or the property owner's agent and appraisal district have executed a written agreement resolving the matter;

(7) the request for RBA was filed by an agent without proper authority as described by Tax Code, §41A.08; or

(8) an LBA award rescinded the ARB order(s) under Tax Code, §41A.015(j)(2)(B).

(b) Contiguous tracts. When an RBA proceeding is brought pursuant to Tax Code, §41A.03(a-1), involving two or more contiguous tracts of land, the arbitrator shall dismiss from the proceeding any tract of land for which subsection (a) of this section applies. If, after dismissal, two or more tracts are not contiguous, the property owner may select the single or contiguous tracts that will be arbitrated. Otherwise, the arbitrator will determine the single or contiguous tracts that contain the property with the highest appraised or market value.

§9.4245. RBA Award.

(a) Questions of jurisdiction. In all arbitrations, the arbitrator shall first determine any questions of jurisdiction.

(b) Arbitrator's determination. If jurisdiction exists, the arbitrator shall determine the appraised or market value of the property that is the subject of the RBA.

(c) Special appraisal. If the arbitrator determines the property qualifies for special appraisal under Tax Code, Chapter 23, Subchapter B, C, D, E, or H, the statutory provisions regarding special appraisal, and the comptroller's rules and policies, including the comptroller's special appraisal manuals, must be followed in making the appraised value determination.

(d) Determination of value of residential homestead. If the arbitrator determines that a residence homestead's appraised value is less than its market value due to the appraised value limitation required by Tax Code, §23.23, the appraised value may not be changed unless:

(1) the arbitrator determines that the formula for calculating the appraised value of the property under Tax Code, §23.23 was incorrectly applied, and the change correctly applies the formula;

(2) the calculation of the appraised value of the property reflected in the ARB order includes an amount attributable to new improvements, and the change reflects the arbitrator's determination of the value contributed by the new improvements; or

(3) the arbitrator determines that the market value of the property is less than the appraised value indicated on the ARB order, and the change reduces the appraised value to the market value determined by the arbitrator.

(e) Arbitrator's award. Within 20 calendar days after the conclusion of the arbitration hearing, the arbitrator shall render a determination and issue the RBA award on the online arbitration system. The arbitrator shall deliver a copy of the RBA award by regular first-class mail to any property owner not participating in the online arbitration system.

(f) No appeal of RBA award. An RBA award is final and may not be appealed except as permitted under Civil Practice and Remedies Code, §171.088, and may be enforced in the manner provided by Civil Practice and Remedies Code, Chapter 171, Subchapter D.

§9.4246. Correction of Appraisal Roll.

The chief appraiser shall correct the appraised or market value, as applicable, of the property as shown on the appraisal roll to reflect the RBA award only where the arbitrator's value is lower than the value determined by the ARB.

§9.4247. Payment of Arbitrator Fees.

(a) Amount of arbitrator fee. The arbitrator fee for RBA shall not exceed the applicable amount specified in Tax Code, §41A.06(b)(4).

(b) Processing of arbitrator fees. Payment of arbitrator fees shall be processed in accordance with §9.4209 of this title and as follows:

(1) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is nearer to the property owner's opinion of value as stated in the request for RBA than the value reflected in the ARB order, the comptroller shall refund the property owner's arbitration deposit. In this case, the appraisal district, on receipt of a copy of the RBA award, shall pay the arbitrator fee.

(2) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is not nearer to the property owner's opinion of value as stated in the request for RBA than the value reflected in the ARB order, the comptroller shall pay the arbitrator fee out of the property owner's deposit.

(3) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is exactly one-half of the difference in value between the property owner's opinion of value of the property as stated in the request for RBA and the ARB order, the comptroller shall process payment of the arbitrator fee and arbitration deposit pursuant to paragraph (2) of this subsection.

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

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DIVISION 4. COMPTROLLER'S REGISTRY OF ARBITRATORS

34 TAC §§9.4260 - 9.4265

The Comptroller of Public Accounts proposes new §9.4260, concerning qualification for inclusion in comptroller's registry of arbitrators; §9.4261, concerning application requirements; §9.4262, concerning renewal requirements; §9.4263, concerning arbitrator eligibility for appointment; §9.4264, concerning arbitrator responsibility for registry profile; and §9.4265 concerning disciplinary action. The new sections will be located in Subchapter K, in new Division 4 (Comptroller's Registry of Arbitrators). The comptroller will propose to repeal all current sections in Subchapter K in a separate rulemaking.

The new sections update the procedures concerning the comptroller's registry of arbitrators for regular binding arbitration to appeal values determined by local appraisal review boards under

Tax Code, §41A.01, and limited binding arbitration for certain alleged procedural violations during the local protest process under Tax Code, §41A.015. The legislation enacted within the last four years that provides the statutory authority for the new sections is House Bill 988, 87th Legislature, R.S., 2021; Senate Bill 1854, 87th Legislature, R.S., 2021; House Bill 4101, 88th Legislature, R.S., 2023; and Senate Bill 2355, 88th Legislature, R.S., 2023.

Section 9.4260 sets forth the requirements for an individual to be included in the comptroller's registry of arbitrators.

Section 9.4261 details the process and requirements for applying to be included in the comptroller's registry of arbitrators.

Section 9.4262 addresses the requirements for an arbitrator to continue to qualify for inclusion in the comptroller's registry of arbitrators.

Section 9.4263 sets forth eligibility requirements for appointment as an arbitrator to a particular arbitration proceeding.

Section 9.4264 requires arbitrators to update their registry profile on the online arbitration system and provide additional information required by the comptroller. It also addresses the effect of updated information that causes the arbitrator to become ineligible to serve as an arbitrator or to be removed from the comptroller's registry of arbitrators.

Section 9.4265 authorizes the comptroller to remove an arbitrator from the comptroller's registry of arbitrators or to render lesser disciplinary actions, and describes the process and requirements for taking such an action.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by conforming the rules 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 new rules 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.*

The new sections are proposed under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

§9.4260. Qualification for Inclusion in Comptroller's Registry of Arbitrators.

(a) Inclusion in the registry. To qualify for inclusion in the registry of arbitrators and continue to be included in the registry, an individual must meet the requirements of this section.

(b) Residency requirement.

(1) An individual must reside in the state of Texas. An individual who has been granted a residence homestead exemption on property they own and occupy in Texas satisfies the residency requirement.

(2) An individual does not qualify for inclusion in the registry of arbitrators if the individual has been granted a residence homestead exemption in another state or has been granted more than one such exemption.

(3) If an individual owns no property for which a residence homestead exemption has been granted in any state, the individual's residence will be considered the state of Texas if the individual lives in a residential property in Texas more than 50 percent of the individual's time.

(4) Falsely claiming to reside in Texas will result in the immediate removal of the individual from the registry and the reporting of this misconduct to the individual's professional licensing or certification board or regulatory authority.

(c) Professional qualifications. To qualify to serve as an arbitrator, an individual must meet the requirements described in Tax Code, §41A.06(b), including the following requirements:

(1) The individual must have completed the comptroller's courses for training and education of ARB members established under Tax Code, §5.041(a) and (e-1), and for the training and education of arbitrators established under Tax Code, §5.043, and be issued a certificate indicating completion of each course prior to applying to the registry.

(2) Individuals in any one of the occupations specified in Tax Code, §41A.06(b)(1)(B)(ii), must:

(A) have completed at least 30 hours of training described in Tax Code, §41A.06(B)(i), of which no more than three hours may be self-study or homework; and

(B) hold a current and continually active license in one of the occupations specified in Tax Code, §41A.06(b)(1)(B)(ii), during the five years preceding the application submission date.

(d) Disqualifying Employment. An individual does not qualify for inclusion in the registry of arbitrators during any period in which the individual holds any one of the following positions in this state:

(1) member of a board of directors of any appraisal district;

(2) member of any appraisal review board;

(3) employee, contractor, or officer of any appraisal district;

(4) employee of the comptroller; or

(5) member of a governing body, officer, or supervisory or managerial employee of any taxing unit.

§9.4261. Application Requirements.

(a) Application submission. Individuals who wish to be included in the registry of arbitrators shall submit their applications through the online arbitration system or, if the online arbitration system is not available, by mailing or emailing the application form to the address specified by the comptroller.

(b) Attestation. By submitting the application and documentation required, the applicant attests that the applicant:

(1) principally resides in the state of Texas in the county identified;

(2) meets all of the qualifications required under §9.4260 of this title;

(3) has read and understands the provisions of this subchapter and Tax Code, Title 1 (Property Tax Code);

(4) will conduct all arbitrations under the terms of Tax Code, Chapter 41A, and this subchapter, as applicable;

(5) will perform these arbitration services for the applicable fee specified in Tax Code, §41A.015(p)(2) or §41A.06(b)(4), as applicable; and

(6) will update the arbitrator's registry profile on the online arbitration system to notify the comptroller of any change in the arbitrator's registry profile, including any change in qualifications, eligibility, contact information, or any material change regarding information provided in the application, within 10 calendar days of the change.

(c) Denial of application. The comptroller shall deny an application if the applicant does not meet all of the requirements of §9.4260 of this title or if the division director, in the exercise of the division director's discretion, determines inclusion of the applicant in the registry would not be in the interest of impartial arbitration proceedings.

(d) Approval of application. If the application is approved, the applicant's name, county of residence in Texas, and other pertinent information will be added to the registry.

(e) Notification to applicant. The comptroller must notify the applicant of the approval or denial of the application as soon as practicable and, for a denial, must provide a brief explanation of the reason(s) for the denial.

(f) Update of registry. The registry will be updated within 30 calendar days of the date the comptroller approves and processes the application.

(g) Registry disclaimers. Inclusion of an arbitrator in the registry is not and shall not be construed as a representation by the comptroller that all information provided by the applicant is true and correct and shall not be construed or represented as a professional endorsement.

§9.4262. Renewal Requirements.

For an arbitrator to continue to qualify for inclusion in the registry, the arbitrator must:

(1) complete and submit the renewal form through the online arbitration system or, if the online arbitration system is not available, by mailing or emailing the renewal form to the address specified by the comptroller, on or before:

(A) each renewal date of the applicant's license or certification under which the applicant was qualified previously under §9.4260 of this title; or

(B) the second anniversary of the date the arbitrator was initially added to the registry or the arbitrator's listing on the registry was renewed;

(2) continue to meet the requirements in §9.4260 of this title;

(3) have no history of failure to comply with this subchapter;

(4) have completed during the preceding two years at least eight hours of continuing education in arbitration and alternative dispute resolution procedures offered by a university, college, or legal or real estate trade association. This continuing education requirement may be satisfied by submission of documentation that the arbitrator attended or taught personally at least eight hours of one or more training courses that meet the requirements of this paragraph;

(5) complete a revised comptroller training program on property tax law for the training and education of arbitrators established under Tax Code, §5.043, not later than the 120th day after the date the program is available to be taken if the comptroller:

(A) revises the program after the individual is included in the registry; and

(B) determines that the program is substantially revised.

§9.4263. Arbitrator Eligibility for Appointment.

(a) Eligibility for appointment. To be eligible for appointment as an arbitrator to a particular arbitration proceeding, an arbitrator must satisfy the requirements of this section.

(b) Engaging in activities in county's appraisal district. An arbitrator is ineligible for and shall not accept any appointment in a county in which the property that is the subject of the arbitration is located, if at any time during the two years preceding the appointment at issue, the arbitrator has engaged in the following activities in that county's appraisal district:

(1) represented any person or entity for compensation, or served as an officer or employee of any firm, company, or other organization that has represented another person or entity for compensation, in any proceeding under Tax Code, Title 1 (Property Tax Code);

(2) served as an officer or employee of the appraisal district; or

(3) served as a member of the appraisal review board for the appraisal district.

(c) Duration of proceeding. For purposes of subsection (b)(1) of this section, a proceeding under Tax Code, Title 1 (Property Tax Code), begins with the filing of a notice of protest and includes communications with appraisal district employees regarding a matter under protest, protest settlement negotiations, any appearance at an ARB hearing, any involvement in a binding arbitration under Tax Code, Chapter 41A, and any involvement at either the district court or appellate court level of an appeal pursued under Tax Code, Chapter 42.

(d) Family relationships. An arbitrator is ineligible for and shall not accept an appointment to any arbitration in which the arbitrator is related by affinity within the second degree or by consanguinity within the third degree as determined under Government Code, Chapter 573, to any of the following individuals:

(1) the property owner or the property owner's agent;

(2) an officer, employee, or contractor of the appraisal district responsible for appraising the property at issue;

(3) a member of the board of directors of the appraisal district responsible for appraising the property at issue; or

(4) a member of the ARB in the area in which the property at issue is located.

(e) Business relationships. An arbitrator is ineligible for and shall not accept an appointment to any arbitration in which the arbitrator currently or during the previous two years has had a business relationship with the property owner, the property owner's agent, the ARB, or the appraisal district involved in that particular arbitration.

(f) Other conflicts of interest. An arbitrator is ineligible for and shall not accept an appointment to any arbitration in which the arbitra-

tor knows of any other conflict of interest that has not been previously described above.

§9.4264. Arbitrator Responsibility for Registry Profile.

(a) Registry profile updates. Each arbitrator included in the registry of arbitrators is required to update the arbitrator's registry profile on the online arbitration system to notify the comptroller of any changes in contact information, including address, phone number, and email address, and any material change in the information provided in the arbitrator's application, qualifications, or eligibility for appointment, within 10 calendar days of the change. A material change includes loss of required licensure, incapacity, ineligibility, a change in county of residence. or other conditions that would prevent the individual from lawfully and professionally performing the arbitrator's arbitration duties. Once the arbitrator has submitted registry profile updates, the arbitrator will be notified that, pending review, the arbitrator will not be able to modify active cases on the online arbitration system or receive new appointments.

(b) Eligible to resume active status. If the information provided in the profile updates do not cause the arbitrator to be disqualified, the comptroller will return the arbitrator to active status, and the arbitrator will be able to access arbitration functions in the online arbitration system and receive new appointments.

(c) Ineligible to complete active cases. If any of the information provided in profile updates causes the arbitrator to be ineligible to act as an arbitrator in one or more of the arbitrator's active cases, the comptroller will reassign affected cases to an eligible arbitrator.

(d) Request for additional information. If the comptroller requires additional information, the comptroller shall notify the arbitrator of the information needed. Once the arbitrator submits the information needed, the comptroller will complete the review.

(e) Removal of arbitrator. Failure of the arbitrator to report a material change in the arbitrator's registry profile, or information provided in profile updates that cause the arbitrator to be disqualified, may result in the removal of the arbitrator from the registry upon its discovery and the denial of future applications for inclusion in the registry. An arbitrator's failure to report a material change as required by this section shall not affect the determinations and awards made by the arbitrator during the period that the arbitrator is listed in active status in the registry.

§9.4265. Disciplinary Action.

(a) Disciplinary action generally. The comptroller is authorized to remove an arbitrator from the registry or, in the comptroller's discretion, to render lesser disciplinary actions including warnings, restriction of arbitrator eligibility for certain counties, or removal from individual arbitrations.

(b) Disciplinary history. The determination to discipline may be based solely on the information or complaint at issue or on a combination of the information or complaint and the arbitrator's disciplinary history.

(c) Good cause for removal. Good cause for removal includes the following grounds:

(1) the individual engaged in repeated instances of bias or misconduct while acting as an arbitrator;

(2) the individual engaged in fraudulent conduct;

(3) the individual is disqualified or becomes disqualified under §9.4260 of this title;

(4) the individual accepts a case in violation of §9.4263 of this title;

(5) the individual violates of §9.4212 or §9.4264 of this title while acting as an arbitrator;

(6) the individual fails or declines to renew the agreement to serve as an arbitrator in the manner required under §9.4262 of this title; or

(7) the comptroller finds that inclusion of the applicant in the arbitration registry would not be in the interest of impartial arbitration proceedings.

(d) Disciplinary discretion. The comptroller may take appropriate disciplinary action where the comptroller finds clear and convincing evidence of a violation, even if that violation does not rise to the level of good cause to justify removal under subsection (c) of this section. In determining the level of discipline, the comptroller may consider not only the complaint at issue, but any disciplinary history in the arbitrator's file. Good cause for disciplinary action includes the following grounds:

(1) the individual is disqualified or becomes disqualified under §9.4262 of this title;

(2) the individual fails to respond to or refuses to comply with communications and requests for information from the comptroller's office by the deadline established in the communication; or

(3) the individual has violated one or more provisions of this subchapter.

(e) Clear and convincing evidence. For purposes of this section, clear and convincing evidence means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations regarding the arbitrator.

(f) Filing a complaint. An individual may file a complaint concerning an arbitrator with the comptroller within 60 calendar days of the last incident giving rise to the complaint. The complaint must contain the following items:

(1) a letter, addressed to the division director and signed by the requestor, that identifies the arbitrator complained of and the alleged grounds for removal or discipline;

(2) for grounds for removal under subsection (c) of this section, at least one affidavit or unsworn declaration meeting the requirements of Civil Practice and Remedies Code, §132.001, from an individual with first-hand knowledge of the alleged conduct that supports the complaint; and

(3) as applicable, copies of all available communications exchanged between the arbitrator and the parties, including emails, documents, and any other materials, such as video or audio recordings, that support the complaint.

(g) Confidentiality. The confidentiality provisions of Tax Code, §22.27, concerning information provided to an appraisal office, apply to information reviewed under this section and may not be disclosed except as provided by law. That portion of the materials considered confidential must be designated as such to protect it from disclosure.

(h) Dismissal. Complaints shall be dismissed under the following conditions:

(1) the conduct complained of does not meet the requirements of this section;

(2) the complaint is not timely or otherwise fails to meet the requirements of subsection (f) of this section; or

(3) the complaint is based on one or more substantive arbitration issues, including evidentiary considerations and the resulting award.

(i) Initial review of complaints. Within 30 calendar days after submission of a complaint under this section, the comptroller shall notify the complainant whether the complaint is under review or dismissed. The dismissal of a complaint is final and may not be appealed. If the complaint is under review, all materials the complainant submitted will be forwarded electronically, by U.S. Postal Service, or by a private third-party service such as FedEx or United Parcel Service (UPS), as long as proof of delivery is provided, to the arbitrator who is the subject of the complaint for a response.

(j) Arbitrator response. The arbitrator has 30 calendar days from delivery of the materials to respond to the comptroller, explaining why a finding of good cause should not be made.

(k) Post-response review and determination. Within 30 calendar days after receipt of the arbitrator's response, the comptroller shall determine whether clear and convincing evidence supports a finding of good cause for removal of the arbitrator from the registry or disciplinary action. The comptroller shall promptly notify the complainant and the arbitrator of the comptroller's determination.

(l) Removal or disciplinary action. If good cause for removal of the arbitrator from the registry under subsection (c) of this section is found, the arbitrator shall be removed from the registry for a period of two years from the date of the determination. If, in the comptroller's discretion, clear and convincing evidence of a violation is established, however, after reviewing the violation and the arbitrator's file, the comptroller does not find it rises to the level of good cause for removal, the comptroller may issue disciplinary action. Prior disciplinary action may be considered in future complaints. If there is neither good cause for removal nor clear and convincing evidence of a violation, no disciplinary action will be taken.

(m) No appeal. The comptroller's determination and a removal or disciplinary action is final and may not be appealed. An arbitrator removed from the registry under subsection (c) of this section may reapply for inclusion in the registry two years after the date of the removal determination. The circumstances giving rise to the removal under this section may be considered in evaluating the reapplication.

(n) No effect on determinations and awards. Any disciplinary action taken shall not affect the determinations and awards made by the arbitrator during the period that the arbitrator is listed in active status in the registry.

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 December 21, 2023.

TRD-202304942
Victoria North
General Counsel, Fiscal and Agency Affairs Legal Services
Comptroller of Public Accounts
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 475-2220

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §801.1

The Texas Workforce Commission (TWC) proposes amendments to the following section of Chapter 801, relating to Local Workforce Development Boards:

Subchapter A. General Provisions, §801.1

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 801 rule change is to address changes in Texas Government Code §2308.256(a) and (g) because of the passage of House Bill (HB) 1615 by the 88th Texas Legislature, Regular Session (2023). Regarding Local Workforce Development Board (Board) composition, the bill removes the requirement that a Board member must have expertise in child care or early childhood education and adds the requirement that a Board must have representatives from the child care workforce.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§801.1. Requirements for Formation of Local Workforce Development Boards

Section 801.1 is amended by amended Texas Government Code §2308.256(a) to add that a Board must include a representative from the child care workforce and subsection §2308.256(g) subsequently removes the requirement that at least one Board member shall have expertise in child care or early childhood education by amending §801.1 as follows:

--Section 801.1(g)(2)(C)(vi) is removed because of the amended Texas Government Code §2308.256(a) requirement. The subsequent clause is renumbered.

--Section 801.1(g)(2)(D)(i) and (ii) are also removed and the language in §801.1(g)(2)(D)(ii) is merged into §801.1(g)(2)(D).

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment 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 address changes in Texas Government Code §2308.256(a) and (g) as a result of the passage of HB 1615 by the 88th Texas Legislature, Regular Session (2023). Regarding Board composition, the bill adds the requirement that a Board must have at least one representative from the child-care workforce.

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 US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

-- 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 TWC;

-- will not require an increase or decrease in fees paid to TWC;

-- will not create a new regulation;

-- will not expand, limit, or eliminate an existing regulation;

-- will not change the number of individuals subject to the rules; and

-- will not 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, has 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, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to expand Board membership to ensure that Boards have adequate representation from the child care workforce and that such child care representatives are able to influence local policymaking.

PART IV. COORDINATION ACTIVITIES

During the Workforce Call on July 21, 2023, Board executive directors and Board staff were informed of the upcoming changes to the rule. The call was made at the beginning of the rulemaking process and an additional Workforce Call was made prior to the Commission approving the rule for public comment.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than January 5, 2024.

PART VI. STATUTORY AUTHORITY

The rule is proposed under the specific authority of House Bill 1615, 88th Texas Legislature, Regular Session (2023), which amended Texas Government Code §2308.256 to require that Boards include a representative of the child care workforce.

The rules are proposed under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule affects Texas Government Code Chapter 2308.

§801.1. Requirements for Formation of Local Workforce Development Boards.

(a) Purpose of Rule.

(1) Upon application by the chief elected officials (CEOs) and approval of the Commission, the Commission shall forward an application to form a Local Workforce Development Board (Board) to the Governor.

(2) Before an application may be submitted to the Governor, all requirements of this section shall be met.

(b) State Law. The formation of Boards is governed by Texas Government Code[,] Chapter 2308.

(c) Chief Elected Official Agreement. Creation of a Board requires agreement by at least three-fourths of the CEOs in the local workforce development area (workforce area) who represent units of general local government, including all of the CEOs who represent units of general local government having populations of at least 200,000. The elected officials agreeing to the creation of the Board

shall represent at least 75 percent of the population of the workforce area.

(d) Chief Elected Officials. The CEOs may, and are encouraged to, consult with local officials other than the ones delineated below. The following officials are designated as the CEOs for the purpose of establishing agreements to form Boards:

(1) Mayors.

(A) The mayor of each city with a population of at least 100,000;

(B) or, if there is no city with a population of greater than 100,000, the mayor of each city with a population greater than 50,000;

(C) or, if there are no cities with a population of greater than 50,000, the mayor of the largest city in the workforce area.

(D) For purposes of this section, municipal population will be determined by the figure last reported by the Texas Demographic Center at the time of submission of the application to the Commission.

(2) All county judges included in a workforce area as designated by the Governor.

(e) Time of Application. CEOs in a workforce area may not establish a Board until the Governor has designated that area as a workforce area as provided in Texas Government Code[,] Chapter 2308.

(f) Applications shall meet all Governor-approved criteria for the establishment of Boards.

(g) Procedures for Formation of a Board. The CEOs shall comply with the following procedures to form a Board.

(1) Public process procedure. If three-fourths of the CEOs, as defined in subsection (d) of this section, agree to initiate procedures to establish a Board, they shall conduct a public process, including at least one public meeting, to consider the views of all affected organizations before making a final decision to form a Board. This public process may include, but is not limited to, notices published in various media and surveys for public comment.

(2) Application procedure.

(A) The CEOs shall submit an application to the Commission. This application shall include evidence of the actions required by paragraph (1) of this subsection. As a part of the application, each CEO who is in agreement regarding the formation of a Board, shall execute the following documents:

(i) An interlocal agreement delineating:

(I) the purpose of the agreement;

(II) the process that will be used to select the CEO who will act on behalf of the other CEOs and the name of such CEO if the person has been selected;

(III) the procedure that will be followed to keep those CEOs informed regarding Board activities;

(IV) the initial size of the Board;

(V) how resources allocated to the workforce area will be shared among the parties to the agreement;

(VI) the process to be used to appoint the Board members, which shall be consistent with applicable federal and state laws; and

(VII) the terms of office of the members of the Board.

(ii) An acknowledgment in the following form: We, the chief elected officials of the Workforce Development Area, acknowledge that the following are responsibilities and requirements pursuant to the formation of the Board:

(I) The Board will assume the responsibilities for the following committees and councils that will be replaced by the Board unless otherwise provided in Texas Government Code[,] Chapter 2308: private industry council, quality workforce planning committee, job service employer committee, and local general vocational program advisory committee;

(II) At least one Workforce Solutions Office shall be established within 180 days of Board certification;

(III) The Board shall have its own independent staff and not be a provider of workforce services, unless the Board secures a waiver of these provisions;

(IV) The CEOs shall enter into a partnership agreement with the Board to designate a grant recipient to receive, be accountable for, and be liable for any misuse of block grant funds;

(V) The partnership agreement shall also specify the entity that will administer the programs, which may be separate from the entity that receives the funds from the state;

(VI) The partnership agreement shall define the process through which the Boards and CEOs will develop the strategic and operational plans, including the training plan required under the Workforce Innovation and Opportunity Act; and

(VII) The strategic plan shall be reviewed by both the Commission and the Texas Workforce Investment Council and approved by the Governor before block grants will be available to the workforce area.

(B) The application shall include evidence that any affected existing Board has been notified and agrees that its functions and responsibilities will be assumed by the proposed Board upon the proposed Board's final certification by the Governor.

(C) The application shall include the names and affiliations of individuals recommended for Board membership, with documentation that CEOs followed the nomination process specified in applicable state and federal law, including Texas Government Code[,] §2308.255 and §2308.256.

(i) Private sector members shall be owners of business concerns, chief executives, chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility. To be eligible to represent the private sector, at least 51 percent of an individual's annual income shall be from private sector sources.

(ii) Private sector membership should represent the composition of the local pool of employers. The private sector membership should include representatives of the region's larger employers and emerging growth industries. Primary consideration should be given to private sector employers who do not directly provide employment and workforce training services to the general public. CEOs shall develop a profile of the workforce area's major industries using locally obtained information and state-published data. The Agency shall provide relevant labor market information, including data that identifies employment trends, emerging high-growth, high-demand industries, the size of local employers, and other data needed to assist CEOs in developing the employer profile. Documentation submitted with the

application shall show how the regional employer profile is reflected in the Board membership.

(iii) Board membership shall include representatives of local organized labor organizations, community-based organizations, educational agencies, vocational rehabilitation agencies, public assistance agencies, economic development agencies, the public employment service, local literacy councils, [~~and~~] adult basic and continuing education organizations, and the child care workforce as required by law.

(iv) Representatives of local organized labor organizations shall be nominated by local labor federations unless no employees in the workforce area are represented by such organizations, in which case nominations may be made by other representatives of employees. A labor federation is defined as an alliance of two or more organized labor unions for the purpose of mutual support and action.

(v) Board nominees shall be actively engaged in the organization, enterprise, or field that they are nominated to represent. Board nominees shall have an existing relationship with the workforce area through residence or employment within the workforce area.

[(vi) ~~At least one of the members of a Board appointed under Texas Government Code, §2308.256(a) shall, in addition to the qualifications required for the members under that subsection, have expertise in child care or early childhood education.~~]

(vi) [~~(vii)~~] At least one of the members of a Board appointed under Texas Government Code[~~,~~] §2308.256(a) shall, in addition to the qualifications required for the members under that subsection:

(I) be a veteran as defined in Texas Government Code[~~,~~] §2308.251(2); and

(II) have an understanding of the needs of the local veterans' population and willingness to represent the interests and concerns of veterans in the workforce area.

(D) No individual member shall be a representative of more than one sector or category described in this section, except as statutorily permitted for one or more members having the qualifications set forth in subparagraph (C)(vi) of this paragraph.[~~:~~]

[(i) ~~expertise in child care or early childhood education; or~~]

[(ii) ~~the qualifications set forth in subparagraph (C)(vii) of this paragraph.~~]

(E) The application shall include documentary evidence substantiating compliance with the application procedure, including but not limited to, written agreements, minutes of public meetings, copies of correspondence, and such other documentation as may be appropriate.

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 December 19, 2023.

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Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 850-8356

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CHAPTER 853. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 853, relating to Independent Living Services for Older Individuals Who Are Blind:

Subchapter A. Independent Living Services for Older Individuals Who Are Blind, §§853.1 - 853.6

Subchapter B. Services, §853.10

Subchapter C. Customer Financial Participation, §853.21

Subchapter D. Case Documentation, §853.30

Subchapter E. Customer's Rights, §853.40

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 853 rule change is to amend eligibility for the OIB program, clarify language for consistency purposes, and complete its four-year review.

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.)

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 has conducted a rule review of Chapter 853, Independent Living Services for Older Individuals Who Are Blind, and any changes are described in Part II of this preamble.

SUBCHAPTER A. Independent Living Services for Older Individuals Who Are Blind

TWC proposes amendments to Subchapter A, as follows:

§853.1. Definitions

Section 853.1 is amended to remove references to Independent Living Services (ILS) and add definitions for "Older Individuals Who are Blind (OIB)" and "significant visual impairment." Subsequent paragraphs are renumbered.

§853.2. Referral

Section 853.2 is amended to remove a reference to ILS, add additional referral sources, and to more clearly describe the referral process.

§853.3. Accessible Communication

Section 853.3 is amended to remove references to ILS.

§853.4. Application

Section 853.4 is amended to more clearly describe the application process.

§853.5. Eligibility

Section 853.5 is amended to remove a reference to ILS and add "significant visual impairment" to the eligibility criteria.

§853.6. Ineligibility Determination

Section 853.6 is amended to clarify language.

SUBCHAPTER B. Services

TWC proposes amendments to Subchapter B, as follows:

§853.10. Independent Living Plan

Section 853.10 is amended to clarify the time frame for developing an ILP and to update the form number.

SUBCHAPTER C. Customer Financial Participation

TWC proposes amendments to Subchapter C, as follows:

§853.21. Customer Participation in the Cost of Services

Section 853.21 is amended to clarify language relating to customer participation in cost of service and to remove a reference to ILS.

SUBCHAPTER D. Case Documentation

TWC proposes amendments to Subchapter D, as follows:

§853.30. Case Closure

Section 853.30 is amended to add language regarding minimal services closures and remove a subsection about post-closure services. The removed subsection included obsolete terminology that was later replaced but is no longer applicable to OIB.

SUBCHAPTER E. Customer's Rights

TWC proposes amendments to Subchapter E, as follows:

§853.40. Rights of Customers

Section 853.40 is amended to remove references to ILS and add receiving a diagnosis of significant visual impairment as one of the requirements to receive OIB services.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5) "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment 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 amend eligibility for the OIB program, clarify language for consistency purposes, and complete its four-year review, as required by Texas Government Code §2001.039.

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 US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--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 TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not 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, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to clarify program rules and increase efficiency of program operations.

PART IV. COORDINATION ACTIVITIES

The proposed rule amendments update Chapter 853 to match current OIB terminology, more accurately describe the referral, application, and case closure process, eligibility criteria, and the time frame for developing an independent living plan.

Because the proposed changes do not add new requirements but only align the rules with current policy and practices, TWC assesses that additional stakeholder engagement is not required for the development of these proposed rules. The public will have an opportunity to comment on these proposed rules when they are published in the *Texas Register* as set forth below.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than February 25, 2024.

SUBCHAPTER A. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

40 TAC §§853.1 - 853.6

PART VI. STATUTORY AUTHORITY

The rules are proposed under:

--Texas Labor Code §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides 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 relate to Title 4, Texas Labor Code, particularly Chapter 352.

§853.1. Definitions.

In addition to the definitions contained in Texas Labor Code §352.001, 34 CFR §361.5, and §856.3 of the Agency's Division for Rehabilitation Services rules, the following words and terms, when used in this chapter, shall have the following meanings:

(1) Act--The Rehabilitation Act of 1973, as amended (29 USC 701 et seq.).

(2) Adjusted income--The dollar amount that is equal to a household's annual gross income, minus allowable deductions.

(3) Applicant--An individual who applies for [~~Independent Living Services for~~] Older Individuals Who Are Blind (OIB) [~~(ILS-OIB)~~] services.

(4) Attendant care--A personal assistance service provided to an individual with significant disabilities to aid in performing essential personal tasks, such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.

(5) Blind--An individual having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(6) Center for Independent Living (CIL)--Has the meaning assigned by §702 of the Act (29 USC §796a).

(7) Client Assistance Program (CAP)--A federally funded program under 34 CFR Part 370 that provides information, assistance, and advocacy for individuals with disabilities who are seeking or receiving services from programs funded under the Act. In Texas, the designated agency is Disability Rights Texas (DRTx).

(8) Comparable services or benefits--Services and benefits that are provided or paid for, in whole or part, by other federal, state, or local public programs, or by health insurance, third-party payers, or other private sources.

(9) Customer--An individual who is eligible for and receiving OIB [~~ILS-OIB~~] services under this chapter.

(10) Customer participation system--The system for determining and collecting the financial contribution that a customer may be required to pay for receiving OIB [~~ILS-OIB~~] services.

(11) Customer representative--Any individual chosen by a customer, including the customer's parent, guardian, other family member, or advocate. If a court has appointed a guardian or representative, that individual is the customer's representative.

(12) Federal Poverty Guidelines--The poverty guidelines updated periodically in the *Federal Register* by the US Department of Health and Human Services under the authority of 42 USC §9902(2), found at https://aspe.hhs.gov/poverty-guidelines.

(13) Independent Living Plan (ILP)--A written plan in which the customer and OIB staff have collaboratively identified the services that the customer needs to achieve the goal of living independently.

(14) Low vision--A condition of having a visual acuity not more than 20/70 in the better eye with correcting lenses, or visual acuity greater than 20/70 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 30 degrees, or having a combination of both.

(15) Older Individuals Who Are Blind (OIB)--The independent living services program that serves individuals ages 55 and over who are blind or visually impaired.

(16) [~~(15)~~] Significant disability--A significant physical, mental, cognitive, or sensory impairment that substantially limits an individual's ability to function independently in the family or community.

(17) Significant visual impairment--A disease or condition of the eye that does not meet the definitions of Blind or Low Vision but does create a significant impediment to independent living and cannot be corrected with glasses or contact lenses.

(18) [~~(16)~~] Transition services--Services that:

(A) facilitate the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences, with the requisite supports and services; and

(B) provide assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community.

§853.2. Referral.

(a) An individual may be referred for OIB [~~ILS-OIB~~] services in [~~by~~] a variety of ways [~~organizations~~], including, but not limited to:

(1) a physician's office;

(2) a community organization;

(3) the Center for Independent Living (CIL);

(4) a senior community organization; [~~or~~]

(5) family, customer representative, and friends;[.]

(6) contract providers; or

(7) online self-referral portal.

(b) A referral shall include the name of the individual seeking services, the address where the individual resides, and an email [e-mail] address and telephone number, if available.

(c) During the referral process, OIB staff may determine the level of services needed by the customer, provide minimal services, or [shall] verify the customer's eligibility criteria. Minimal services may[, determine the level of services needed by the customer, and provide minimal services, which can] include information and referral [guide], a guide to independent living, bump dots for kitchen appliances, and low-cost magnifiers. If minimal services are all that a customer requires, the case may [can] be closed as a referral only.

(d) For service delivery to begin, an individual shall submit a complete application and document that all eligibility requirements are met.

§853.3. Accessible Communication.

(a) The Agency shall provide all members of the public with disabilities who are seeking information or other services from the Agency access to and use of electronic and information resources comparable to the access and use provided to members of the public without disabilities, unless compliance with this section imposes a significant difficulty or expense to the Agency under Texas Government Code §2054.460.

(b) The Agency may use alternate methods or formats to provide timely access by individuals with disabilities to Agency electronic and information resources.

(c) The Agency shall ensure that OIB [ILS-OIB] applicants and customers are given the opportunity to request and receive communication from the Agency in an alternate format or by alternate methods.

§853.4. Application.

An individual is considered to have completed the [submitted an] application process when [the individual or the individual's representative, as appropriate]:

(1) the individual or the individual's representative has completed and signed the OIB application form and an OIB staff member has entered the[--including entry of] electronic PIN into the case management system[--the ILS-OIB application form];

(2) the individual or the individual's representative has provided the information necessary to initiate an assessment to determine eligibility and service delivery; and

(3) the individual or the individual's representative is available to complete the assessment process to determine eligibility.

§853.5. Eligibility.

(a) To be eligible for OIB [ILS-OIB], a customer must:

(1) be age 55 or older;

(2) be blind or have low vision or a significant visual impairment, as defined in §853.1, relating to Definitions;

(3) be an individual for whom independent living goals are feasible; and

(4) be present in Texas.

(b) Eligibility for blindness, [or] low vision, or a significant visual impairment is determined by OIB staff based on the documented diagnosis of a licensed practitioner.

(c) Individuals shall establish eligibility through existing data and information, including, but not limited to, medical records and information used by the Social Security Administration. The information may be obtained from the applicant, the applicant's family members, or the applicant's representative. OIB staff may assist in locating or obtaining existing documentation.

(d) The Agency shall substantively evaluate the documentation and application to determine whether eligibility requirements are met.

(e) OIB staff shall endeavor to make an eligibility determination within 60 days from the time a completed and signed application for services has been received. The eligibility determination is conditional on the applicant's availability to complete the assessment process, as set forth in §853.4(3) of this subchapter. When an applicant is unavailable to complete such assessment process in a timely manner due to unforeseen circumstances, which may include, but are not limited to, medical conditions or hospitalizations, the 60-day period shall be abated until the applicant is available to complete the necessary assessment process to determine eligibility.

(f) Eligibility cannot be established unless and until all required elements under subsection (a) of this section have been completed and documented, including any assessment to establish eligibility.

(g) Eligibility requirements are applied without regard to an individual's age, color, creed, gender, national origin, race, religion, or length of time present in Texas.

§853.6. Ineligibility Determination.

(a) A determination of ineligibility shall be based only on a substantive evaluation of an applicant's completed and signed application, including all documentation required to establish eligibility under §853.5(a) of this subchapter.

(b) Before making a determination of ineligibility, OIB staff shall provide the applicant or the applicant's representative, as appropriate, an opportunity to consult with OIB staff. OIB staff shall notify the applicant, or the applicant's representative, as appropriate, of an ineligibility determination. Notice shall be provided in accessible format and through accessible methods and in compliance with[, as required under] Texas Government Code §2054.460, if applicable. The notice shall include the following:

(1) A brief statement of the ineligibility determination, with reference to the requirements under this chapter and any deficiencies;

(2) The mailing date of the determination;

(3) An explanation of the individual's right to an appeal;

(4) The procedures for filing an appeal with the Agency, including applicable time frames;

(5) The right to have a hearing representative, including legal counsel;

(6) How to contact the Texas CAP, which is DRTx; and

(7) The contact information [address or fax number] to which the appeal must be sent.

(c) When appropriate, OIB staff may refer the applicant to other agencies and facilities.

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 December 19, 2023.

TRD-202304896
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 850-8356

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SUBCHAPTER B. SERVICES

40 TAC §853.10

The rule is proposed under:

--Texas Labor Code §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides 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 relates to Title 4, Texas Labor Code, particularly Chapter 352.

§853.10. Independent Living Plan.

(a) Once an individual is determined eligible, the ILP is developed [~~and agreed to~~] within 90 days of the eligibility date. If the ILP cannot be completed within 90 days, then OIB staff must document the reason for the delay in a case note. [~~from the date of notification of eligibility, unless an alternate date is agreed to by the customer or the customer's representative, as appropriate~~].

(b) OIB staff must jointly develop the ILP and all subsequent amendments in writing, through consultation with the customer or the customer's representative, as appropriate.

(c) A customer may waive receipt of the written plan by signing the Agency Waiver of Independent Living Plan (VR 5154 [~~DARS 5154~~]).

(d) Through consultation, OIB staff and the customer, or the customer's representative, as appropriate, determine how services shall be delivered and document service delivery methods in the electronic record of the ILP, which OIB staff must maintain.

(e) The Agency shall ensure that the customer or the customer's representative, as appropriate, is advised of procedures and requirements affecting the development and review of the ILP.

(f) To receive a copy of the ILP and its amendments in a medium other than print, the customer must inform OIB staff of the preferred medium.

(g) OIB staff shall review the ILP at least annually with the customer or the customer's representative, as appropriate, to assess the customer's progress in meeting the objectives identified in the ILP.

(h) OIB staff shall incorporate any revisions to the ILP that are necessary to reflect changes in the customer's goals, intermediate objectives, or needs.

(i) The customer must inform the Agency in a timely manner of changes that will affect the provision of services, including, but not limited to, the customer's unavailability to receive services.

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

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Les Trobman
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SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION

40 TAC §853.21

The rule is proposed under:

--Texas Labor Code §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides 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 relates to Title 4, Texas Labor Code, particularly Chapter 352.

§853.21. Customer Participation in the Cost of Services.

(a) Some [~~The following~~] independent living services, as set forth [~~defined~~] in §853.11, relating to Scope of Services, may be [~~are~~] subject to customer participation in cost of service as defined in OIB policy.[~~:~~]

[~~(1) Transportation, excluding transportation for diagnostic services; and~~]

[~~(2) Adaptive aids or appliances that cost more than $50.~~]

(b) OIB staff shall administer the customer participation system in accordance with the rules in this chapter, the OIB [~~ILS-OIB~~] policy manual, and 34 CFR §367.67(b)(1).

(c) OIB staff shall provide those independent living services [~~defined as~~] not requiring customer participation in cost of services as set forth in §853.11 of this chapter at no cost to the customer.

(d) OIB staff shall determine the customer's adjusted gross income and the percentage of the Federal Poverty Guidelines at https://aspe.hhs.gov/poverty-guidelines for that income, based on documentation provided by the customer.

(e) OIB staff is required to apply the Federal Poverty Guidelines at https://aspe.hhs.gov/poverty-guidelines to determine customer participation.

(f) The customer or customer's representative shall sign an ILP [~~a customer participation agreement~~] acknowledging [~~the amount of~~] the customer's contribution [~~fee~~] for services and providing written agreement that:

(1) the information provided by the customer or the customer's representative about the customer's household size, annual gross income, allowable deductions, and comparable services or benefits is true and accurate; or

(2) the customer or the customer's representative chooses not to provide information about the customer's household size, annual gross income, allowable deductions, and comparable services or benefits.

(g) If the customer or the customer's representative, as appropriate, chooses not to provide information on the customer's household size, annual gross income, allowable deductions, and comparable services or benefits, the customer shall pay the entire cost of applicable services.

(h) The customer shall report to OIB staff as soon as possible all changes to household size, annual gross income, allowable deductions, and comparable services or benefits and sign an amended ILP [~~a new customer participation agreement~~].

(i) When the customer amends the ILP [~~signs a new participation agreement~~], the new [~~amount of the~~] customer's contribution [~~fee~~] for services [~~service~~] takes effect the beginning of the following month. The new contribution [~~amount~~] shall not be applied retroactively.

(j) OIB staff shall develop a process to reconsider and adjust the customer's contribution [~~fee~~] for services based on circumstances that are both extraordinary and documented. This may include assessing the customer's ability to pay the customer's participation amount. Extraordinary circumstances include:

(1) an increase or decrease in income;

(2) unexpected medical expenses;

(3) unanticipated disability-related expenses;

(4) a change in family size;

(5) catastrophic loss, such as fire, flood, or tornado;

(6) short-term financial hardship, such as a major repair to the customer's home or personally owned vehicle; or

(7) other extenuating circumstances for which the customer makes a request and provides supporting documentation.

(k) The customer's contribution [~~calculated fee~~] for services remains in effect during the reconsideration and adjustment process.

(l) OIB staff shall:

(1) use program income that is received from the customer [~~participation system~~] only to provide services outlined in §853.11 of this chapter; and

(2) report fees collected as program income.

(m) The Agency may not use program income received from the customer [~~participation system~~] to supplant any other fund sources.

(n) The Agency may not pay any portion of the customer's contribution [~~participation fee~~].

(o) The customer's ILP [~~participation agreement~~] and all financial information collected by OIB staff are subject to subpoena.

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 December 19, 2023.

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Les Trobman
General Counsel
Texas Workforce Commission
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SUBCHAPTER D. CASE DOCUMENTATION

40 TAC §853.30

The rule is proposed under:

--Texas Labor Code §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides 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 relates to Title 4, Texas Labor Code, particularly Chapter 352.

§853.30. Case Closure.

(a) The Agency closes a case when minimal services have been provided enhancing the applicant's independence and the applicant does not need the full array of OIB services, or when the customer's ILP has been completed, typically within 18 months of plan development. The case will be closed sooner without completion of services if:

(1) the customer does not meet eligibility criteria;

(2) the customer is unavailable, for an extended period of time, to complete an assessment of independent living needs and staff has made repeated efforts to contact and encourage the applicant to participate;

(3) the customer has refused services or further services;

(4) the customer is no longer present in Texas;

(5) the customer's whereabouts are unknown;

(6) the customer's medical condition is rapidly progressive or terminal;

(7) the customer has refused to cooperate with the Agency; or

(8) the customer's case has been transferred to another agency.

(b) A customer or the customer's representative, as appropriate, shall be notified of any case closure except when the customer's whereabouts are unknown.

~~[(c) Post-closure services shall not normally exceed six months.]~~

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 December 19, 2023.

TRD-202304899

Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: February 4, 2024
For further information, please call: (512) 850-8356

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SUBCHAPTER E. CUSTOMER'S RIGHTS

40 TAC §853.40

The rule is proposed under:

--Texas Labor Code §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides 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 relates to Title 4, Texas Labor Code, particularly Chapter 352.

§853.40. Rights of Customers.

(a) In accordance with applicable legal provisions, the Agency does not, directly or through contractual or other arrangements, exclude, deny benefits to, limit the participation of, or otherwise discriminate against any individual on the basis of age, color, disability, national origin, political belief, race, religion, sex, or sexual orientation. For the purposes of receiving OIB [~~ILS-OIB~~] services, the customer must be blind or have a low vision diagnosis or a significant visual impairment as defined in §853.1; however, that requirement is not considered discrimination against any individual on the basis of disability.

(b) OIB staff shall ensure the customer or the customer's representative, as appropriate, is notified in an accessible format about the rights included in subsection (a) of this section, and §853.21, relating to Customer Participation in the Cost of Services, when:

(1) the customer applies for services;

(2) OIB staff determines that a customer is ineligible for services; and

(3) OIB staff intends to terminate services.

(c) Filing a complaint with DRTx:

(1) A customer has the right to appeal a determination to the state's CAP. The CAP in Texas is implemented by DRTx.

(2) DRTx advocates are not employees of the Agency. There are no fees for CAP services, which are provided by advocates and attorneys when necessary. Services are confidential.

(3) A customer who is enrolled in OIB services [~~ILS-OIB~~], or the customer's representative, may file a complaint with DRTx alleging that a requirement of OIB [~~ILS-OIB~~] was violated. The complaint does not need to be filed with OIB [~~ILS-OIB~~].

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 December 19, 2023.

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Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 850-8356

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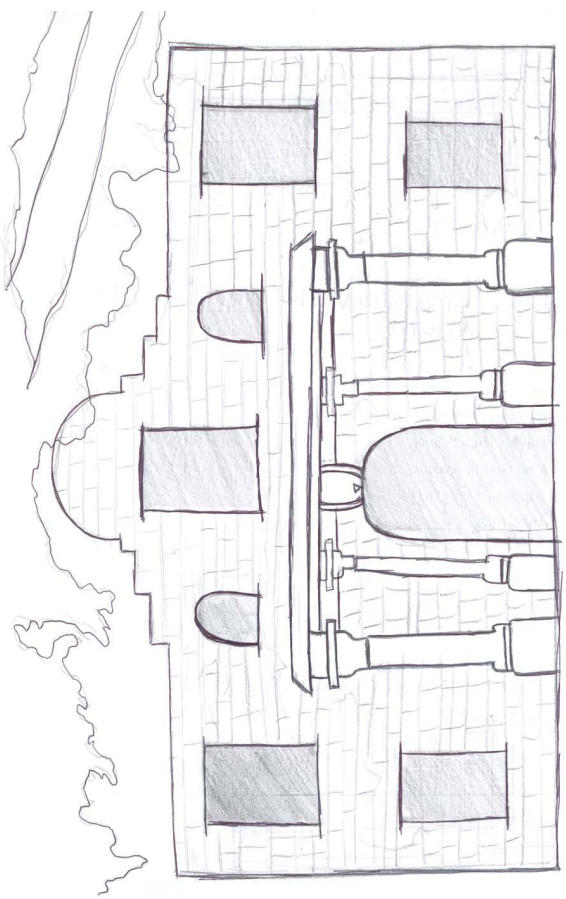

ADOPTED RULES

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 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.10

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission Rule in Chapter 18. Specifically, the Commission adopts amendments to §18.10, regarding Guidelines for Substantial Compliance for a Corrected/Amended 8-day Pre-election Report. The amended rule is adopted without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6507). The rule will not be republished.

This adoption amends the rules used to determine whether an otherwise timely filed 8-day pre-election report will be considered late by virtue of correction. If a filer makes a correction to an 8-day pre-election report, the law requires the Commission to review the correction to see if the report substantially complied with the law as originally filed. Tex. Gov't Code § 571.0771(c). If a substantial correction is made to the report, the report is considered filed as of the day of the correction. Since 8-day reports are subject to an accruing penalty of $500 for the first day late and $100 for each additional day after that up to $10,000, a voluntary correction to an 8-day pre-election report can trigger substantial fines. The filer must also affirm that the report was filed in good faith and within 14 business days of learning of the error or omission for the correction not to trigger a late penalty.

The 8-day reports are considered "critical" reports which provide voters important information immediately before an election. The law is designed to prevent a filer from filing an incomplete or inaccurate report only to correct it later while evading any late filing penalty. However, the Commission has an interest in encouraging voluntary corrections to good-faith errors or omissions in reports. Knowing that a correction may trigger a hefty fine could dissuade some filers from correcting their reports. The adopted rule amendment attempts to strike a balance of encouraging corrections for good-faith mistakes while preventing a person from filing an inaccurate or incomplete report before an election.

The Commission currently decides whether a report substantially complied as originally filed by using TEC §18.10. If a corrected 8-day report is determined to be late by virtue of correction, a filer may request that the fine be waived or reduced. TEC §18.10 provides a special set of criteria for reductions or waivers of fines of 8-day reports that are late due to correction. The general rules for late reports, TEC §18.23 through §18.26, are also applied to 8-day reports that are considered late due to correction. The filer is given the more generous outcome.

The adopted amendment raises the monetary threshold of what would constitute a substantial correction. It also moves criteria that would qualify a corrected report or a waiver into the determination of whether the report will be considered late because of the correction. This provides a filer the waiver it would be entitled to under the current rules without having to file an affidavit of defense.

This adoption is submitted concurrently with the adopted repeal of §18.11, regarding Guidelines for Waiver or Reduction of a Late Fine for a Corrected/Amended 8-day Pre-election Report, so that waivers or reductions will be determined by the general rules for late reports. This will clear up the ambiguity as to which set of rules apply and create a simpler, more uniform set of rules for late reports.

No public comments were received on this amended rule.

The amended rule is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Chapter 571 of the Government Code.

The adoption affects Title 15 of the Election Code, and Chapter 571 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2023.

TRD-202304879
James Tinley
General Counsel
Texas Ethics Commission
Effective date: January 7, 2024
Proposal publication date: November 10, 2023
For further information, please call: (512) 463-5800

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1 TAC §18.11

The Texas Ethics Commission (the Commission) adopts a repeal in Texas Ethics Commission Rule in Chapter 18. Specifically, the Commission adopts the repeal of rule §18.11, regarding Guidelines for Waiver or Reduction of a Late Fine for a Corrected/Amended 8-day Pre-election Report. The repealed rule is adopted without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6508). The repeal will not be republished.

No public comments were received on this repealed rule.

The repealed rule is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repeal affects Title 15 of the Election Code and Chapter 571 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2023.

TRD-202304880
James Tinley
General Counsel
Texas Ethics Commission
Effective date: January 7, 2024
Proposal publication date: November 10, 2023
For further information, please call: (512) 463-5800

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 85. VEHICLE STORAGE FACILITIES

16 TAC §85.722

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 85, §85.722, regarding the Vehicle Storage Facilities Program, without changes to the proposed text as published in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5806). The adopted rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC Chapter 85, implement Texas Occupations Code, Chapter 2303, Vehicle Storage Facilities.

The adopted rule amendments address the maximum amounts for vehicle storage and impoundment fees that may be charged by a vehicle storage facility company. The adopted rule increases the allowable vehicle storage facility impoundment fee and daily storage fees in accordance with changes in the Consumer Price Index for all Urban Consumers (CPI-U) during the preceding state fiscal biennium, as authorized by statute. Pursuant to Texas Occupations Code §2303.1552, the Texas Commission of Licensing and Regulation (Commission) is authorized to adjust the vehicle impound and storage fees based upon changes in the CPI not later than November 1st on every odd-numbered year. The Commission is then authorized by that statute to adjust the impoundment fee described under §2303.155(b)(2) and the storage fees described under §2303.155(b)(3) by an amount equal to the amount of the applicable fee in effect on December 31 of the preceding year multiplied by the percentage increase or decrease in the consumer price index during the preceding state fiscal biennium. The adopted rule, based upon analysis of the CPI during the preceding state fiscal biennium by Department staff, is necessary to comply with the statutory requirements to implement changes in the vehicle impound and storage fees for 2023.

2023 Rate Adjustment Pursuant to Stakeholder Comment

On or about August 3, 2023, the Department received a stakeholder comment regarding a concern about the calculations used for the 2023 Rate Adjustment pursuant to §2303.1552. The comment noted a difference in the calculations used between the 2019 and 2021 Rate Adjustments which resulted in reduced fees that VSF operators were authorized to charge under the 2021 maximum VSF Storage and Impoundment fee rates following that 2021 adjustment. Upon review of the two rate adjustments, the Department amended the 2023 Rate Adjustment, consistent with existing state law, which includes a "catch-up adjustment," using initial base fees that reflect what the maximum authorized fees would currently be if the same 2019 and 2021 rate adjustment calculations had been employed. The result will be higher allowed maximum fees to be charged by VSF operators under the adopted rule.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §85.722(d) by reflecting the new maximum amounts for daily storage fees that may be charged by a vehicle storage facility in connection with receipt and storage of a vehicle, as authorized by statute.

The adopted rule amends §85.722(e) by reflecting the new maximum amount for the vehicle impoundment fee that may be charged by a vehicle storage facility in connection with impoundment and custody of a vehicle, as authorized by statute.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5806). The public comment period closed on November 6, 2023. The Department did not receive any comments from interested parties on the proposed rule.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The proposed rule was presented to the Towing and Storage Advisory Board (Advisory Board) at its meeting on September 13, 2023. The Advisory Board did not make any changes to the proposed rule. The Advisory Board voted and recommended that the proposed rule be published in the *Texas Register* for public comment. The Advisory Board agreed that a second meeting was not needed as the rule amendments employed the statutory calculations as authorized by Texas Occupations Code §2303.1552. At its meeting on December 1, 2023, the Commission adopted the proposed rule.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 2303, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 2303. No other statutes, articles, or codes are affected by the adopted rule.

The legislation that enacted the statutory authority under which the adopted rule is adopted is House Bill 1140, 86th Legislature, Regular Session (2019).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2023.

TRD-202304937
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: January 15, 2024
Proposal publication date: October 6, 2023
For further information, please call: (512) 463-7750

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §§229.1, 229.3, 229.4, 229.6, 229.7

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §§229.1, 229.3, 229.4, 229.6, and 229.7, concerning the performance standards and procedures for educator preparation program (EPP) accountability. The amendments are adopted without changes since published as proposed in the August 18, 2023 issue of the *Texas Register* (48 TexReg 4467) and will not be republished. The adopted amendments provide for adjustments to the *2022-2023 Accountability System for Educator Preparation (ASEP) Manual,* clarify the system for accreditation assignments, clarify provisions for continuing approval reviews, and include technical updates.

REASONED JUSTIFICATION: EPPs are entrusted to prepare educators for success in the classroom. Texas Education Code (TEC), §21.0443, requires EPPs to adequately prepare candidates for certification. Similarly, TEC, §21.031, requires the SBEC to ensure candidates for certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. TEC, §21.045, also requires SBEC to establish standards to govern the continuing accountability of all EPPs. The SBEC rules in 19 TAC Chapter 229 establish the process used for issuing annual accreditation ratings for all EPPs to comply with these provisions of the TEC and to ensure the highest level of educator preparation, which is codified in the SBEC Mission Statement.

Following is a description of the adopted amendments to 19 TAC Chapter 229.

§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.

Update of ASEP Manual:

The adopted amendment to Figure: 19 TAC §229.1(c) updates the ASEP manual as follows:

Updates to the title update the appropriate date to the 2022-2023 academic year.

Technical edits to the table of contents update the title of Chapter 7 to match the corresponding change in the manual and capitalize the title of Chapter 5 to apply style standards for capitalization.

Updates to Chapter 1 update the appropriate date to the 2022-2023 academic year.

Updates to Chapter 2 update the small group aggregation to align with 19 TAC §229.4(c)(4) that provides that an EPP with a three-year cumulated group that is fewer than ten individuals, the group will be measured against the performance standard of the current year or an alternative performance standard of up to one candidate failing to meet the requirement, whichever is more favorable to the EPP. This allows an EPP to miss the standard by one candidate without failing the performance standard for accountability purposes. The update also includes a diagram to provide a demonstration of the small group aggregation to provide transparency to the field.

Updates to Chapter 3 update the appropriate dates to the 2022-2023 academic year. Additionally, an unnecessary year designation would be removed to simplify the annual update process.

Updates to Chapter 4 provide a technical edit to correct the cross-reference to 19 TAC §229.2(19), regarding the definition of first-year teacher. Updates also clarify that only teachers on standard, intern, and probationary certificates are included in the population of individuals that principals will complete surveys regarding preparation. This provides additional transparency to the field.

Updates to Chapter 5 provide a technical edit to correct the worked example.

Updates to Chapter 6 replace the term "license" with the term "certificate" to clarify that individuals apply for a teaching certificate, not license. This provides consistency of language. Updates also clarify that surveys related to Indicator 4b are only associated with individuals in the academic year in which they have been issued a certificate. This provides clarity to the field that although candidates submit a survey when they apply for their certificate, the survey is not used for accountability purposes until the academic year in which they are issued that certificate.

Updates to Chapter 7 add "Evaluation of Educator Preparation Programs by Teachers" to "New Teacher Satisfaction" in the title and the summary paragraph. This update was recommended by stakeholders to communicate the importance of the instrument for the purpose of increasing response rates. It also aligns with how the instrument is described to teachers. Updates also clarify that beginning in the 2023-2024 academic year, the population included in new teachers submitting a survey will align with the same population as the principal survey. This was recommended by stakeholders and ensures consistency in which individuals are included in surveys related to EPP accountability.

Updates to Chapter 8 provide a technical edit to replace the term "petition" with the term "application" to align with the term regarding EPP commendation, Innovative Educator Preparation.

Updates to Chapter 9 shift language about the applicability of the Index system from an option for status determination to the way that the status determination is made. This aligns with the contents of updated 19 TAC §229.4(b).

§229.3. Required Submissions of Information, Surveys, and Other Data.

The adopted amendment to §229.3(f) strikes §229.3(f)(3) as it was never utilized to measure Indicator 3 in ASEP. This provides clarity as to which data submissions are used for accountability. The subsequent provisions are renumbered accordingly.

§229.4. Determination of Accreditation Status.

The adopted amendment to §229.4(a)(4)(A) prescribes that EPPs that do not meet the performance standard for the frequency, duration, and documentation of field supervision due to only one candidate failing to receive the minimum number of observations will still meet that standard for accountability purposes. This prevents a program from failing this standard due to not having documentation for field supervision for only one candidate. This is responsive to stakeholder input about flexibility in the standards for small programs.

The adopted amendment to §229.4(b) clarifies that ASEP accreditation statuses are assigned to EPPs based on the Index system prescribed in the manual. The adopted amendment also removes outdated language which allowed EPPs to receive the better of the two systems for the 2021-2022 academic year. This provides clarity to the field as to the assignment of ASEP statuses and remove outdated language.

The adopted amendment to §229.4(b)(1) removes language regarding the ASEP system used for accountability that began in the 2021-2022 academic year as one of the two systems as options, as all programs will now be assigned statuses based on the Index system. The subsequent provisions are renumbered or relettered accordingly.

The adopted amendment to §229.4(b)(2) removes outdated language regarding the ASEP system that was in place through the 2021-2022 academic year. This provides transparency to the field as to how EPPs are assigned ASEP accreditation statuses. The subsequent provisions are renumbered accordingly.

The adopted amendment to §229.4(b)(4) removes outdated language regarding the ASEP status of Not Rated: Declared State of Disaster. This provides clarity to the field by removing language that is no longer operable.

The adopted amendment to §229.4(c)(4) prescribes that when there is a small group with fewer than 10 individuals in a cumulative three-year period for that group, the candidate group will either be measured against the performance standard of the current year, or a performance standard where up to one candidate can fail to meet the requirement, whichever one is more favorable to the EPP. This allows for standards that are not 100% to not function as though they are 100% for small groups.

The adopted amendment to §229.4(c)(5) clarifies that if an EPP is assigned Accredited-Probation due to carry over status, the status will not be counted against the program as a consecutively measured year for purposes of revocation. This ensures that a program is not revoked due to a carryover status.

§229.6. Continuing Approval.

The adopted amendment to §229.6(b) prescribes that an EPP has up to four months to comply with SBEC rules and or TEC, Chapter 21, following a continuing approval review, or the Texas Education Agency (TEA) staff will recommend the EPP be sanctioned. This ensures transparency and consistency in the field regarding how long an EPP has to get into compliance after a continuing approval review.

§229.7. Informal Review of Texas Education Agency Recommendations.

An adopted technical edit in §229.7(a) and (b) updates a cross reference to §229.5.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began August 18, 2023, and ended September 18, 2023. The SBEC also provided an opportunity for registered oral and written comments on the proposal during the September 29, 2023 meeting's public comment period in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

The State Board of Education (SBOE) took no action on the review of the amendments to 19 TAC §§229.1, 229.3, 229.4, 229.6, and 229.7 at the November 17, 2023 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an EPP, for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; §21.043(b) and (c), which requires SBEC to provide EPPS with data, as determined in coordination with stakeholders, based on information reported through the Public Education Information Management System (PEIMS) that enables an EPP to assess the impact of the program and revise the program as needed to improve; §21.0441(c) and (d), which requires the SBEC to adopt rules setting certain admission requirements for EPPs; §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding EPPs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

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 December 19, 2023.

TRD-202304881
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Effective date: January 8, 2024
Proposal publication date: August 18, 2023
For further information, please call: (512) 475-1497

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER M. FILING REQUIREMENTS

The commissioner of insurance adopts amendments to 28 TAC §§5.9310, 5.9312, 5.9321, 5.9323, 5.9327, 5.9332, 5.9334, 5.9342, 5.9355, 5.9357, 5.9361, 5.9372, 5.9373 and new §5.9313, concerning filing requirements for property and casualty insurance. Among other changes, these adopted amendments reflect the enactment of Senate Bills 965 and 1367, 87th Legislature, 2021. Section 5.9321, concerning General Filing Requirements, is adopted with a nonsubstantive change to the proposed text published in the July 7, 2023, issue of the *Texas Register* (48 TexReg 3622). The change inserts an omitted word in §5.9321(c)(6)(C). Section 5.9327, concerning Additional Requirements for Personal Automobile and Residential Property Forms, was revised in response to public comments. These sections will be republished. The remaining sections are adopted without changes to the proposed text, and will not be republished. A notice of hearing was published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5580), and the hearing was held on October 4, 2023.

REASONED JUSTIFICATION. SB 965 repealed the law authorizing the commissioner to establish different filing requirements for certain personal automobile insurers with low market shares. SB 1367 eliminated rate, rule, and form filing requirements for numerous commercial lines of insurance. The amendments conform Subchapter M with the statutory changes.

The amendments make additional changes throughout Subchapter M. The amendments prohibit inapplicable provisions in personal automobile and residential property endorsements (for endorsements filed on or after January 1, 2025); require that insurers file application forms along with personal automobile policy forms; prohibit scanned documents and scanned text in filed property and casualty policy forms, endorsements, and form usage tables; prohibit password-protected or otherwise encrypted documents in filings; clarify the information used to establish an insurer exemption under Insurance Code §2251.252(a); distinguish the filing requirements applicable to advisory organizations; require submission of information on third-party data and models in rate, rule, and underwriting guideline filings; change underwriting guideline filing requirements to require a complete set of underwriting guidelines with each filing; delete the requirement to file a complete set of underwriting guidelines every three years; and replace TDI mailing addresses with TDI's website, where appropriate.

A change to the text as proposed inserts a word mistakenly omitted from the proposed text in §5.9321(c)(6)(C).

Amendments make minor grammatical, punctuation, and format changes to reflect current TDI drafting style and plain-language preferences.

The following summary describes the amendments to specific sections of the Filings Made Easy rules (FME Rules) found in 28 TAC Chapter 5, Subchapter M, Divisions 4, 5, 6, 7, 9, 10, and 11. The detailed section-by-section summary is organized by division.

Division 4. Filings Made Easy - Transmittal Information and General Filing Requirements for Property and Casualty Form, Rate, Underwriting Guideline, and Credit Scoring Model Filings.

Section 5.9310. Property and Casualty Transmittal Information and General Filing Requirements. The amendments to §5.9310 add text specifying that a filing submitted for one line of insurance (a monoline filing) may also be used in multi-peril insurance. Accordingly, amendments to this section delete references to dual filings, including transmittal information requirements for dual filings. Neither the new multi-peril text nor the deletion of dual filings text will require a separate multi-peril filing. When a filer makes a monoline filing under Insurance Code Chapters 2251 or 2301, the filing may be used for multi-peril insurance without making an additional, separate multi-peril filing.

Amendments implement SB 1367 by changing the definition of multi-peril insurance to exclude a combination of coverages as described in Insurance Code §2251.0031 and §2301.0031, which were added by the bill. These sections list insurance lines that are exempted from certain filing and approval requirements in Insurance Code Chapters 2251 and 2301.

Amendments also add the option to use the National Association of Insurance Commissioners System for Electronic Rate and Form Filing (SERFF) tracking number as an alternative to the TDI file number for certain required transmittal information.

Amendments also renumber subsections, paragraphs, and subparagraphs as appropriate to reflect the other amendments in the section, and they insert the titles of cited Insurance Code and Administrative Code provisions for consistency with current TDI rule drafting style.

Section 5.9312. Personally Identifiable Information. Amendments make two nonsubstantive clarifying changes to descriptions of personally identifiable information, changing "phone" to "phone number" and "email" to "email address."

Section 5.9313. Filing Format Requirements. New §5.9313 specifies filing format requirements that prohibit encrypted or password-protected documents in filings. Section 5.9313 does not make any changes to a filer's ability to mark documents as confidential or protect documents from public view in SERFF.

Section 5.9313 also specifies that property and casualty policy forms, endorsements, and form usage tables must not be scanned documents; may not include any scanned text or images with text that will be part of the insurance contract; must be in a format that is selectable and searchable; and must be in portrait, rather than landscape, orientation.

These requirements streamline the filing process by ensuring that policy forms, endorsements, and form usage tables are

more readily accessible to TDI staff and compatible with text search tools in SERFF and TDI's form review technology that relies on word recognition software.

Division 5. Filings Made Easy - Requirements for Property and Casualty Policy Form and Endorsement Filings.

Section 5.9321. General Filing Requirements. Amendments specify that unless requested by TDI, filings made by advisory organizations do not need to include proposed effective dates or form usage tables. Amendments allow filers to use a SERFF tracking number instead of a TDI file number to identify previously approved filings. Amendments also make several nonsubstantive wording changes to text and reorganize existing requirements on conditional mandatory addendums within the section for clarity.

Amendments also delete plain-language requirements for personal automobile and residential property insurance as addressed within this section. These requirements are deleted here and added to §5.9327 to clarify that the plain-language requirements only apply to personal automobile and residential property forms.

A change to the proposed text of §5.9321(c)(6)(C) inserts the word "that" in the phrase "form usage table that describes the conditions." The word was mistakenly omitted from the proposed text.

Section 5.9323. Requirements for Reference Filings. The amendment allows the SERFF tracking number to be used as an alternative identifier to the TDI file number for reference filings.

Section 5.9327. Additional Requirements for Personal Automobile and Residential Property Forms. The section heading is amended to address the provisions included in the section.

Amendments add new subsection (a), which specifies requirements for personal automobile and residential property insurance forms. New subsection (a)(2) requires that when filing an endorsement with provisions that do not apply to every policy to which the endorsement will be attached, the provisions must be enclosed with brackets to reflect that the provisions are variable text. New subsection (a)(2) also requires filings to indicate that when the endorsement is attached to a policyholder's specific policy, the endorsement will not include any provisions that are inapplicable to that specific policy. The text in subsection (a)(2) provides an example of how this requirement will operate. The requirements in subsection (a)(2) are effective for endorsements filed on or after January 1, 2025.

These changes are intended to increase consumers' understanding of their insurance policies by reducing or eliminating inapplicable provisions. The delayed implementation date is intended to allow insurers lead time to incorporate the requirements into their business practices.

Plain-language requirements for personal automobile and residential property insurance have been deleted in §5.9321 and similar text has been adopted in §5.9327(a)(1) to clarify that the plain-language requirements apply only to personal automobile and residential property forms. In addition, amendments in §5.9327 redesignate and renumber subsequent provisions as appropriate to reflect the new text.

New subsection §5.9327(c) requires that when making a new automobile insurance policy form filing, insurers must file for informational purposes any automobile insurance application forms that are not part of the policy. The new subsection also clarifies that insurers must file for approval any personal automobile insurance application forms that are part of the insurance policy.

Changes to the proposed text remove a proposed requirement to incorporate mandatory endorsements for policy forms filed on or after January 1, 2025. This change is discussed in detail in the Summary of Comments and Agency Response.

Division 6. Filings Made Easy - Requirements for Rate and Rule Filings.

Section 5.9332. Categories of Supporting Information. Amendments add new categories of supporting information for third-party data and model information. These amendments are intended to modernize the FME Rules to address insurers' increasing use of third-party data and models. The amendments require that the following information be filed for third-party data: the name of the data vendor or source; a description of the data; a description of how the data is used; and a list of the rating variables that reflect the use of the data. Similarly, amendments require that the following information be filed for third-party models: the name of the model vendor or source; the model name and version number; a description of the model; a description of the model input; a description of how the model output is used; and a list of the rating variables that depend on the model's output.

Amendments also allow filers the option of using the SERFF tracking number instead of the TDI file number when providing loss cost information for reference filings.

In addition, amendments renumber a paragraph to reflect addition of the new categories of supporting information, and they insert the titles of cited Insurance Code provisions and make nonsubstantive language changes for consistency with current TDI rule drafting style.

Section 5.9334. Requirements for Rate and Rule Filing Submissions. Amendments distinguish which filing requirements apply to advisory organization rate and rule filings. The amendments specify that advisory organization filings do not need to include proposed effective dates; written premium and policyholder information; policyholder impact information; historical premium and loss information; expense information; or profit provision information.

Amendments also add third-party data and model information to the list of required elements of rate and rule filing submissions.

In addition, amendments redesignate existing subsections as appropriate to reflect addition of the new provisions, and they insert the titles of cited Insurance Code provisions and make nonsubstantive language changes for consistency with current TDI rule drafting style.

Division 7. Filings Made Easy - Requirements for Underwriting Guideline Filings.

Section 5.9342. Filing Requirements. Amendments remove the requirement to file a comprehensive set of underwriting guidelines every three years. Instead, the amendments require, not later than 10 days after use, a comprehensive set of underwriting guidelines with each underwriting guideline filing. The amendments also require that each underwriting guideline filing include a mark-up or redline version of the guideline, clearly indicating any changes. These amendments reduce the number of underwriting guideline filings and streamline TDI's review of these filings.

The amendments also require that for each third-party data set used in underwriting, the following information be filed: the name of the data vendor or source; a description of the data; a description of how the data is used; and a list of the underwriting guidelines that reflect the use of the data. Similarly, amendments specify that the following information be filed for third-party models: the name of the model vendor or source; the model name and version number; a description of the model; a description of the model input; a description of how the model output is used; and a list of the underwriting guidelines that depend on the model's output.

The amendments specify that filings must clearly indicate any changes in the underwriting guidelines resulting from a change in third-party data and modeling information, and that no filing is necessary for a change in third-party data and modeling information that does not result in a change to underwriting guidelines. Adding the filing requirement for third-party data and model information modernizes the FME Rules to include information that insurers are increasingly using in their underwriting guideline filings.

In addition, amendments redesignate existing subsections and update references to subsections within the section as appropriate to reflect the new provisions, and they insert the titles of cited Insurance Code provisions for consistency with current TDI rule drafting style.

Division 9. Filings Made Easy - Reduced Filing Requirements for Certain Residential Property Insurers.

An amendment to the title of Division 9 clarifies that the division now applies only to residential property insurers for consistency with SB 965, which repealed Insurance Code §2251.1025, concerning Filing Requirements for Certain Personal Automobile Insurers with Less Than 3.5 Percent of Market.

Section 5.9355. Purpose. An amendment implements SB 965 by eliminating a reference to Chapter 2251, Subchapter C, which previously contained §2251.1025. In addition, an amendment inserts the title of Insurance Code Chapter 2251, Subchapter F for consistency with current TDI rule drafting style.

Section 5.9357. Filing Requirements. Amendments implement SB 965 by eliminating references to personal automobile insurers and making conforming changes throughout the section. To increase clarity, amendments revise the rule text related to certain insurers exempted from filing and approval requirements. The amendments also include third-party data and model information in the list of supporting information that insurers subject to §5.9357 are not required to file.

Division 10. Filings Made Easy - Additional Filing Requirements for Certain County Mutual Insurance Companies.

Section 5.9361. Additional Requirements. Amendments add the option to use a SERFF tracking number as an alternative to the TDI file number for certain required filing information and insert the title of Insurance Code Chapter 2301 for consistency with current TDI rule drafting style.

Division 11. Filings Made Easy - Certificates of Property and Casualty Insurance.

Section 5.9372. Preparation and Submission of Certificate of Insurance Form Filings. Amendments restructure rule text addressing how TDI will accept filings. The amendments also improve clarity, eliminate obsolete physical and mailing addresses, remove an email address, and specify that mailing addresses and other contact information are available on the Property and Casualty Certificates of Insurance web page on TDI's website. An amendment also inserts the title of Insurance Code Chapter 1811 for consistency with current TDI rule drafting style.

Section 5.9373. Certificate of Insurance Form Filing Transmittal Information. Amendments remove "request by mail" as an option for filers to obtain the Certificate of Insurance Form Filing Transmittal Form. The request-by-mail option is removed because TDI no longer receives requests by mail; the form is available on TDI's website.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received comments from 10 commenters. Two speakers representing three of these commenters also spoke at a public hearing on the proposal held on October 4, 2023. Commenters in support of the proposal were Texas Appleseed, Texas Watch, and Consumer Federation of America, who submitted a joint comment letter, and the Office of Public Insurance Counsel (OPIC).

Commenters against the proposal were the American Property Casualty Insurance Association (APCIA); the Insurance Council of Texas (ICT) and the Association of Fire and Casualty Companies of Texas (AFACT), who submitted a joint comment letter; the National Association of Mutual Insurance Companies (NAMIC); the Texas Farm Bureau Insurance Companies; and Insurance Services Office, Inc. (ISO).

Comments and agency responses are grouped by topic.

Requirement to Incorporate Mandatory Endorsements for Policy Forms Filed on or After January 1, 2025

The proposal included a requirement that when an insurer files new or revised personal automobile or residential property policy forms on or after January 1, 2025, the insurer must incorporate the provisions of all associated mandatory endorsements at the time of the filing. Although four commenters expressed support for the proposed measure, many of the concerns expressed from other commenters were on this requirement. Several commenters misunderstood or misstated the proposed requirement.

Although TDI disagrees with the comments opposing the requirement, TDI has declined to adopt the proposed requirement. However, TDI remains concerned about improving consumer understanding of insurance policies and maintains the position that insurers have a responsibility to minimize consumer confusion, so TDI will continue discussions with stakeholder groups to identify and explore ways for insurers to efficiently and effectively make it easier for consumers to understand their policies.

Comments Misunderstanding or Misstating the Mandatory Endorsement Incorporation Requirement

Comment: Several commenters opposing the requirement make the following factually incorrect statements about the proposed requirement:

- mandatory endorsements would be prohibited on or after January 1, 2025;

- insurers would be required to incorporate all mandatory endorsements before January 1, 2025;

- insurers would be required to maintain a complete policy with all potential mandatory endorsement combinations;

- insurers would be prohibited from customizing insurance policies; and

- insurers would have to amend, print, and mail their base policy form to incorporate future legislative or regulatory requirements instead of using a mandatory endorsement.

Agency Response: Although TDI has declined to adopt the proposed requirement, TDI disagrees with the comments. The requirement would not have prohibited mandatory endorsements, but rather required incorporation only if and when an insurer filed a new policy form or revised an existing policy form using mandatory endorsements. The requirement would not have required any insurer action by January 1, 2025, but rather would have established a new standard for forms filed on or after that date. The requirement would not have required an insurer to maintain a policy with all potential mandatory endorsement combinations. Mandatory endorsements are not a "potential combination"--they are always added to the policy. The requirement would not have prohibited customization of policies, nor would it have required that insurers amend, print, or mail their base policy to incorporate future legislative or regulatory requirements instead of using a mandatory endorsement.

Comments on TDI's Statutory Authority for the Requirement

Comment: Two commenters question TDI's statutory authority to adopt a requirement that insurers incorporate mandatory endorsements when new policy forms are filed or when existing forms are filed for amendment on or after January 1, 2025.

Agency Response: Although TDI has declined to adopt the proposed requirement, TDI maintains that the agency has statutory authority to adopt such a requirement. TDI's authority is in Insurance Code §§36.002(1)(C), 36.002(2)(E), 541.401, 2301.053, 2301.055, Article 5.35(f), and 36.001.

Comment That the Mandatory Endorsement Incorporation Requirement Is Not Authorized by SB 965 or SB 1367

Comment: One commenter states that the mandatory endorsement requirement and some of the adopted amendments go beyond and are not authorized by either SB 965 or SB 1367.

Agency Response: TDI agrees with the comment. The mandatory endorsement incorporation requirement (though not adopted) and several adopted amendments are unrelated to either SB 965 or SB 1367 and are not adopted under the rulemaking authority provided by those bills. Rather, they are adopted under separate authority listed in the Statutory Authority statements in this adoption order. They are included in the same rulemaking proposal as the amendments implementing SB 965 and SB 1367 because they all amend sections in the Filings Made Easy rules.

Comments on Policy Forms Promulgated, Approved, or Adopted by the Commissioner Before June 11, 2003

Comment: Two commenters contend that the mandatory endorsement incorporation requirement conflicts with Insurance Code §1952.052 and §2002.052 that allow insurers to use policy forms that were promulgated, approved, or adopted by the commissioner before June 11, 2003.

Agency Response: Although TDI has declined to adopt the proposed requirement, TDI disagrees with the comments. Insurance Code §1952.052, relating to automobile insurance forms and endorsements, and §2002.052, relating to residential property insurance, allow the use of such forms without filing.

Comments on Different Contract Requirements for Texas

Comment: Several commenters suggest the rule as proposed requires insurers to have a different contract for Texas, and that Texas would be an outlier. These commenters express concern that the rule would prohibit the use of national policy forms, such as Insurance Services Office (ISO) or a company's own standard policy forms.

Agency Response: Although TDI has declined to adopt the proposed requirement, TDI disagrees with the comments. Because policies must comply with Texas laws, insurers already have a different contract for Texas. Many insurers currently create a Texas-specific contract by pairing a policy form with a mandatory endorsement that revises the policy to conform with Texas laws. The requirement would not have changed the contract; instead, it would have required the mandatory endorsement provisions to be incorporated into the policy form itself, changing only the format of the contract.

TDI disagrees that the requirement would have prohibited the use of national policy forms or a company's own standard policy forms. Under the requirement, a company could have continued using its forms until deciding to revise the form itself. Even then, companies would have only been required to incorporate mandatory endorsements the company used at that time. The requirement would not have prohibited the use of future mandatory endorsements with standard policy forms.

Comments on Lack of Substantive Coverage Impact

Comment: One commenter states that the mandatory endorsement incorporation requirement would have no substantive impact on coverage. Another commenter states that although the requirement might reduce policy page counts, the same policy language and contract terms would still need to be included.

Agency Response: TDI agrees with the comments. The requirement was intended to assist consumers in understanding their policies, rather than changing coverage.

Comments on the Impact of the Requirement on Consumer Understanding

Comment: Several commenters state broadly that the mandatory endorsement incorporation requirement would not help consumers understand their policies. Two commenters contend that the requirement would have very little impact in terms of reducing or eliminating the need for consumers to cross-reference endorsements, and that for policies that are national base forms, there will always be some need to cross-reference specific language that is amended or changed. These two commenters state that this is also true of other endorsements that may be requested by policyholders.

Several commenters suggest the opposite, explaining that the mandatory endorsement incorporation requirement would make policies and coverage more understandable, as well as making review less complicated and time-consuming. Another commenter states that insurance policies are long documents full of technical and legal terminology, and that consumers often find multiple endorsements amending various sections of a policy confusing. The commenter states that many insurers make changes to their policy forms using a Texas-specific amendatory endorsement that is often 8 to 10 pages long, and that incorporating mandatory endorsements into the policy would provide transparency and an important protection for Texas consumers.

Agency Response: TDI agrees that insurance policies are long, highly technical contracts that are challenging to read and un-

derstand, and the requirement would have added transparency and an important consumer protection.

Although TDI has declined to adopt the proposed requirement, TDI disagrees that the mandatory endorsement incorporation requirement would not have improved consumer understanding of insurance policies.

Comments on the Cost and Efficiency of the Mandatory Endorsement Incorporation Requirement

Comment: Several commenters state that the requirement would decrease efficiency and increase costs for insurers, though the commenters do not provide written estimates for costs or time. The commenters express concern that the requirement would result in significant costs from updating, printing, and mailing entire policies.

One commenter states that the cost relating to the requirement would be for printing and one-time information technology (IT) costs, and that companies doing business in multiple states may need to have multiple programs. The commenter estimates a one-time potential cost of $25,000 to more than $100,000.

Agency Response: Although TDI has declined to adopt the proposed requirement, TDI disagrees that the mandatory endorsement incorporation requirement would have necessarily resulted in significant insurer costs. If insurers decided to not modify their policies that use mandatory endorsements, they would have had no costs resulting from the requirement. More specifically, it would have applied only when a company was already in the process of making a change to the underlying policy form, so any costs of incorporating existing mandatory language would be minimal or almost nonexistent.

Comments That the Mandatory Endorsement Incorporation Requirement Would Confuse Claims Adjusters

Comment: Two commenters state that requiring different base contracts every time a mandatory provision is required would be potentially confusing in training and retention of qualified adjusters who handle claims across multiple states. Another commenter states that because claims adjusters often work across multiple states, a forced variation in policy construction creates significant inefficiencies and increased likelihood for error for adjusters accustomed to working with uniform polices that are amended to meet consumer needs.

Agency Response: Although TDI has declined to adopt the proposed requirement, TDI disagrees with the comments. The requirement would not have changed the policy language the adjusters are reading. Also, the requirement would not have prevented a company from providing an annotated version of its policy form to make it easier for claims adjusters to use. The mandatory endorsement incorporation requirement would not have caused confusion for claims adjusters or other insurance industry professionals, but would have improved consumers' understanding of their insurance policies.

Comment on Alternative to Mandatory Endorsement Incorporation Requirement

Comment: Although one commenter states support for the mandatory endorsement incorporation requirement, the commenter also offers an alternative for TDI's consideration. The commenter suggests requiring incorporation of all mandatory endorsements into a single Texas amendatory endorsement every three years as an alternative approach that TDI may consider.

Agency Response: TDI appreciates the comment but declines to make the suggested change. Requiring a filing on a specific time schedule would impose costs on insurers. However, allowing insurers to choose whether and when to schedule the event triggering the incorporation of mandatory endorsements would allow insurers to avoid or minimize any costs relating to the requirement.

Requirement to Bracket Variable Text in Filing and to Exclude Inapplicable Text in Consumer's Policy

The adopted amendments require that when filing a new or amended endorsement form on or after January 1, 2025, with provisions that do not apply to every personal automobile or residential property policy to which the endorsement will be attached, an insurer must bracket the provisions to indicate that they are variable text. The amendments also require the insurer's filing to indicate that when the endorsement is attached to a policyholder's specific policy, the endorsement will not include any provisions that are inapplicable to that specific policy. The following paragraphs address comments received on these requirements.

Comment Misunderstanding the Bracketing Requirement

Comment: One commenter erroneously states that the amendments require the consumer's insurance policy to have brackets around inapplicable provisions.

Agency Response: TDI disagrees with the comment and clarifies that the amendments require that inapplicable provisions be bracketed in endorsement forms only in the versions of those forms filed with TDI. The rule does not require or authorize insurers to use brackets around inapplicable provisions in the documents provided to consumers. To the contrary, the rule prohibits the inclusion of inapplicable provisions in the documents provided to consumers.

Comment on Cost and Workload for Bracketing Requirement

Comment: One commenter says that the bracketing of variable text has a significant impact on residential property programs that have multiple base coverage forms, which may lead to increased programming and procedural costs for insurers. The commenter also suggests there might not be sufficient time to implement the changes and that insurers might not have a choice regarding the timing of filings needed to respond to legislation. Another commenter states that the requirement may result in significant forms work for personal lines policies and that insurers would likely have 16 or 17 months to implement.

Agency Response: TDI disagrees that the requirement will impose a significant cost or implementation difficulty. Under the requirements of the rule, insurers have complete discretion to decide whether and when they will file with TDI new or amended endorsements with variable text. To the extent that insurers choose not to include variable text in new or revised endorsement forms filed with TDI, insurers will have no costs resulting from the requirement. Allowing insurers to choose whether and when to schedule the event triggering the requirement to bracket variable text allows insurers to avoid or minimize any costs relating to the requirement.

Requirement to File Automobile Insurance Application Forms

Adopted amendments require that insurers file automobile insurance application forms with TDI. Specifically, TDI's adopted amendments include two requirements relating to filing automobile insurance applications: (1) applications that are part of the

policy must be filed for approval, and (2) applications that are not part of the policy must be filed for informational purposes. The first is required by statute, and the second codifies existing agency practice.

Insurance Code §2301.006 requires that TDI review and approve forms used in writing certain insurance lines before an insurer may use those forms. Forms include the policy form and endorsements. Insurance Code §2301.003(b)(14) specifies that this filing and prior approval requirement applies to personal automobile insurance. Therefore, statute requires that insurers file and receive approval for automobile insurance application forms that are made part of the insurance policy.

TDI's current practice is to also request automobile insurance applications that are not part of the policy for informational purposes. Codifying this practice into rule will streamline filing requirements so that filers and agency staff have a clear understanding of filing requirements at the outset of the process.

The following paragraphs address comments relating to the requirement to file for information automobile insurance applications that are not part of the policy.

Comments on Lack of Statutory Authority on Automobile Insurance Application Filing Requirement

Comment: Three commenters state that TDI does not have statutory authority to require insurers to file personal automobile application forms that are not part of the insurance policy.

Agency Response: TDI disagrees with the comments. TDI has authority for the requirement under Insurance Code Chapter 2301 and §36.001. Under Chapter 2301, TDI must evaluate whether each provision in a policy form or endorsement is unjust or deceptive, encourages misrepresentation, or violates law or public policy. For personal automobile policies, TDI must also look for specific mandatory coverages, such as uninsured motorist coverage and personal injury protection coverage, which must be offered and can only be rejected by named insureds in a specified manner as referenced in Insurance Code §2301.053. Given the breadth of those requirements, TDI needs additional information to understand the context of provisions in a new personal automobile insurance policy form and how it is likely to be understood and operate in the marketplace. Also, Insurance Code §2301.054 specifies that a contract or agreement not written into a personal automobile insurance application and policy is void and violates the Insurance Code.

Accordingly, TDI's current practice is to request that insurers file for informational purposes automobile insurance application forms that are not part of the policy. TDI has found that such application forms could contain contractual terms, some of which might conflict with the remainder of the contract, despite insurer representations otherwise. The informational filing of automobile insurance application forms that are not part of the insurance contract provides an important consumer protection; the filing requirement is necessary for TDI to perform its review-and-approval duties under Chapter 2301.

Comment on Lack of Policyholder Benefit of Automobile Insurance Application Form Filing Requirement

Comment: One commenter states this requirement is unnecessary and has no clear benefit to policyholders.

Agency Response: TDI disagrees with the comment. TDI's current practice is to request automobile insurance application forms as part of the form review process. This requirement increases transparency for filers and streamlines the filing process by requiring application forms be provided at the outset of the filing process.

Language in automobile insurance application forms that is inconsistent with the policy language may cause consumer harm in that consumers may be confused or unable to understand their coverage; it benefits policyholders for TDI to verify that automobile insurance application forms do not have language that conflicts with policy language or statutory requirements.

Comment on Increased Costs from Automobile Insurance Application Form Filing Requirement

Comment: One commenter states that the requirement will increase costs because the commenter's automobile insurance application is not static, but rather dynamic, and changes depending on the inputs.

Agency Response: TDI disagrees with the comment. TDI's current practice is to request automobile insurance application forms as part of the form review process, and including this requirement in the rule streamlines the filing process. TDI has not experienced any companies that have been unable to fulfill this request.

Comment Misunderstanding the Automobile Insurance Application Form Filing Requirement

Comment: One commenter mistakenly states that a company would have to include the application form with a filing anytime the company made a change to its personal automobile policy form.

Agency Response: TDI disagrees with the comment. A change to a personal automobile policy form does not trigger an automobile insurance application form filing under the requirement. The adopted rule text specifies that it applies "when an insurer files a new personal automobile policy form."

Requirement for Third-Party Data in Rate and Rule Filings

The adopted amendments add new categories of supporting information for third-party data and third-party models and require this information in rate and rule filings. The required information consists of basic information about the source of the data and models and how they are used in the ratemaking process. The following paragraphs address comments relating to the requirement to file third-party data and model information in rate and rule filings.

Comments on Breadth and Ambiguity of the Third-Party Information Requirement in Rate and Rule Filings

Comment: Two commenters state that "third-party data" is not defined and is overly broad and vague. These commenters state that this change adds a new level of uncertainty and vagueness on how it will be applied and what insurers will need to file. The commenters also state that the requirement adds another layer of bureaucratic uncertainty because TDI staff may construe this requirement inconsistently.

Agency Response: TDI disagrees with the comments. The requirement adds transparency and specificity by listing the required information, which helps both companies and TDI staff. Companies will know what to include in their filings, and TDI staff will know what is expected to be in the filing.

Comment on Costs of the Third-Party Information Requirement in Rate and Rule Filings

Comment: One commenter states that requiring this information will create greater compliance burdens, which will add to the administrative costs in creating and maintaining policies.

Agency Response: TDI disagrees with the comment. The required third-party data and model information is basic identifying and descriptive information. This requirement is not expected to impose significant costs.

Comments on TDI's Need for Third-Party Information in Rate and Rule Filings

Comment: Two commenters state that the information insurers currently provide is sufficient for TDI to evaluate rate and rule filings. A third commenter states that TDI and OPIC both need this information to fulfill their statutory duty to determine whether rates and rules meet applicable laws and regulations.

Agency Response: TDI disagrees with the comments that the information TDI currently receives is sufficient, and TDI agrees with the comment that the new requirement is necessary for TDI to fulfill its statutory duty. TDI has observed increasingly frequent insurer use of third-party data and models in rate and rule filings. TDI has seen third-party data and models used to develop classification systems, territorial relativities, roof condition scores, and wildfire risk scores. TDI has a statutory responsibility to review rates to verify compliance with statutory and regulatory standards, and third-party information required by the rule is necessary for TDI to fulfill this statutory responsibility.

Comments on Alternative to Third-Party Information Requirement in Rate and Rule Filings

Comment: Two commenters recommend that the requirement not be adopted, or that TDI instead limit the requirement to specific types of third-party data such as hurricane models used to develop catastrophe loads in rate filings.

Agency Response: TDI disagrees with not adopting the requirement and declines to implement the alternative suggestion. While information on third-party data and models that is used to develop catastrophe loads in rate filings falls within the adopted requirement, limiting the requirement to data used to develop catastrophe loads in rate filings is insufficient for TDI to fulfill its statutory requirement. Insurers are also using third-party data and models to develop classification systems, territorial relativities, roof condition scores, wildfire risk scores, and other supplementary rating information. The use of third-party data and models in these other aspects of ratemaking is as relevant as catastrophe load information is when reviewing filings for compliance.

Requirement for Third-Party Data in Underwriting Guideline Filings

The adopted amendments also require insurers to include information about the use of third-party data and third-party models in underwriting guideline filings. The required information consists of basic information about the source of the data and models and how they are used in the underwriting process. Insurers are required by law to file their underwriting guidelines for personal automobile, residential property, and workers' compensation insurance.

Insurance Code §38.002 requires each insurer writing personal automobile insurance or residential property insurance to file its underwriting guidelines with TDI and requires that the underwriting guidelines are sound, actuarially justified, substantially commensurate with the contemplated risk, and not unfairly discriminatory. Insurance Code §2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Insurance Code §2053.032 requires that underwriting guidelines for workers' compensation insurance be sound, actuarially justified, or otherwise substantially commensurate with the contemplated risk, as well as not be unfairly discriminatory.

The following paragraphs address comments relating to the requirement to file third-party data and model information in underwriting guideline filings.

Comments on Breadth and Ambiguity of the Third-Party Information Requirement in Underwriting Guideline Filings

Comment: Two commenters state that third-party data required in underwriting guideline filings is not defined and is overly broad and vague. They suggest that TDI add some parameters to the third-party data requirement.

Agency Response: TDI disagrees with the comments. "Third-party data" is a common term, and the adopted amendments provide parameters to the requirement by listing the specific information required with underwriting guideline filings. The new requirement adds transparency and specificity, which helps both filers and TDI staff.

Comments on Costs of the Third-Party Information Requirement in Underwriting Guideline Filings

Comment: One commenter states that requiring third-party information in underwriting guideline filings will create greater compliance burdens, which will add to administrative costs in creating and maintaining policies. Two other commenters question why external data should be required in underwriting guideline filings, like data used to determine replacement cost values, building codes that may be used in underwriting, or consumer price indexes. The commenters state that the requirement will increase costs.

Agency Response: TDI disagrees with the comments. The required third-party data and model information is basic identifying and descriptive information. This requirement is not expected to impose significant costs.

Comments on Statutory Authority to Require Third-Party Information Requirement in Underwriting Guideline Filings

Comment: Two commenters state that TDI has no statutory authority to require this information in underwriting guidelines.

Agency Response: TDI disagrees with the comments. Both Insurance Code §38.002 and §2053.032 require that underwriting guidelines be "sound, actuarially justified, or otherwise substantially commensurate with the contemplated risk." Further, both statutes provides that "underwriting guidelines may not be unfairly discriminatory." The third-party information required by the rule is necessary for TDI to fulfill its statutory responsibility to verify that underwriting guidelines comply with these statutory requirements.

Comments on TDI's Need for Third-Party Information in Underwriting Guideline Filings

Comment: Two commenters state that underwriting guidelines pertain to accepting or rejecting a risk and that models are not typically used to accept or reject a risk. A third commenter states that TDI needs this information to fulfill its statutory duty to assess whether underwriting guidelines comply with applicable statutes and regulations.

Agency Response: TDI disagrees with the comments that third-party data and models are not used in underwriting guidelines. TDI has observed increasing use of third-party data and models in underwriting guideline filings. For example, TDI has seen third-party data and models used to develop wildfire risk scores, which have been used in companies' underwriting guideline filings.

TDI agrees with the comment that the information is necessary for TDI to achieve its statutory responsibility to review underwriting guidelines to verify compliance with statutory and regulatory standards.

Prohibition on Password-Protected, Encrypted, or Scanned Documents in Filings

The adopted amendments prohibit password-protected or otherwise encrypted documents in filings. The amendments prohibit scanned documents and scanned text in filed property and casualty policy forms, endorsements, and form usage tables. The following paragraphs address comments relating to these prohibitions.

Comments That TDI Accepts Password-Protected or Encrypted Filings in Other Settings

Comment: Two commenters state that TDI allows filings in other settings that are routinely encrypted, or password protected, and that this prevents the inadvertent release of documents with personal information or sensitive trade secret information.

Agency Response: TDI disagrees with the comments. Property and casualty form, rate, rule, underwriting guidelines, and credit scoring model filings must be submitted through SERFF. There is an existing mechanism within SERFF to keep confidential or trade secret information from public view. Also, because a password may expire or a filer may change the password, it is impractical and inefficient for TDI staff to work with password-protected documents. Although TDI does accept certain password-protected documents or encrypted documents in other settings, they are allowed to protect personally identifiable information (PII) in those documents. Existing FME rules prohibit the filing of PII.

Comments on Password-Protected or Encrypted Documents' Impact on Open Records Requests

Comment: Two commenters state that insurance companies often make open records requests for competitors' rate filings so that they may use those rates in their own filings, and that if the prohibition is adopted, companies may miss the 10-day deadline from the Office of the Attorney General to object to the release of their rate filing information.

Agency Response: TDI disagrees with the comments. TDI does agree that competitors often request other companies' rate filings. However, the Office of Attorney General's process under the Open Records Act is not at issue in this rule. The rule does not prevent companies from making timely objections to the Office of the Attorney General.

Comments on TDI's Statutory Authority to Prohibit Password-Protected, Encrypted, or Scanned Documents in Filings

Comment: Two commenters state that TDI has no statutory authority to prohibit encrypted, password-protected, or scanned documents in filings.

Agency Response: TDI disagrees with the comments. The requirement is adopted under Insurance Code §§36.002(1)(C), 36.002(1)(F), 36.002(2)(E), 2251.101, 2301.055, 559.004, and 36.001.

Comments on TDI's Rationale for Prohibiting Scanned or Unsearchable Documents

Comment: Two commenters question why TDI is prohibiting scanned and unsearchable documents.

Agency Response: The adopted amendments prohibit scanned documents and scanned text in filed policy forms, endorsements, and form usage tables to ensure that filings are compatible with text search tools in SERFF and TDI's current form review technology, which rely on word recognition software. This technology helps TDI review form filings more consistently and efficiently. If a PDF or other document is scanned or includes scanned text, the technology might not work.

Changes to Underwriting Guideline Filing Requirements

The adopted amendments remove the requirement to file a complete set of underwriting guidelines every three years. Instead, the amendments require insurers to file a complete set with each revision of their underwriting guidelines.

The following paragraphs address general comments received on the adopted underwriting guideline filing requirements. Comments about the third-party-information requirement in underwriting guideline filings are already addressed above.

Comment Misunderstanding the Adopted Amendments for Underwriting Guideline Filings

Comment: One commenter states that replacing the requirement to file underwriting guidelines every three years with the requirement to file not later than 10 days after use could reduce the volume of filings.

Agency Response: TDI agrees that adopted amendments remove the requirement to file a full set of underwriting guidelines every three years, which will reduce the volume of filings. TDI also clarifies that the text requiring filing underwriting guidelines not later than 10 days after use is not new. It has been in the FME rule for years.

Comment Requesting Rule Text Limiting TDI's Review to New or Amended Underwriting Guidelines

Comment: One commenter suggests that TDI include rule text limiting the agency's review of underwriting guideline filings. The commenter requests that the rule text specify that only new or amended underwriting guidelines will be subject to approval or disapproval.

Agency Response: TDI disagrees with the comment and declines to implement the suggestion. TDI has a statutory responsibility to verify that filed underwriting guidelines--in their entirety--satisfy statutory and regulatory requirements, which may have changed since the prior filing. TDI also clarifies that TDI reviews underwriting guidelines for compliance but does not approve or disapprove underwriting guideline filings.

Comment Supporting Requirement to File a Comprehensive Set of Underwriting Guidelines with Each Filing

Comment: One commenter expresses support for TDI's requirement that filers include a comprehensive set of underwriting guidelines with each personal automobile, residential property, or workers' compensation underwriting guideline filing. The commenter states that underwriting guidelines often contain interdependent elements that cannot be reviewed individually for

legal compliance. The commenter states that the requirement will allow TDI reviewers to efficiently consider filed changes within the full context of the underwriting structure, and better identify and understand potential legal violations.

Agency Response: TDI agrees with the comment. Agency reviewers may have difficulty evaluating a change in underwriting guidelines without the context of the complete set of guidelines.

Comment on Allowing Monoline Filings to Be Used in Multi-Peril Insurance

Comment: One commenter expresses support for the amendment that allows a monoline filing to be used for multi-peril insurance without making an additional, separate multi-peril filing. The commenter suggests it will likely have a positive impact on insurers by reducing the number of multi-peril filings.

Agency Response: TDI appreciates the comment.

Comment on Requiring SERFF Filing for Change in Policy Form Use

TDI also received a comment that suggests adding an additional requirement to the FME rules, which is discussed in the following paragraphs.

Comment: One commenter suggests adding an express requirement that any changes in policy form usage be filed in SERFF for informational purposes.

Agency Response: TDI appreciates the suggestion but declines to make the change. To the extent the suggested change may create a new requirement, it would need another rule proposal to allow an opportunity for stakeholders and the public to comment. TDI would also need to weigh the potential merits and costs of the suggested change.

DIVISION 4. FILINGS MADE EASY - TRANSMITTAL INFORMATION AND GENERAL FILING REQUIREMENTS FOR PROPERTY AND CASUALTY FORM, RATE, UNDERWRITING GUIDELINE, AND CREDIT SCORING MODEL FILINGS

28 TAC §§5.9310, 5.9312, 5.9313

STATUTORY AUTHORITY. The commissioner adopts the amendments to §5.9310 and §5.9312 and new §5.9313 under Insurance Code §§36.002(1)(C), 36.002(1)(F), 36.002(2)(E), 2251.101, 2301.001, 2301.007, 2301.055, 559.004, and 36.001.

Insurance Code §36.002(1)(C) authorizes the commissioner to adopt reasonable rules that are necessary to effect the purposes of a provision of Insurance Code Chapter 2301, Subchapter A. Insurance Code §2301.001 states that the purpose of Insurance Code Chapter 2301, Subchapter A, includes regulating insurance forms to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive, and to provide regulatory procedures for the maintenance of appropriate information reporting systems. Also, Insurance Code §2301.007 states that the commissioner may disapprove a form or withdraw approval of a form if it violates any law or contains a provision, title, or heading that is unjust or deceptive, encourages misrepresentation, or violates public policy.

Insurance Code §36.002(1)(F) authorizes the commissioner to adopt reasonable rules necessary to effect the purposes of a provision of Insurance Code Chapter 2251.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §2251.101 provides that each insurer must file its rates, rating manuals, supplementary rating information, and additional information with TDI as required by the commissioner. It also provides that the commissioner adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information.

Insurance Code §2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Insurance Code Chapter 2301, Subchapter B.

Insurance Code §559.004 authorizes the commissioner to adopt rules necessary to implement Insurance Code Chapter 559.

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 December 19, 2023.

TRD-202304903
Jessica Barta
General Counsel
Texas Department of Insurance
Effective date: January 8, 2024
Proposal publication date: July 7, 2023
For further information, please call: (512) 676-6555

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DIVISION 5. FILINGS MADE EASY - REQUIREMENTS FOR PROPERTY AND CASUALTY POLICY FORM AND ENDORSEMENT FILINGS

28 TAC §§5.9321, 5.9323, 5.9327

STATUTORY AUTHORITY. The commissioner adopts the amendments to §§5.9321, 5.9323, and 5.9327 under Insurance Code §§36.002(1)(C), 36.002(2)(E), 541.401, 2301.001, 2301.007, 2301.053, 2301.054, 2301.055, Article 5.35(f), 2051.201, and 36.001.

Insurance Code §36.002(1)(C) authorizes the commissioner to adopt reasonable rules that are necessary to effect the purposes of a provision of Insurance Code Chapter 2301, Subchapter A. Insurance Code §2301.001 states that the purpose of Insurance Code Chapter 2301, Subchapter A, includes regulating insurance forms to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive, and to provide regulatory procedures for the maintenance of appropriate information reporting sys-

tems. Also, Insurance Code §2301.007 states that the commissioner may disapprove a form or withdraw approval of a form if it violates any law or contains a provision, title, or heading that is unjust or deceptive, encourages misrepresentation, or violates public policy.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §541.401 specifies that the commissioner may adopt and enforce reasonable rules the commissioner determines necessary to accomplish the purposes of Insurance Code Chapter 541. Insurance Code §541.001 states that the purpose of Insurance Code Chapter 541 is to regulate insurance trade practices by defining or providing for the determination of trade practices that are unfair methods of competition or unfair or deceptive acts or practices and prohibiting those trade practices.

Insurance Code §2301.053 provides that a form may not be used unless it is written in plain language.

Insurance Code §2301.054 specifies that a contract or agreement not written into a personal automobile insurance application and policy is void and violates the Insurance Code.

Insurance Code §2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Insurance Code Chapter 2301, Subchapter B.

Insurance Code Article 5.35(f) specifies timelines for commissioner form and endorsement approval, and states that for good cause shown the commissioner may withdraw approval of a form or endorsement at any time.

Insurance Code §2051.201 authorizes the commissioner to adopt and enforce all reasonable rules necessary to carry out the provisions of a law referenced in Insurance Code §2051.002(1), (2), or (3).

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.

§5.9321. General Filing Requirements.

(a) Filings must be submitted for one line of insurance only, except for multi-peril and interline filings.

(b) Filings submitted under this division may not be combined with any other filing types submitted under this subchapter.

(c) Filings must contain the following:

(1) the transmittal information required in §5.9310 of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements);

(2) a copy of the proposed policy forms or endorsements;

(3) a form number for each proposed form;

(4) an edition date for each proposed form, if applicable;

(5) the TDI file number or SERFF tracking number for the previously approved policy to which the proposed form will be attached, if applicable;

(6) a form usage table that includes:

(A) the form name and form number for each proposed form;

(B) information indicating whether each proposed form is optional, mandatory, or conditional mandatory; and

(C) for conditional mandatory forms, an addendum to the form usage table that describes the conditions that make each form mandatory. For filings other than personal automobile, residential property, or personal multi-peril, the filer may describe the conditions elsewhere in the filing;

(7) a memorandum that:

(A) explains in detail the reasons for the filing;

(B) describes each proposed policy form or endorsement; and

(C) details each policy form or endorsement's use, including the type of risk or risks for which the forms or endorsements will be used.

(d) Filings must also meet the following requirements.

(1) Filings must include all provisions required by statute, administrative rule, or Commissioner's order. Filers may add the required provisions to a policy form by including a Texas amendatory endorsement. The filing must include the amendatory endorsement, or the filing may reference an approved amendatory endorsement that applies to the policy forms in the filing.

(2) For amended policy forms or endorsements, copies of the previously approved or adopted policy forms or endorsements indicating the differences between the approved or adopted policy forms or endorsements and the filed policy forms or endorsements must be included. New text must be underlined, and deleted text must be in brackets with a strikethrough. Alternatively, the changes can be indicated by other clearly identified or highlighted editorial notations referencing new and replaced text. The marked changes must be in a separate single document for each filed form.

(e) Unless requested by TDI, filings made by advisory organizations do not need to include:

(1) the proposed effective date specified in §5.9310(c)(9) of this title; or

(2) the form usage table specified in subsection (c)(6) of this section.

§5.9327. Additional Requirements for Personal Automobile and Residential Property Forms.

(a) Personal automobile and residential property insurance forms are subject to this subsection.

(1) Filed forms must meet the plain-language requirements described in Insurance Code §2301.053, concerning Requirements for Forms; Plain-Language Requirement, and Commissioner's Order No. 92-0573. Filings must also include the Flesch Reading Ease Test readability score for the forms.

(2) When filing an endorsement form with provisions that do not apply to every policy to which the endorsement will be attached, the provisions must be enclosed with brackets to reflect that the provisions are variable text. The filing must also indicate that when the endorsement is attached to a policyholder's specific policy, the endorsement will not include any provisions that are inapplicable to that specific policy. For example, an insurer may file an endorsement with provisions that amend an HO-3 policy and an HO-5 policy. If certain provisions apply only to the HO-5, those must be bracketed in the filed form, and must not be visible to the policyholder when the form is used to endorse the HO-3. This paragraph applies to new or amended endorsements filed on or after January 1, 2025.

(b) Insurers must file residential property policy declarations page forms for approval.

(1) Declarations pages include renewal declarations pages, renewal certificates, amended declarations pages, and separate disclosure pages allowed under §5.9700 of this title (relating to Residential Property Declarations Pages and Deductible Disclosures).

(2) Filed declarations page forms must be completed with sample--not actual--policyholder information sufficient to demonstrate how the insurer will comply with this rule and Insurance Code §2301.056, concerning Requirement for Forms; Declarations Page Requirement.

(c) Insurers must file personal automobile insurance application forms as follows:

(1) new or amended application forms that are part of the insurance policy must be filed for approval; and

(2) application forms that are not part of the insurance policy must be filed for informational purposes when an insurer files a new personal automobile policy form.

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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Jessica Barta
General Counsel
Texas Department of Insurance
Effective date: January 8, 2024
Proposal publication date: July 7, 2023
For further information, please call: (512) 676-6555

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DIVISION 6. FILINGS MADE EASY - REQUIREMENTS FOR RATE AND RULE FILINGS

28 TAC §5.9332, §5.9334

STATUTORY AUTHORITY. The commissioner adopts the amendments to §5.9332 and §5.9334 under Insurance Code §§36.002(1)(F), 36.002(2)(E), 912.056, 2251.101, and 36.001.

Insurance Code §36.002(1)(F) authorizes the commissioner to adopt reasonable rules necessary to effect the purposes of a provision of Insurance Code Chapter 2251.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner requires by rule.

Insurance Code §2251.101 provides that each insurer must file its rates, rating manuals, supplementary rating information, and additional information with TDI as required by the commissioner. It also provides that the commissioner adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information.

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.

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DIVISION 7. FILINGS MADE EASY - REQUIREMENTS FOR UNDERWRITING GUIDELINE FILINGS

28 TAC §5.9342

STATUTORY AUTHORITY. The commissioner adopts the amendments to §5.9342 under Insurance Code §§36.002(2)(E), 38.002, 38.003, 2053.034, and 36.001.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §38.002 requires each insurer writing personal automobile insurance or residential property insurance to file its underwriting guidelines with TDI and to ensure that the underwriting guidelines are sound, actuarially justified, substantially commensurate with the contemplated risk, and not unfairly discriminatory.

Insurance Code §38.003 provides that TDI may obtain a copy of the underwriting guidelines of an insurer for lines other than personal automobile insurance or residential property insurance.

Insurance Code §2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines.

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.

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DIVISION 9. FILINGS MADE EASY - REDUCED FILING REQUIREMENTS FOR CERTAIN RESIDENTIAL PROPERTY INSURERS

28 TAC §5.9355, §5.9357

STATUTORY AUTHORITY. The commissioner adopts the amendments to §5.9355 and §5.9357 under Insurance Code §§36.002(1)(F), 36.002(2)(E), and 36.001.

Insurance Code §36.002(1)(F) authorizes the commissioner to adopt reasonable rules necessary to effect the purposes of a provision of Insurance Code Chapters 2251.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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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DIVISION 10. FILINGS MADE EASY - ADDITIONAL FILING REQUIREMENTS FOR CERTAIN COUNTY MUTUAL INSURANCE COMPANIES

28 TAC §5.9361

STATUTORY AUTHORITY. The commissioner adopts the amendments to §5.9361 under Insurance Code §§36.002(1)(F), 36.002(2)(E), 912.056, 2251.101, and 36.001.

Insurance Code §36.002(1)(F) authorizes the commissioner to adopt reasonable rules necessary to effect the purposes of a provision of Insurance Code Chapters 2251.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §912.056 requires that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner requires by rule.

Insurance Code §2251.101 requires that each insurer must file its rates, rating manuals, supplementary rating information, and additional information with TDI as required by the commissioner. It also requires that the commissioner adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information.

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.

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DIVISION 11. FILINGS MADE EASY - CERTIFICATES OF PROPERTY AND CASUALTY INSURANCE

28 TAC §5.9372, §5.9373

STATUTORY AUTHORITY. The commissioner adopts the amendments to §5.9372 and §5.9373 under Insurance Code §1811.003 and §36.001.

Insurance Code §1811.003 allows the commissioner to adopt rules necessary or proper to accomplish the purposes of Insurance Code Chapter 1811.

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.

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.334

The Comptroller of Public Accounts adopts an amendment to §3.334, concerning local sales and use taxes, without changes to the proposed text as published in the October 27, 2023, issue of the *Texas Register* (48 TexReg 6340). The rule will not be republished.

The comptroller adds subsection (c)(7) regarding the location where an order is received:

"The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller."

The text is taken from Section 3.10.1C5 of the Streamlined Sales and Use Tax Agreement (SSUTA). *See* https://www.streamlinedsalestax.org/docs/default-source/agreement/ssuta/ssuta-as-amended-through-05-24-23-with-hyperlinks-and-compiler-notes-at-end.pdf.

In its 2014 rulemaking, the comptroller proposed a definition of "receive," but deleted the proposed definition in response to concerns stated in oral and written comments. *See* (39 TexReg 4179) (May 30, 2014) (proposed rule amendment) and (39 TexReg 9598) (December 5, 2014) (adopted rule amendment).

In its January 2023 rulemaking, the comptroller again declined to adopt a definition of "receive" and instead, addressed the two circumstances that were most prominently debated - automated website orders and fulfillment warehouses. Subsection (b) of the adopted rule articulated the comptroller's interpretation that an automated website "receives" the order and that a fulfillment warehouse does not "receive" the order when it is forwarded from the website to the warehouse. *See* (48 TexReg 400) (January 27, 2023).

Since then, it has become apparent that other circumstances also require a clear articulation of the comptroller's interpretation of the term "received." Thus, the comptroller is adopting a general standard that is applicable to all situations, as well as to automated website orders and fulfillment warehouses.

The adopted standard comports with the ordinary usage of the terms, as evidenced by the fact that the standard has been approved by twenty-four states under the Streamlined Sales Tax Agreement. The adopted standard will also promote uniformity with those states that have elected or will elect origin-based sourcing.

The comptroller is currently in litigation with cities claiming that the location where an order is received should be the location where the vendor forwards the order for fulfillment, rather than the location where the order is received from the customer. *See City of Coppell, Texas; the City of Humble, Texas; the City of DeSoto, Texas; the City of Carrollton, Texas; the City of Farmers Branch, Texas; and the City of Round Rock, Texas v. Glenn Hegar,* Cause No. D-1-GN-21-003198 in Travis County, Texas District Court. However, as explained more fully in the January 2023 rulemaking, the legislative history indicates that the legislature did not intend a fulfillment warehouse to be the location where the order was received unless the fulfillment warehouse received the order directly from the customer. *See* (48 TexReg 398) (January 27, 2023).

In addition, as explained more fully in the January 2023 rulemaking (48 TexReg 396), the comptroller's current interpretation goes as far back as Comptroller's Decision No. 15,654 (1985), which stated:

"But it seems to the administrative law judge that the legislature was amending the law if not entirely in reaction to the then-pending case of *Bullock v. Dunigan Tool & Supply Co.,* 588 S.W.2d 633 (Tex. Civ. App.-Texarkana, writ ref'd n.r.e.), at least partly in reaction to that case. And if that be so, then the legislature did not want warehousing and storage facilities (many of which are outside city limits) to be the places where sales were consummated for local sales tax purposes unless orders were actually received there by personnel working there, but wanted the office location out of which the salesman operated to be the place where the sales were consummated."

The comptroller expects this issue to be fully litigated. But in the interim, the comptroller must still apply the local tax consummation statutes to pending controversies, and taxpayers are entitled to understand the basis for the comptroller's rulings. Adoption of a definitive standard may also facilitate a more definitive decision from the courts.

The comptroller held a public hearing on November 8, 2023. The comptroller received oral and written comments regarding adoption of the amendment. The commenters were the following persons:

Barbara Boulware, City Attorney for City of Goliad in support.

Mayor Clyde C. Hairston, Mayor Pro Tem Mitchell Cheatham, Deputy Mayor Pro Tem Betty Gooden-Davis, Councilmembers Carol Strain-Burk, Stanley Jaglowski, Marco Mejia, and Derrick Robinson, City of Lancaster against the proposed amendment.

Representative Ben Bumgarner against the proposed amendment.

Kyle Kasner, Texas City Services, against the proposed amendment.

John Kroll, HMWK, against the proposed amendment.

Jim Harris, on behalf of the Coalition for Appropriate Sales Tax Law Enactment and its members the cities of Coppell, Carrollton, Desoto, Farmers Branch, Humble, Lancaster, and Lewisville (the CASTLE group), against the proposed amendment.

Jack Newman against the proposed amendment.

Dan Butcher, Clark Hill, commented without taking a position for or against the proposed amendment.

City Manager Michael W. Kovacs of City of Fate in support of amendment.

Interim Director of Budget and Strategy-Budget Justyn Mejorado, City of Sugar Land without taking a position for or against the amendment.

Attorney for the City of Round Rock Stephan L. Sheets against the amendment.

Mayor TJ Gilmore, City of Lewisville against the amendment.

Mayor Josh Schroeder, City of Georgetown against the amendment.

City Manager Sam A. Listi, City of Belton against the amendment.

City Manager Rolin McPhee, City of Longview against the amendment.

Mayor David Bristol, City of Prosper against the amendment.

City Manager Mike Land, City of Coppell against the amendment.

In summary, most opponents of the rule amendment commented that the amendment is inconsistent with the statute and will impair the sourcing of local sales tax to fulfillment warehouses. Supporters of the rule amendment commented that the amendment will provide clarity and stability to local government institutions.

Summary of the Factual Bases for the Rule.

In some circumstances, the consummation of a sale for local sales tax purposes is determined by when and where an order is received. Controversies have arisen regarding this determination, but the consummation statutes provide no further guidance. Therefore, the comptroller is exercising its rule-making authority to articulate a uniform standard.

Reasons Why the Comptroller Disagrees With, and in Some Cases Agrees With, Party Submissions and Proposals.

The effect on fulfillment warehouses and similar facilities.

Most of the opponents of new subsection (c)(7) are concerned with the effect of the subsection on fulfillment warehouses and similar facilities. New subsection (c)(7) does not change the comptroller's existing rule regarding these facilities. Subsection (b)(1)(A) already provides: "Forwarding previously received orders to a facility for fulfillment does not make the facility a place of business." The text of new subsection (c)(7) is consistent with the existing text: "The location where an order is received ... means the physical location ... where an order is initially received ... and not where the order may be subsequently accepted, completed or fulfilled."

New subsection (c)(7) also supplements the preexisting rule by explicitly stating the criteria for determining when an order is received: "An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller."

The criticisms of new subsection (c)(7) are similar to the criticisms that the comptroller previously received regarding subsection (b)(1)(A), and much of the comptroller's commentary in the January 2023 rulemaking is applicable here. See 48 TexReg 391 (January 27, 2023).

New subsection (c)(7) explicitly limits receipt to the location where the order is *initially* received, ruling out intermediate and final locations where an order might be accepted, completed, or fulfilled. The CASTLE group commented that the modifier "initially" is not present in the portion of definition of "place of business" that refers to the location at which orders "are received." The CASTLE group, as well as Mr. Kasner, also commented that the consummation statute in Tax Code, §321.203 sometimes refers to where the retailer "first receives" the order, implying that an order can be "received" at more than one place.

The CASTLE group also argued that the dictionary defines "receive" as "to take into one's possession, to take delivery of a thing, to get, or to come by," and a fulfillment warehouse cannot fulfill an order unless it gets or comes by the order. This argument may seem reasonable in the abstract, but not in context. When the statute and its legislative history are considered as a whole, the proper construction is the opposite - a fulfillment warehouse does not receive an order for purposes of the local sales tax statutes merely because fulfillment information has been sent to the warehouse.

With regard to statutory construction, the Texas Supreme Court has stated: "We must analyze statutory language in its context, considering the specific sections at issue as well as the statute as a whole. {Citation omitted}. While 'it is not for courts to undertake to make laws "better" by reading language into them,' we must make logical inferences when necessary 'to effect clear legislative intent or avoid an absurd or nonsensical result that the Legislature could not have intended.'" *Castleman v. Internet Money Ltd.,* 546 S.W.3d 684, 688 (Tex. 2018), quoting *Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm'n,* 518 S.W.3d 318, 338 (Tex. 2017).

Considering the local sales tax statute sections as a whole, the term "received" must be limited to the location where an order is initially received. This construction effects the clear legislative intent and avoids an absurd or nonsensical result that the legislature could not have intended.

The legislature did not define "receiving," "received," or "order." So, the terms must be construed in the context in which they are used. One context is the definition of "place of business of the retailer" in Tax Code, §321.002(3)(A). A "place of business of a retailer" is a location operated "for the purpose of receiving orders." One might say, as does the CASTLE group, that a purpose of a fulfillment warehouse is to receive the order because receipt is a necessary step in fulfillment. However, one might also reasonably say that while a sales office is operated for the "purpose of receiving orders," a fulfillment warehouse without sales personnel is not operated for such a purpose - the purpose is only fulfillment, which does not require the receipt of the entire order containing price and payment terms. The only necessary information is delivery information - the product description, quantity, and delivery location. Because there are at least two reasonable interpretations, the terms in this context are ambiguous.

In another context the meaning becomes clearer. That context is the consummation statute in Tax Code, §321.203. Consider Tax Code, §321.203(d):

"(d) If the retailer has more than one place of business in this state and Subsections (c) and (c-1) do not apply, the sale is consummated at:

(1) the place of business of the retailer in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent or employee who took the order operates."

Assume a situation in which the retailer has multiple retail stores in Texas (more than one place of business in the state), but a customer calls in an order to a Texas sales office and the order is fulfilled from a location outside of Texas, so that Tax Code, §321.203(c) and (c-1) indisputably do not apply. Also assume that information from the order is forwarded to the retailer's executive office in Texas for approval, to the retailer's Texas credit office for a credit check, to the retailer's Texas manufacturing facility for assembly, to the retailer's Texas storage lot for bundled shipping to a fulfillment center, to the retailer's fulfillment center for fulfillment to the customer, to the retailer's Texas accounting office for billing, and to the retailer's Texas controller for collection on the account.

In the sense proposed by the CASTLE group, all these locations "received" the "order" to complete their assigned tasks. But this interpretation leads to absurd results. If the "order" was "received" at multiple locations, so that each location became a "place of business," it would be impossible to identify the particular location where the local tax should be sourced.

Furthermore, Tax Code, §321.203(d) refers to "*the* place of business ... where the order is received," indicating that there is a singular location where the order is received. The most reasonable singular location, and perhaps the only reasonable singular location, is where the information necessary to accept the order is initially received as provided in subsection (c)(7). In the example above, the location where the order is received would be the Texas sales office.

This example regarding Tax Code, §321.203(d) also illustrates the need for additional clarity. Subsection (b)(1)(A) explicitly provides that a fulfillment center is not a "place of business" simply because orders may be forwarded to the facility for fulfillment. But subsection (b)(1)(A) does not explicitly eliminate the possibility that other locations are "places of business," such as locations where orders are accepted or otherwise completed. New subsection (c)(7) explicitly eliminates those possibilities. There is a single location where an order is received - the initial location where all the information necessary for acceptance has been received. With this clarification, the consummation statute can be applied with greater certainty.

The CASTLE group commented: "For all practical purposes an order placed on a website is typically received at the same time at various locations, including fulfillment centers." However, for the practical purpose of sourcing local tax, there is a single location where a website order is initially received - the Web server. According to a report from the group's own expert, Amit Basu: "...the Buyer places the online order by communicating with a Web server that manages the Seller's Web site. ... The Web server transmits the order electronically to the Seller's e-Commerce software program."

Mr. Kroll commented that it may be impossible to determine the location of initial receipt: "Some companies will have multiple redundant server/data center operations spread across multiple geographic locations." The comptroller agrees. As pointed out in the 2020 rulemaking, a computer server may be situated on the seller's premises, it may be situated at a co-location facility operated by a third party, or it may be situated at a web hosting facility operated by a third party. The computer server may be one of multiple servers that serve the same website from different physical addresses as part of a cloud distribution network. The computer server may route the order to multiple other servers for load balancing purposes. Conversely, a single computer server may serve multiple websites. The seller may or may not know the physical address of the server receiving the order. But, if the seller does not know the physical location of the server, an ordinary person would not consider the physical location of the computer server to be a place of business of the seller. So, the best way to treat these orders consistently and coherently is to treat them uniformly as being received at locations that are not places of business of the seller. If a server is not a "place of business" of the seller, then the exact location of the server does not have to be determined because the location will not determine the sourcing of local sales tax.

The comptroller's construction of the statute is supported by statutory history. Prior to 1979, the consummation statute had no provision for sourcing to where an "order" was "received," and the statute provided:

"If the retailer has more than one place of business in the State, the place or places at which retail sales, leases, and rentals are consummated shall be the retailer's place or places where the purchaser or lessee takes possession and removes from the retailer's premises the articles of tangible personal property, or if the retailer delivers the tangible personal property to a point designated by the purchaser or lessee, then the sales, leases, or rentals are consummated at the retailer's place or places of business from which tangible personal property is delivered to the purchaser or lessee." Acts 1969, 61st Leg., 2nd C.S., Ch. 1. Art. 1 § 42.

In 1979, the Texas Legislature added a definition of "place of business of the retailer," which was previously undefined. The definition required that the location be operated "for the purpose of receiving orders." Acts 1979, 66th Legislature, Ch. 624, Art. 1, §3 (amended Article 1066c(B)(1)). The legislature also added a sourcing provision based on where the order is received, comparable to current Tax Code, §321.203(d):

"If neither possession of tangible personal property is taken at nor shipment or delivery of the tangible personal property is made from the retailer's place of business within this State, the sale, lease, or rental is consummated at the retailer's place of business within the State where the order is received or if the order is not received at a place of business of the retailer, at the place of business from which the retailer's salesman who took the order operates."

Acts 1979, 66th Legislature, Ch. 624, Art. 1, §3 (amended Article 1066c(B)(1)(c)). Like current Tax Code, §321.203(d), the legislature referred to "*the* place of business ... where the order is received," contemplating a single location, and not multiple locations. And like the current statute, the 1979 sourcing statute would be unworkable if an "order" could be "received" at multiple locations where order information might be sent for processing.

The 1979 amendments were originally set to expire on August 31, 1981. But, following an October 2, 1980, Interim Report of the House Ways and Means Committee, the legislature made the 1979 amendments permanent. Acts 1981, 67th Legislature, Ch. 838, §1.

Mr. Kroll commented that the comptroller "misremembers the legislative history." The comptroller disagrees. During the 1979 session of the legislature, a House Study Group analysis stated that the "bill is necessary to protect the state from possible consequences of the pending court suits." The analysis specifically referenced "Dunigan Tool and Supply v. Bullock" as one of those suits. The analysis is available at the Legislative Reference Library website at https://lrl.texas.gov/scanned/hroBillAnalyses/66-0/SB582.pdf.

In the *Dunigan* litigation, sales personnel took orders that were forwarded to pipe storage facilities where the orders were fulfilled. At the time of the 1979 legislation, the district court had ruled that the transactions should be sourced to the pipe storage facilities. *Bullock v. Dunigan Tool & Supply Co.,* 588 S.W.2d 633, 635 (Tex. Civ. App. - Austin, Sept. 6, 1979, writ ref'd n.r.e.). Therefore, when the 1979 House Study Group bill analysis stated that the bill was intended to protect the state from the consequences of the *Dunnigan* litigation, the analysis meant that the legislation was intended to reduce the circumstances in which transactions would be sourced to fulfillment warehouses, which at the time were often located in rural areas not subject to local sales tax. The legislature accomplished this objective by adding a definition of "place of business" that was limited to a location operated "for the purpose of receiving orders," and by adding a provision for sourcing transactions to where the order was received. Acts 1979, 66th Legislature, Ch. 624, Art. 1, §3.

Mr. Kasner commented that the proposed rule reverses the effect of the *Dunigan* decision. He is correct, because the rule attempts to follow the subsequent legislation, which was intended to reverse the effect of the *Dunigan* decision.

In the subsequent October 2, 1980, Interim Report of the House Ways and Means Committee, the committee considered whether to allow the recently adopted statutory definition of "place of business" to expire. The committee described the consequence: "The location of sale would no longer be tied to permitted outlets, salesmen's locations, or sales offices." Interim Report at 20. The committee understood that the phrase "operated for the purpose of receiving orders" meant sales activities and not ancillary activities necessary to subsequently effectuate the sale.

To be clear, under the 1979 legislation and today, a fulfillment warehouse could be and can be a "place of business." The legislature set a low threshold: "A warehouse, storage yard, or manufacturing plant may not be considered a 'place of business of the retailer' unless three or more orders are received by the retailer in a calendar year at such warehouse, storage yard, or manufacturing plant." Acts 1979, 66th Legislature, Ch. 624, Art. 1, §3. A typical warehouse, storage yard, or manufacturing plant would almost certainly process more than three orders in a calendar year. So, this explicit threshold requirement is an additional indication that the legislature did not intend for these facilities to automatically be "places of business" simply because they processed order information that was previously received at other locations. Instead, the legislature set a low threshold yet still expected these facilities to engage in at least some sales activities.

Mr. Gilmore commented: "This is a major revision to a state practice that has been in place for more than 50 years." The CASTLE group commented that the amendment is "inconsistent with his {the comptroller's} pre-2019 application of the statutory definition of 'place of business.'" The comptroller disagrees with these comments.

The comptroller's treatment of fulfillment warehouses goes as far back as Comptroller's Decision No. 15,654 (1985), which stated (emphasis added):

"But it seems to the administrative law judge that the legislature was amending the law if not entirely in reaction to the then-pending case of *Bullock v. Dunigan Tool & Supply Co.,* 588 S.W.2d 633 (Tex. Civ. App.-Texarkana, writ ref'd n.r.e.), at least partly in reaction to that case. And if that be so, then the legislature did not want warehousing and storage facilities (many of which are outside city limits) to be the places where sales were consummated for local sales tax purposes unless orders were actually received there by personnel working there, but wanted the office location out of which the *salesman* operated to be the place where the sales were consummated."

The CASTLE group commented: "The Comptroller misreads the decision." But the text speaks for itself and is an accurate quotation from the decision.

The 2014 version of §3.334 (39 TexReg 9597 at 9605) (STAR Accession No. 201501004R) also discussed fulfillment warehouses:

"(2) Distribution centers, manufacturing plants, storage yards, warehouses, and similar facilities.

(A) A distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller at which the seller receives three or more orders for taxable items during the calendar year is a place of business.

(B) If a salesperson who receives three or more orders for taxable items within a calendar year is assigned to work from, or to work at, a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the facility is a place of business.

(C) If a location that is a place of business of the seller, such as a sales office, is in the same building as a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the entire facility is a place of business of the seller."

If a distribution center was automatically a "place of business," as suggested by the CASTLE group, there would be no reason for subparagraph (C).

In 2016, STAR Accession No. 201606995L (June 1, 2016) also discussed fulfillment warehouses:

"The warehouse from which the person ships those items is not a place of business, unless the warehouse separately qualifies as a place of business."

And, in 2019, STAR Accession No. 201906015L (June 13, 2019) discussed fulfillment warehouses:

"Scenario One: Taxpayer Retailer operates fulfillment centers in Texas that are not open to the public. ... When an order is received at a location that is not a place or business and is fulfilled in Texas at a location that is not a place of business, the sale is consummated at the location in Texas to which the order is shipped. See Rule 3.334(h)(3)(D). For Scenario One, local sales and use tax is due based on the location where the order is delivered."

Again, a fulfillment warehouse is not automatically a place of business.

Each of these documents, which the comptroller indexed and made available for public inspection on the State Tax Automated Research (STAR) System, is consistent with the statement in the rule that the location from which a product is shipped shall not be used in determining the location where the order is received by the seller.

Commenters, including Representative Bumgarner (District 63), Mayor Gilmore (Lewisville), City Manager McPhee (Longview), Mayor Schroeder (Georgetown), Mayor Bristol (Prosper), City Manager Land (Coppell), Justyn Mejorado (Interim Director of Budget and Strategy - Budget for the City of Sugar Land), and Jack Newman (unknown city) expressed concern about revenue loss, particularly with regard to local sales taxes generated by fulfillment warehouses within their jurisdictions. Some requested more study. The comptroller received similar comments in the previous rulemaking. The comptroller's previous responses remain applicable.

Since 1985, the comptroller's interpretation has been that a fulfillment warehouse is not automatically a "place of business." To be a "place of business," the warehouse must receive at least three orders during the calendar year. A company that sources local sales tax to a warehouse location is representing to the comptroller that the warehouse is a "place of business" that has received three or more orders. The representation may or may not be correct. The comptroller does not know unless a misrepresentation is discovered during an audit. Without that knowledge, the comptroller cannot say whether the company would or would not change its reporting as a result of the rule's explicit statement of the comptroller's existing policy. An individual jurisdiction may be able to conduct a detailed study for companies in its jurisdiction to determine the effect. But the comptroller does not have the resources to conduct such a study for every reporting location in the state.

The clarifications in the adopted rule will likely cause some vendors to recognize their noncompliance and change their reporting methods, with some cities gaining and some losing. But the validity of the rule does not turn on whether there will or will not be revenue losses or gains to particular cities, the extent of such losses or gains, or whether the outcome is fair or unfair. The validity of the rule turns on whether it follows the statute.

Response to comments regarding use of language from the SSUTA.

Mr. Kroll commented: "The Texas Legislature, (the entity with constitutional responsibility for the state's Tax Policy), has had nine regular sessions to adopt the SSUTA's preferred origin sourcing model found in SSUTA 3.10.1. The Legislature has not acted, even in 2013 when then Senator Hegar was chairing the Senate Finance, Subcommittee on Fiscal Matters with Tax policy responsibility."

The CASTLE group similarly commented: "the Legislature, in general, rejected the Comptroller's efforts to become a member and be subject to the Agreement, and, more specifically, declined to adopt the language of 3.10.1 and change the definition of what is a 'place of business.'"

Mr. Land (Coppell) commented: "By not adopting the agreement, the legislature was rejecting the very language the Comptroller proposes to adopt..."

Mayor Hairston (Lancaster) commented: "Rule changes refer to the Streamline Sales and Use Tax Agreement. States participating in this agreement do not seem to have similar economic issues as the State of Texas. If the intent of the rule change is to position the state to participate in the Sales and Use Tax Agreement, further research is needed to better support the rationale for this action."

And, Mr. McPhee (Longview) commented: "This sentiment runs counter to the story of Texas. Yes, we should look to and learn from other states, but Texas should lead and not follow. We should not implement statewide policies because 'everyone else is doing it.'"

Mayor Bristol (Prosper) had similar comments.

Although the legislature declined to adopt the SSUTA, it would be an overstatement to suggest that the legislature specifically rejected the language of a single subsection of the SSUTA. As the CASTLE group points out in its comments: "Therefore, prior to December 31, 2007, the Legislature had to agree to the quoted 3.10.1 language, as a step in allowing Texas to be subject to the Agreement. But doing so would have required not only that the Legislature radically revise the statutory definition of "place of business" but make many other changes to the sections of the Tax Code addressing sales and use tax."

Texas has a unique, composite consummation statute, in which sales are sometimes sourced to where the order is received, sometimes sourced to where the order is fulfilled, and sometimes sourced to where the order is delivered. Adoption of the SSUTA would require fundamental changes to this composite consummation statute, which the comptroller is not advocating or promoting. However, there is one area of overlap. Both systems use the receipt of an order as a factor in sourcing. In this area of overlap, it is entirely appropriate to consider how the SSUTA does it.

The comptroller has considered the language in the SSUTA and concluded that it is a reasonable and practical method of determining where and when an order is received. And, the SSUTA language has the added benefit of being a concept that other states have acknowledged, and a concept with which many taxpayers will already be familiar.

Responses to other comments.

Mr. Butcher commented that the comptroller should provide that businesses with economic development agreements will be able to receive the benefits for their remaining terms. Mr. Bristol commented that the comptroller should provide rules to curb abusive economic development agreements while providing cities the abilities to provide for true economic development. The comptroller responds that the agency will not adopt any special provisions for economic development agreements in this rulemaking. The economic development statutes determine what is and is not allowable under such agreements, and the comptroller cannot by rule prevent revenue shifting that is permissible under the consumption statutes.

Mayor Hairston (Lancaster) commented that "the contemplated shift from origin-based to destination-based sales tax sourcing represents a significant alteration of existing law." The comptroller disagrees with this comment. There cannot be a wholesale shift because the consummation statutes have never been solely origin-based. From 1979 to the present, there have been four sourcing possibilities. Local taxes may be sourced to the point where the order was received, the point from which the order was

shipped or delivered, the point to which the order was shipped or delivered, or the first point in the state where the item is stored, used, or consumed. *See* Acts 1979, 66th Legislature, Ch. 624; Tax Code, §321.203 and §321.205. Even the expression "origin" sourcing is something of a misnomer, since local taxes have never been based on the point where a product was designed, developed, or manufactured.

With regard to the reference in subsection (c)(7) to "on behalf of the seller," Mr. Kasner commented that "a clear comparison/distinction needs to be provided on this term in light of TTC {Texas Tax Code} using the term 'agent.'" The comptroller responds that no additional rule text is needed. The local sales and use tax statute uses the term "agent" to determine whether a location is a "place of business" - a "place of business" must be a location "operated by the retailer or the retailer's *agent* or employee." However, under the statute, an order may be "received" at a location that is not a place of business. There is no requirement in subsection (c)(7), explicit or implied, that an order can only be received by the retailer, the retailer's agent, or the retailer's employee. The adopted paragraph simply references the location where the order is received "by or on behalf of the seller," and further states that it may be the location of a "seller or a third party." No agency is required and no comparison or distinction between the terms is needed.

Mr. Kasner commented that the definition of "'order received' needs to broaden to address orders received directly by the retailer, its employees, and/or its agents." The comptroller responds that the reference in subsection (c)(7) to an order received "*by* or on behalf of the seller" is sufficient to cover orders received directly by the retailer, its employees, and/or its agents.

Mr. Kasner commented that a definition of "automated order receipt system" needs to be provided, and asks whether the term is the same as a "computer server, Internet protocol address, domain name, website or software application." The comptroller responds that the term is not the same, and it is sufficiently specific without further definition. For example, a website may or may not be automated to receive orders, and an automated order system might be a telephonic system that does not use any of the listed items.

Mr. Kasner commented that the proposed definition needs to emphasize the "hierarchy of sales consummation." The comptroller responds that this hierarchy is already explained in the other paragraphs of subsection (c).

Mr. Kroll commented that "Destination sourcing ... is the Comptroller's preferred method of local sales tax sourcing." The comptroller disagrees with this comment. The comptroller's objective is to apply the statutes, and as previously stated, the statutes have four sourcing possibilities, only one of which is destination sourcing.

Mr. Listi (Belton) commented that new subsection (c)(7) adds another layer to the hierarchy of sale consummation. Mr. Listi further stated that subsection (c)(7) sources a sale to the location where the "order is initially received" and not "where the order may be subsequently accepted, completed, or fulfilled." The comptroller responds that subsection (c)(7) only determines where an order is received and does not determine where a sale is consummated. A sale may still be consummated at a location where the order is fulfilled.

Mr. McPhee (Longview) commented that a "similar issue" was considered by the 2021 legislature in House Bill 4072 and the 2023 legislature with House Bill 5089. The comptroller responds that these bills are dissimilar because they would have radically changed the consummation hierarchy. Subsection (c)(7) does not change the consummation hierarchy.

Mayor Schroeder (Georgetown) commented that the proposed rule change imposes an unnecessary burden on small businesses. The comptroller responds that subsection (c)(7) may reduce the burden on small businesses and other taxpayers by providing more definitive guidelines on when and where an order is received.

Mr. Sheets commented by resubmitting his prior comments made on Oct. 24, 2022. The comptroller responds that its previous responses remain responsive.

Implications for the pending litigation.

Representative Bumgarner commented that the proposed rule change should be paused indefinitely to allow the pending litigation to be fully litigated before attempting to make any additional changes to local sales tax sourcing. The comptroller responds that the rule amendment should facilitate the litigation by explicitly stating the comptroller's interpretation of the statute, enabling a more definitive ruling from the courts.

During the pendency of the lawsuit, the comptroller is temporarily enjoined from enforcing §3.334(b)(5). Subsection (b)(5) provides guidance on whether certain facilities are or are not "places of business." A fulfillment warehouse without sales personnel may be affected by subsection (b)(5). While the temporary injunction is in place, the agency will not attempt to reallocate local taxes allocated to such facilities based on subsection (b)(5).

New subsection (c)(7) provides guidance on a different issue - when and where an order is received. This issue affects the consummation of sales to locations other than fulfillment warehouses, as the preceding discussion regarding Tax Code, §321.203(d) illustrates. For example, is a sale consummated at the sales office that receives the order, or is the sale consummated at the home office that approves the order forwarded by the sales office? The comptroller is currently resolving issues like this example, and the rulemaking should not be delayed until the litigation is concluded.

Statements in support.

Ms. Boulware (Goliad) commented that the amendment would provide some clarity and stability to the local governmental institutions that received sales taxes, and Mr. Kovacs (Fate) commented that the amendment is consistent with earlier efforts to promote good governance and sound economic principles in the administration of sales tax.

The comptroller adopts the amendment under Tax Code, §§111.002 (Comptroller's Rule; Compliance; Forfeiture); 321.306 (Comptroller's Rules); 322.203 (Comptroller's Rules); 323.306 (Comptroller's Rules), which authorize the comptroller to adopt rules to implement the tax statutes.

The amendment to this section implements Tax Code, Chapter 321, Subchapters A, B, C, D, and F; Tax Code, Chapter 322; Tax Code, Chapter 323.

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 December 20, 2023.

TRD-202304936
Jenny Burleson
Director, Tax Policy Division
Comptroller of Public Accounts
Effective date: January 9, 2024
Proposal publication date: October 27, 2023
For further information, please call: (512) 475-2220

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION SUBCHAPTER N. REPORTING WORKPLACE VIOLENCE

40 TAC §800.600

The Texas Workforce Commission (TWC) adopts the following new subchapter to Chapter 800, relating to General Administration:

Subchapter N. Reporting Workplace Violence, §800.600

New Subchapter N Reporting Workplace Violence, §800.600, is adopted without changes to the proposal, as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6201), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 800 rule change is to establish rules as required by House Bill (HB) 915, 88th Texas Legislature, Regular Session (2023), which added Chapter 104A to the Texas Labor Code. HB 915 requires employers to post a notice to employees providing contact information so that employees can anonymously report their concerns regarding workplace violence or suspicious activities to the Texas Department of Public Safety.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER N. REPORTING WORKPLACE VIOLENCE

The Commission adopts new Subchapter N as follows:

New Subchapter N, regarding reporting workplace violence, provides rules regarding the form and content of a reporting workplace violence poster as required by HB 915 and Texas Labor Code Chapter 104A.

§800.600. Reporting Workplace Violence

New §800.600 prescribes the form and content of a reporting workplace violence poster as required by HB 915 and Texas Labor Code Chapter 104A.

TWC hereby certifies that the final rule has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period closed on November 20, 2023. No comments were received.

PART IV. STATUTORY AUTHORITY

The rule is adopted under Texas Labor Code §104A.003, as enacted by House Bill 915, 88th Texas Legislature, Regular Session (2023), which provides TWC authority to prescribe the form and content of the notice required under Texas Labor Code Chapter 104A.

The adopted rule affects Title 3, Texas Labor Code, particularly Chapter 104A.

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 December 19, 2023.

TRD-202304891
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: January 8, 2024
Proposal publication date: October 20, 2023
For further information, please call: (512) 850-8356

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Texas

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 1, Part 15, of the Texas Administrative Code:

Chapter 356, Medicaid and CHIP Electronic Health Information

Subchapter A Medicaid Electronic Health Record

Subchapter B Medicaid Electronic Health Record Incentive Payment Program

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 356, Medicaid and CHIP Electronic Health Information, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 356" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the chapter being reviewed will not be published, but may be found in Title 1, Part 15, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304950
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: December 21, 2023

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Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 117, End Stage Renal Disease Facilities

Subchapter A General Provisions

Subchapter B Application and Issuance of a License

Subchapter C Minimum Standards for Equipment, Water Treatment and Reuse, And Sanitary and Hygienic Conditions

Subchapter D Minimum Standards for Patient Care and Treatment

Subchapter E Dialysis Technicians

Subchapter F Corrective Action Plan and Enforcement

Subchapter G Fire Prevention and Safety Requirements

Subchapter H Physical Plant and Construction Requirements

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 117, End Stage Renal Disease Facilities, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 117" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304966
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: December 27, 2023

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The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 448, Standard of Care

Subchapter A Definitions

Subchapter B Standard of Care Applicable to All Providers

Subchapter D Facility Licensure Information

Subchapter E Facility Requirements

Subchapter F Personnel Practices and Development

Subchapter G Client Rights

Subchapter H Screening and Assessment

Subchapter I Treatment Program Services

Subchapter J Medication

Subchapter K Food and Nutrition

Subchapter L Residential Physical Plant Requirements

Subchapter M Court Commitment Services

Subchapter N Therapeutic Communities

Subchapter O Faith Based Chemical Dependency Programs

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 448, Standard of Care, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 448" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304954
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: December 21, 2023

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Department of Aging and Disability Services

Title 40, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 40, Part 1, of the Texas Administrative Code:

Chapter 40, Use of General Revenue for Services Exceeding the Individual Cost Limit of a Waiver Program

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 40, Use of General Revenue for Services Exceeding the Individual Cost Limit of a Waiver Program, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 40" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published, but may be found in Title 40, Part 1, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304949
Jessica Miller
Director, Rules Coordination Office
Department of Aging and Disability Services
Filed: December 21, 2023

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The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 40, Part 1, of the Texas Administrative Code:

Chapter 43, Service Responsibility Option

Subchapter A Introduction

Subchapter B Responsibilities of Individuals Choosing to Participate In The SRO

Subchapter C Responsibilities of An SRO Provider

Subchapter D Termination of the SRO

Subchapter E Support Consultation

Subchapter F Budget

Subchapter G Reporting Allegations

Subchapter H Oversight

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 43, Service Responsibility Option, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 43" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published, but may be found in Title 40, Part 1, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304948
Jessica Miller
Director, Rules Coordination Office
Department of Aging and Disability Services
Filed: December 21, 2023

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The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 40, Part 1, of the Texas Administrative Code:

Chapter 55, Contracting to Provide Home-Delivered Meals

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 55, Contracting to Provide Home-Delivered Meals may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 55" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published, but may be found in Title 40, Part 1, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304946
Jessica Miller
Director, Rules Coordination Office
Department of Aging and Disability Services
Filed: December 21, 2023

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The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 40, Part 1, of the Texas Administrative Code:

Chapter 60, Contracting to Provide Programs of All-Inclusive Care for the Elderly (PACE)

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 60, Contracting to Provide Programs of All-Inclusive Care for the Elderly (PACE), may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 60" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published, but may be found in Title 40, Part 1, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304947
Jessica Miller
Director, Rules Coordination Office
Department of Aging and Disability Services
Filed: December 21, 2023

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Adopted Rule Reviews

Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 104, Children Participating in Rodeos

Notice of the review of this chapter was published in the October 27, 2023, issue of the *Texas Register* (48 TexReg 6396). HHSC and DSHS received no comments concerning this chapter.

HHSC and DSHS have reviewed Chapter 104 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agencies determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 104. Any amendments or repeals to Chapter 104 identified by HHSC and DSHS in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's and DSHS' review of 25 TAC Chapter 104 as required by the Texas Government Code, §2001.039.

TRD-202304970
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: December 27, 2023

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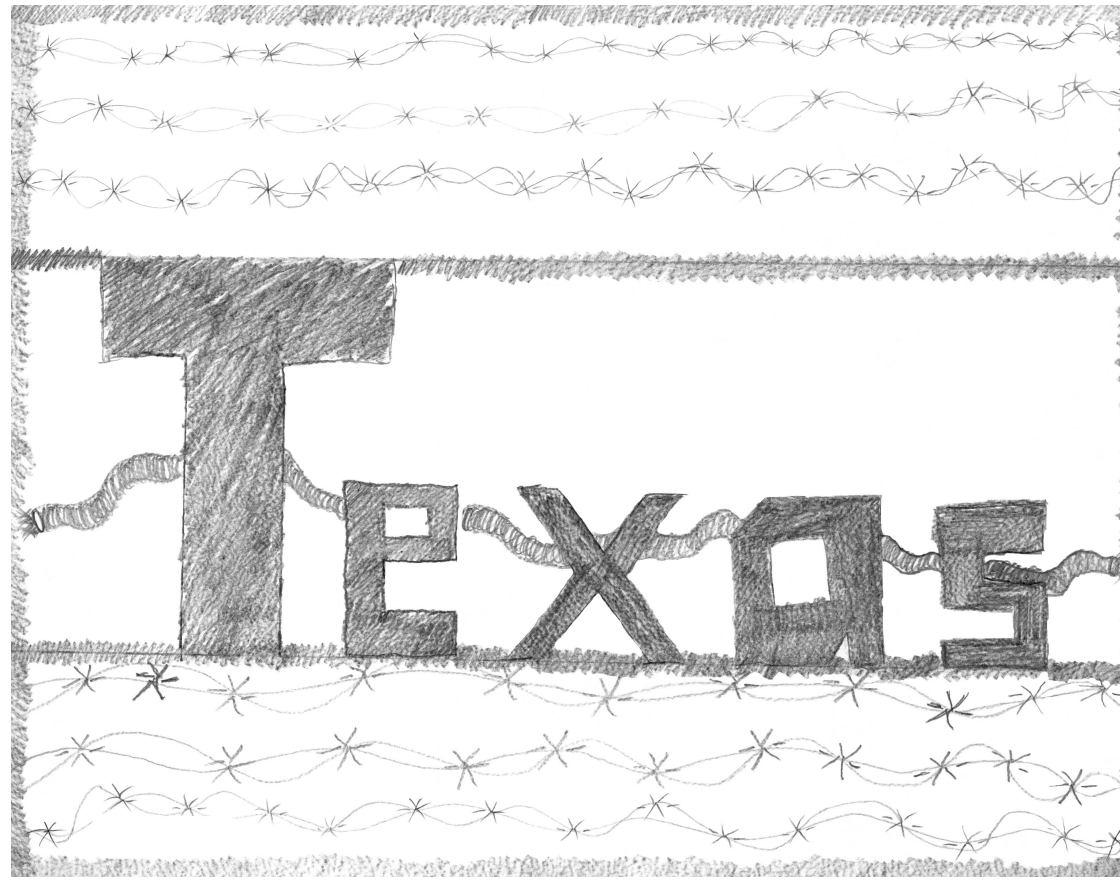
TEXAS

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/01/24 - 01/07/24 is 18.00% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/01/24 - 01/07/24 is 18.00% for commercial[2] credit.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-202304979
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 27, 2023

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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 **February 6, 2024.** 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 **February 6, 2024.** 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: Aqua Utilities, Incorporated; DOCKET NUMBER: 2023-0747-PWS-E; IDENTIFIER: RN102679321; LOCATION: Aledo, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system; PENALTY: $1,125; ENFORCEMENT COORDINATOR: Daphne Greene, (903) 335-5157; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Ball Metal Beverage Container Corporation; DOCKET NUMBER: 2023-0768-AIR-E; IDENTIFIER: RN100214881; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: aluminum beverage can production plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit Number O1131, General Terms and Conditions and Special Terms and Conditions Number 2.F., and Texas Health and Safety Code, §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; PENALTY: $287; ENFORCEMENT COORDINATOR: Karyn Olschesky, (817) 588-5896; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: BPX Operating Company; DOCKET NUMBER: 2023-0972-AIR-E; IDENTIFIER: RN107965535; LOCATION: Orla, Culberson County; TYPE OF FACILITY: oil and gas production facility; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 129697, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $3,938; ENFORCEMENT COORDINATOR: Karyn Olschesky, (817) 588-5896; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(4) COMPANY: Castillo and Torres Services, LLC dba D and N GROCERY; DOCKET NUMBER: 2022-0510-PST-E; IDENTIFIER: RN102257102; LOCATION: Tyler, Smith 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 release in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Lauren Little, (817) 588-5888; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: City of Blue Mound; DOCKET NUMBER: 2021-0436-WQ-E; IDENTIFIER: RN105497515; LOCATION: Blue Mound, Tarrant County; TYPE OF FACILITY: municipal separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge

stormwater under Texas Pollutant Discharge Elimination System (TPDES) General Permit for municipal separate storm sewer systems; and 30 TAC §305.125(1) and expired TPDES General Permit Number TXR040599, Part IV, Section B(2), by failing to submit concise annual reports to the Executive Director within 90 days of the end of each reporting year; PENALTY: $27,500; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Overton; DOCKET NUMBER: 2021-1054-MWD-E; IDENTIFIER: RN102096203; LOCATION: Overton, Rusk County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010242001, Permit Conditions Number 2(g), by failing to prevent an unauthorized discharge of untreated sewage into or adjacent to any water in the state; 30 TAC §305.125(1) and TPDES Permit Number WQ0010242001, Effluent Limitations and Monitoring Requirements Number 2, by failing to disinfect the effluent; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010242001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal; 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0010242001, Permit Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; and 30 TAC §317.6(e), by failing to equip doors with panic hardware; PENALTY: $66,875; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $66,875; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Goya C-Stores INCORPORATED dba Zip in Grocery; DOCKET NUMBER: 2022-1137-PST-E; IDENTIFIER: RN101881183; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE 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; PENALTY: $1,625; ENFORCEMENT COORDINATOR: Justin Prichard, (512) 239-2611; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: HALFMANN, CHARLES; DOCKET NUMBER: 2023-1712-WR-E; IDENTIFIER: RN111799003; LOCATION: Miles, Tom Green County; TYPE OF FACILITY: operator; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain authorization prior to diverting, storing, impounding, taking, or using state water, or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: $350; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(9) COMPANY: UNITED AGRICULTURAL COOPERATIVE, INCORPORATED dba United Ag General Store; DOCKET NUMBER: 2023-0823-PST-E; IDENTIFIER: RN104208673; LOCATION: El Campo, Wharton County; TYPE OF FACILITY: retail convenience facility; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (512) 239-1482; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Warren Independent School District; DOCKET NUMBER: 2021-1532-MWD-E; IDENTIFIER: RN101512044; LOCATION: Warren, Tyler County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011307001, Effluent Limitations and Monitoring Requirements Number 2, by failing to comply with the permitted effluent limitations; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0011307001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0011307001, 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 the noncompliance; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0011307001, Monitoring and Reporting Requirements Number 3.b, by failing to maintain monitoring and reporting records at the facility and make them readily available for review by a TCEQ representative for a period of three years; 30 TAC §305.125(1) and §317.7(i) and TPDES Permit Number WQ0011307001, Operational Requirements Number 1, by failing to provide atmospheric vacuum breakers on all potable water washdown hoses; 30 TAC §317.3(e)(5), by failing to provide an audiovisual alarm for all lift stations; and 30 TAC §305.125(1) and (5) and §317.4(a)(5) and TPDES Permit Number WQ0011307001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: $28,138; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $22,511; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202304971
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 22, 2023

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Notice of Correction to Agreed Order Number 7

In the November 24, 2023, issue of the *Texas Register* (48 TexReg 6932), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 7, for OLVERA REFORESTATION SERVICES LLC; Docket Number 2023-1554-WQ-E. The error is as submitted by the commission.

The reference to the Docket Number should be corrected to read: "2023-1554-WR-E."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202304972
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 22, 2023

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Notice of District Petition

Notice issued December 21, 2023

TCEQ Internal Control No. D-08232023-044; Circle S Midlothian, LLC, a Texas limited liability company and HAB 3336, LLC, a Texas limited liability company, ("Petitioners") filed a petition for creation of Circle S East Municipal Utility District of Ellis County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article III, Section 52 and Article XVI, Section 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 own a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Ag Texas Farm Credit Services, on the property to be included in the proposed District, and the aforementioned entity has consented to the creation of the District and inclusion of all of the land in the District; (3) the proposed District will contain approximately 649.96 acres of land, located entirely within Ellis County, Texas; (4) none of the land to be included in the proposed District is within the corporate limits of any municipality, but a portion of the land is in the extraterritorial jurisdiction of the City of Midlothian, Texas (City); and (5) although the City has not consented to creation of the District, the Petitioner has satisfied the requirements of Texas Water Code Section 54.016(b) and (c) and Texas Local Government Code Section 42.042, so that the authorization for inclusion of the land in the proposed District may be assumed pursuant to the cited statutes. The petition further states that the proposed District will: (1) construct, maintain and operate a waterworks system, including the purchase and sale of water, for domestic and commercial purposes, (2) construct, maintain and operate a sanitary sewer collection, treatment and disposal system, for domestic and commercial purposes, (3) construct, install, maintain, purchase and operate drainage and roadway facilities and improvements, and (4) construct, install, maintain, purchase and operate such additional facilities, systems, plants and enterprises of such facilities as shall be consonant with the purposes for which the 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, from the information available at this time, that the cost of said project will be approximately $103,000,000 ($75,000,000 for water, wastewater and drainage and $28,000,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202304985
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 27, 2023

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Notice of District Petition

Notice issued December 21, 2023

TCEQ Internal Control No. D-09262023-033; Lund Farm Investment LLC, a Texas limited liability company, ("Petitioner") filed a petition for creation of Lund Farm Municipal Utility District (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article III, Section 52 and Article XVI, Section 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 is the owner of a majority of the assessed value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 569.739 acres of land, located within Bastrop and Travis Counties, Texas; and (4) a portion of the land to be included in the proposed District is within the extraterritorial jurisdiction of the City of Elgin, Texas (City), and the City has consented to creation of and inclusion of the land within the District. By resolution No. 2023-08-15-55, passed and adopted on August 15, 2023, the City gave its consent to the creation of the proposed District, pursuant to Texas Water Code Chapter 54.016. The petition further states that the proposed District will purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment and appliances necessary to: (1) provide a water supply for municipal uses, domestic uses and commercial purposes; (2) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; (3) gather, conduct, divert and control local storm water or other local harmful excesses of water in the District and the payment of organization expenses, operational expenses during construction and interest during construction; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (5) provide such other facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is created and permitted under state law. According to the petition, a preliminary investigation has been made to determine the cost of purchasing and constructing the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately $64,870,000, including $42,100,000 for water, wastewater and drainage, $21,170,000 for roads, and $1,600,000 for recreational facilities.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202304987
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 27, 2023

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Notice of District Petition

Notice issued December 22, 2023

TCEQ Internal Control No. D-11012023-003; Flying Bar D Ranch, Ltd., a Texas limited partnership, (Petitioner) filed a petition for creation of Flying Bar D Municipal Utility District of Guadalupe 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 Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 312.602 acres located within Guadalupe County, Texas; and (4) all of the land to be included in the proposed District is within the extraterritorial jurisdiction of the City of Seguin.

By Resolution No. 23R-154, passed and approved on September 19, 2023, and effective September 20, 2023, the City of Seguin accepted the Petition for Release from the City's extraterritorial jurisdiction filed by the Petitioner for the land included in the proposed District. The proposed District is now located outside the corporate limits and extraterritorial jurisdiction of any city, town, or village. Therefore, city consent is not required. The petition further states that the proposed District will: (1) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial, or commercial purposes or provide adequate drainage for the proposed District; (2) collect, transport, process, dispose of and control domestic, industrial, or commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water in the proposed District; and (4) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. Additional works and services which may be performed by the proposed District include the purchase, construction, acquisition, provision, operation, maintenance, repair, improvement, extension and development of a roadway system for the proposed District. 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 $99,349,396 ($65,413,984 for water, wastewater, and drainage and $33,935,412 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202304988

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 27, 2023

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Notice of Water Quality Application

The following notices was issued on December 21, 2023:

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 FROM THE DATE THIS NOTICE IS ISSUED.

INFORMATION SECTION

Civitas at Crowley, LLC has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0016053001, to authorize to adjust the daily average flow not to exceed from 75,000 gallons per day (GPD) to 50,000 GPD in the Interim phase. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 GPD. The facility will be located approximately 2,395 feet north of the intersection of Floyd Hampton Road and Old Granbury Road (Farm-to-Market Road 1902), in Tarrant County, Texas 76036.

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 (10) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

INFORMATION SECTION

CEMEX Construction Materials South, LLC, which operates Balcones Cement Plant, a portland and masonry cement manufacturing facility, has applied for a minor modification to Texas Pollutant Discharge Elimination System Permit No. WQ0002179000 to add a stormwater pond in the facility. The draft permit authorizes the discharge of wash water (from plant process areas, truck wash areas at the plant and at the quarry, and the railcar loading area), utility wastewater (non-contact cooling water and cooling tower blowdown), previously monitored effluent (treated domestic wastewater via internal Outfall 101), and stormwater (from the plant, material and product storage areas, and the railcar loading area) on an intermittent and flow-variable basis via Outfall 001. The facility is located at 2580 Wald Road, near the City of New Braunfels, Comal County, Texas 78132. 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 FROM THE DATE THIS NOTICE IS ISSUED.

INFORMATION SECTION

Frito-Lay, Inc., which operates Frito-Lay Rosenberg Facility, a facility that produces snack food, including potato chips, corn chips, and tortilla chips, has applied for a major amendment of Texas Pollutant Discharge Elimination System Permit No. WQ0002443000 to Change sampling locations for Outfalls 003; merge effluent limits at Outfall 103 to Outfall 003 and then remove Outfall 103 in phase IV. The draft permit authorizes the discharge of process wastewater, stormwater runoff, and utility wastewater on an intermittent and flow-variable basis via Outfall 001; domestic wastewater at a daily average flow not to exceed 18,000 gallons per day (gpd) via Outfall 002; and process wastewater, stormwater runoff, and utility wastewater at a daily average flow not to exceed 1,100,000 gpd in phases I, II, III, and IV via Outfall 003. The facility is located at 3310 State Highway 36 North, near the City of Rosenberg, in Fort Bend County, Texas 77471.

TRD-202304986
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 27, 2023

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the second half of October 2023, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
AUSTIN	ICU MEDICAL INC	L06846	AUSTIN	03	10/18/23
AUSTIN	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS MEDICAL CENTER	L06335	AUSTIN	46	10/25/23
AUSTIN	ST DAVIDS HEART & VASCULAR PLLC	L04623	AUSTIN	106	10/25/23
BEAUMONT	TEXAS ONCOLOGY PA	L07192	BEAUMONT	01	10/31/23
BROWNSVILLE	JAIME L SILVA MD PA	L05245	BROWNSVILLE	12	10/30/23
BRYAN	ST JOSEPH REGIONAL HEALTH CENTER DBA CHI ST JOSEPH HEALTH REGIONAL HOSPITAL	L00573	BRYAN	89	10/18/23
COLLEGE STATION	SCOTT & WHITE HOSPITAL-COLLEGE STATION DBA BAYLOR SCOTT & WHITE MEDICAL CENTER-COLLEGE STATION	L06557	COLLEGE STATION	15	10/26/23
CYPRESS	HEART CARE CENTER OF NORTHWEST HOUSTON PA	L05539	HOUSTON	23	10/17/23
DALLAS	HEARTPLACE PLLC	L04607	DALLAS	79	10/27/23
DALLAS	CARDINAL HEALTH 414 LLC DBA CARDINAL NUCLEAR PHARMACY SERVICES	L02048	DALLAS	162	10/27/23
EL PASO	EL PASO CARDIOLOGY ASSOCIATES PA	L05162	EL PASO	21	10/17/23

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

EL PASO	TENET HOSPITALS LIMITED DBA THE HOSPITALS OF PROVIDENCE SIERRA CAMPUS	L02365	EL PASO	124	10/30/23
FLOWER MOUND	TEXAS HEALTH PHYSICIANS GROUP DBA TEXAS HEALTH HEART AND VASCULAR SPECIALISTS	L05507	FLOWER MOUND	31	10/17/23
FORT WORTH	LOCKHEED MARTIN CORPORATION	L05633	FORT WORTH	25	10/24/23
FORT WORTH	UNIVERSITY OF NORTH TEXAS HEALTH SCIENCE CENTER FORT WORTH	L02518	FORT WORTH	59	10/30/23
HOUSTON	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST WEST HOSPITAL	L06358	HOUSTON	18	10/30/23
HOUSTON	SPECTRACELL LABORATORIES INC	L04617	HOUSTON	23	10/27/23
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM	L03457	HOUSTON	79	10/24/23
HOUSTON	THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON	L02774	HOUSTON	84	10/23/23
HOUSTON	INSIGNIA TTG PARENT LLC	L05775	HOUSTON	120	10/24/23
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN NORTHEAST HOSPITAL	L02412	HOUSTON	153	10/24/23
HUMBLE	NORTH HOUSTON FAMILY MEDICINE PLLC	L05671	HUMBLE	14	10/23/23

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

HUMBLE	CARDIOVASCULAR ASSOCIATION PLLC	L05421	HUMBLE	36	10/23/23
LUBBOCK	METHODIST CHILDRENS HOSPITAL DBA JOE ARRINGTON CANCER CENTER	L06903	LUBBOCK	10	10/16/23
MCALLEN	COLUMBIA RIO GRANDE HEALTHCARE LP DBA RIO GRANDE REGIONAL HOSPITAL	L03288	MCALLEN	64	10/23/23
PAMPA	PRIME HEALTHCARE SERVICES – PAMPA LLC DBA PAMPA REGIONAL MEDICAL CENTER	L06510	PAMPA	07	10/17/23
PASADENA	BAYPORT POLYMERS LLC	L06922	PASADENA	15	10/16/23
SAN ANTONIO	RLS (USA) INC	L04764	SAN ANTONIO	61	10/30/23
SAN ANTONIO	VHS SAN ANTONIO PARTNERS LLC DBA BAPTIST HEALTH SYSTEM	L00455	SAN ANTONIO	273	10/30/23
STAFFORD	ALOKI ENTERPRISE INC	L06257	STAFFORD	64	10/20/23
SUGAR LAND	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST SUGAR LAND HOSPITAL	L05788	SUGAR LAND	57	10/30/23
THE WOODLANDS	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST THE WOODLANDS HOSPITAL	L06861	THE WOODLANDS	19	10/30/23
THROUGHOUT TX	HALLIBURTON ENERGY SERVICES INC	L03284	ALVARADO	47	10/31/23

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

THROUGHOUT TX	PROFESSIONAL SERVICE INDUSTRIES INC	L04940	DALLAS	25	10/27/23
THROUGHOUT TX	GEOTEX ENGINEERING LLC	L06677	DENTON	27	10/16/23
THROUGHOUT TX	PROBE TECHNOLOGY SERVICES INC	L05112	FORT WORTH	42	10/31/23
THROUGHOUT TX	PROFESSIONAL SERVICE INDUSTRIES INC	L00931	FORT WORTH	127	10/19/23
THROUGHOUT TX	NATIONAL OILWELL VARCO LP	L00287	HOUSTON	166	10/16/23
THROUGHOUT TX	CARDINAL HEALTH 414 LLC DBA CARDINAL HEALTH NUCLEAR PHARMACY SERVICES	L01911	HOUSTON	172	10/17/23
THROUGHOUT TX	K ALLRED OILFIELD SERVICES LLC	L07178	MIDLAND	02	10/20/23
THROUGHOUT TX	K ALLRED OILFIELD SERVICES LLC	L07178	MIDLAND	03	10/20/23
THROUGHOUT TX	B2Z ENGINEERING	L06996	MISSION	08	10/27/23
THROUGHOUT TX	TURNER SPECIALTY SERVICES LLC	L05417	NEDERLAND	58	10/24/23
THROUGHOUT TX	TIER 1 INTEGRITY LLC	L06718	PASADENA	25	10/18/23
THROUGHOUT TX	GCT INSPECTION INC	L02378	PASADENA	115	10/23/23
TYLER	THE UNIVERSITY OF TEXAS HEALTH CENTER AT TYLER	L01796	TYLER	82	10/27/23
WEBSTER	BAY AREA HEART PLLC	L07165	WEBSTER	02	10/24/23

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
ALBANY	ANDERSON PERFORATION SERICES LLC	L06587	ALBANY	11	10/24/23
CLEVELAND	GARNEPUDI V PRASAD MD PA	L05629	CLEVELAND	04	10/31/23
DALLAS	THE CENTER FOR MOLECULAR IMAGING LP DBA SOUTHWEST DIAGNOSTIC CENTER FOR MOLECULAR IMAGING	L05715	DALLAS	16	10/20/23
FORT WORTH	BAYLOR ALL SAINTS MEDICAL CENTER	L02212	FORT WORTH	121	10/30/23
LUFKIN	PINEY WOODS HEALTHCARE SYSTEM LP DBA WOODLAND HEIGHTS MEDICAL CENTER	L01842	LUFKIN	72	10/20/23
TYLER	THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT TYLER	L04117	TYLER	71	10/30/23

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
PAMPA	LAXMICHAND KAMNANI	L05273	PAMPA	08	10/17/23
RICHARDSON	ONCARE DIGITAL ASSETS INC	L07001	RICHARDSON	02	10/17/23

TRD-202304973

Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: December 27, 2023

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Licensing Actions for Radioactive Materials

During the first half of November 2023, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

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A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
AMARILLO	TEXAS ONCOLOGY PA	L06149	AMARILLO	12	11/01/23
AUSTIN	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS MEDICAL CENTER	L06335	AUSTIN	47	11/03/23
AUSTIN	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA DAVIDS SOUTH AUSTIN MEDICAL CENTER	L03273	AUSTIN	129	11/06/23
BAYTOWN	COVESTRO LLC	L01577	BAYTOWN	75	11/03/23
CYPRESS	KPH CONSOLIDATION INC DBA HCA HOUSTON HEALTHCARE NORTH CYPRESS	L06988	CYPRESS	09	11/13/23
DALLAS	SOUTHERN METHODIST UNIVERSITY	L00443	DALLAS	32	11/14/23
DENISON	UHS OF TEXOMA INC DBA TEXOMA MEDICAL CENTER	L01624	DENISON	74	11/10/23
DENTON	TEXAS ONCOLOGY PA	L05815	DENTON	24	11/06/23
DESOTO	DIAB AMERICAS LP	L06208	DESOTO	07	11/14/23
EL CAMPO	EL CAMPO MEMORIAL HOSPITAL	L02664	EL CAMPO	22	11/13/23
HARLINGEN	THE UNIVERSITY OF TEXAS RIO GRANDE VALLEY	L06754	HARLINGEN	10	11/07/23

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

HOUSTON	ABDUL ALI MD PA	L06842	HOUSTON	04	11/08/23
HOUSTON	JUBILANT DRAXIMAGE INC DBA JUBILANT RADIOPHARMA	L06944	HOUSTON	11	11/13/23
HOUSTON	RLS (USA) INC	L05517	HOUSTON	34	11/10/23
HOUSTON	TEXAS CHILDRENS HOSPITAL	L04612	HOUSTON	80	11/03/23
HOUSTON	HALLIBURTON ENERGY SERVICES INC	L00442	HOUSTON	149	11/13/23
HOUSTON	AMERICAN DIAGNOSTIC TECH LLC	L05514	HOUSTON	165	11/14/23
NEDERLAND	MURLIDHAR A AMIN MD PA	L05735	NEDERLAND	09	11/14/23
PASADENA	AFTON CHEMICAL CORPORATION	L06740	PASADENA	07	11/01/23
RICHARDSON	METHODIST HOSPITALS OF DALLAS DBA METHODIST RICHARDSON MEDICAL CENTER	L06474	RICHARDSON	15	11/08/23
RICHARDSON	THE UNIVERSITY OF TEXAS AT DALLAS	L02114	RICHARDSON	72	11/13/23
SAN ANTONIO	JAWAD Z SHEIKH MD	L06668	SAN ANTONIO	04	11/08/23
THROUGHOUT TX	CMT ASSOCIATES LLC	L06945	ARGYLE	04	11/03/23
THROUGHOUT TX	ALLIANCE GEOTECHNICAL GROUP INC	L05314	DALLAS	54	11/08/23
THROUGHOUT TX	THE UNIVERSITY OF TEXAS AT EL PASO	L00159	EL PASO	78	11/01/23
THROUGHOUT TX	NATIONAL INSPECTION SERVICES LLC	L05930	FORT WORTH	53	11/03/23
THROUGHOUT TX	DESERT NDT LLC	L06462	FORT WORTH	60	11/03/23

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

THROUGHOUT TX	THE UNIVERSITY OF TEXAS MEDICAL BRANCH OFFICE OF ENVIRONMENTAL HEALTH AND SAFETY	L01299	GALVESTON	121	11/07/23
THROUGHOUT TX	WSSM INC	L07035	KATY	07	11/01/23
THROUGHOUT TX	ARCTIC TESTING AND INSPECTION LLC	L07065	LA PORTE	07	11/08/23
THROUGHOUT TX	MISTRAS GROUP INC	L06369	LA PORTE	38	11/07/23
THROUGHOUT TX	ASSOCIATED TESTING LABORATORIES INC	L01553	SUGAR LAND	39	11/02/23
THROUGHOUT TX	ECOSERV ENVIRONMENTAL SERVICES LLC	L04999	WINNIE	22	11/08/23
THROUGOUT TX	INSPECTION ASSOCIATES INC	L06601	CYOPRESS	23	11/14/23
THROUGOUT TX	ACUREN INSPECTION INC DBA PREMIUM INSPECTION AND TESTING INC DBA VERSA INTEGRITY GROUP INC DBA CAPITAL ULTRASONIC LLC	L01774	LA PORTE	318	11/13/23
THROUGOUT TX	PRO INSPECTION INC	L06666	ODESSA	19	11/14/23
TYLER	ALLENS NUTECH INC	L04274	TYLER	106	11/03/23

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
COLLEGE STATION	TEXAS A&M UNIVERSITY ENVIRONMENTAL HEALTH AND SAFETY	L06561	COLLEGE STATION	09	11/01/23
EL PASO	BHS PHYSICIANS NETWORK INC DBA CENTER OF THE HEART – A PROVIDENCE MEDICAL PARTNERS PRACTICE	L05695	EL PASO	12	11/03/23
HOUSTON	PETNET HOUSTON LLC	L05542	HOUSTON	42	11/13/23
PASADENA	CHEVRON PHILLIPS CHEMICAL COMPANY LP	L00230	PASADENA	98	11/07/23
SAN ANTONIO	SAN ANTONIO ENDOVASCULAR AND HEART INSTITUTE	L05766	SAN ANTONIO	13	11/01/23
SAN ANTONIO	PETNET SOLUTIONS INC	L05569	SAN ANTONIO	40	11/08/23

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
HARKER HEIGHTS	PROFESSIONAL SERVICE INDUSTRIES INC	L06169	HARKER HEIGHTS	13	11/10/23

TRD-202304974
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: December 27, 2023

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Licensing Actions for Radioactive Materials

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NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
GALVESTON	GALVESTON COLLEGE GALVESTON COLLEGE NUCLEAR MEDICINE PROGRAM	L07202	GALVESTON	00	11/27/23
THROUGHOUT TX	1836 ENGINEERING LLC	L07201	FORT WORTH	00	11/27/23

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
ARLINGTON	THE UNIVERSITY OF TEXAS AT ARLINGTON	L00248	ARLINGTON	64	11/21/23
AUSTIN	AUSTIN RADIOLOGICAL ASSOCIATION	L00545	AUSTIN	249	11/27/23
BAYTOWN	EXXON MOBIL CORPORATION DBA EXXONMOBIL CHEMICAL COMPANY	L01135	BAYTOWN	95	11/30/23
BEDFORD	TEXAS ONCOLOGY PA	L05545	BEDFORD	80	11/21/23
COLLEGE STATION	TEXAS A&M UNIVERSITY	L00448	COLLEGE STATION	162	11/29/23
CONROE	ADNAN AFZAL MD PA	L06071	CONROE	17	11/22/23
DALLAS	PETNET SOLUTIONS INC	L05193	DALLAS	65	11/22/23
DALLAS	TEXAS ONCOLOGY PA DBA SAMMONS CANCER CENTER	L04878	DALLAS	74	11/22/23

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

DALLAS	THE UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER AT DALLAS	L00384	DALLAS	140	11/20/23
DALLAS	METHODIST HOSPITALS OF DALLAS	L00659	DALLAS	152	11/22/23
DENTON	UNIVERSITY OF NORTH TEXAS	L00101	DENTON	119	11/27/23
HOUSTON	SPECTRACELL LABORATORIES INC	L04617	HOUSTON	24	11/22/23
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM MEMORIAL HERMANN TEXAS MEDICAL CENTER	L04655	HOUSTON	60	11/20/23
HOUSTON	THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER	L00466	HOUSTON	188	11/27/23
HUMBLE	MADAIAH REVANA MD PA	L03263	HUMBLE	13	11/22/23
LEWISVILLE	COLUMBIA MEDICAL CENTER OF LEWISVILLE SUBSIDIARY LP	L02739	LEWIVILLE	88	11/15/23
LUBBOCK	ISORX TEXAS LTD	L05284	LUBBOCK	42	11/21/23
MIDLAND	EUROFINS ENVIRONMENT TESTING SOUTH CENTRAL LLC	L05499	MIDLAND	18	11/28/23
PASADENA	PASADENA REFINING SYSTEM INC	L01344	PASADENA	44	11/22/23
POINT COMFORT	FORMOSA PLASTICS CORPORATION TEXAS	L03893	POINT COMFORT	64	11/27/23
SAN ANGELO	SHANNON MEDICAL CENTER	L02174	SAN ANGELO	84	11/27/23

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

SAN ANTONIO	THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO	L01279	SAN ANTONIO	180	11/29/23
SUGAR LAND	TMH PHYSICIAN ORGANIZATION METHODIST SUGAR LAND CARDIOLOGY ASSOCIATES	L06575	SUGAR LAND	03	11/17/23
SUGAR LAND	E+ PET IMAGING XI LP	L05858	SUGAR LAND	11	11/29/23
THE WOODLANDS	BAYLOR ST LUKES MEDICAL GROUP	L06875	THE WOODLANDS	08	11/21/23
THROUGHOUT TX	MES PARTNERS INC	L07029	CORPUS CHRISTI	01	11/30/23
THROUGHOUT TX	ECS SOUTHWEST LLP	L06693	HOUSTON	11	11/20/23
THROUGHOUT TX	TERRACON CONSULTANTS INC	L05268	HOUSTON	75	11/30/23
THROUGHOUT TX	SIVALLS INC	L02298	ODESSA	43	11/16/23
THROUGHOUT TX	TECHCORR USA MANAGEMENT LLC	L05972	PASADENA	135	11/20/23
THROUGHOUT TX	INSIGHT NDE INC	L06817	PORT LAVACA	09	11/22/23
WICHITA FALLS	UNITED REGIONAL HEALTH CARE SYSTEM INC	L00350	WICHITA FALLS	129	11/27/23

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
CONROE	SHASHI S BELLUR MD PA	L05728	CONROE	11	11/21/23
HOUSTON	HALCO LIGHTING TECHNOLOGIES LLC	L06625	HOUSTON	03	11/28/23

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
HOUSTON	CARDIOLOGISTS OF HOUSTON PA	L05500	HOUSTON	12	11/22/23
IRVING	ABBOTT LABORATORIES	L04841	IRVING	18	11/29/23
THROUGHOUT TX	INTEGRITY TESTING & INSPECTIONS INC	L06027	DEER PARK	14	11/22/23
WEBSTER	ANGELCARE IMAGING LLC	L07042	WEBSTER	01	11/29/23

TRD-202304976
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: December 27, 2023

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Bridgefield Indemnity Insurance Company, a foreign fire and/or casualty company. The home office is in Cincinnati, Ohio.

Application for incorporation in the state of Texas for Texicare Health Insurance Company, a domestic life, accident and/or health insurance company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202304967
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: December 22, 2023

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Correction of Error

The Texas Department of Insurance (TDI) proposed amendments to 28 TAC §§3.3038, 3.3702 - 3.3705, 3.3707 - 3.3711, 3.3720, 3.3722 and 3.3723, new 28 TAC §3.3712 and §3.3713 as well as the repeal of 28 TAC §3.3725 in the December 8, 2023, issue of the *Texas Register* (48 TexReg 7130). Due to an error by TDI, the proposal included an incorrect date for the public hearing to be held regarding the proposal. The correct information is as follows:

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2842 at 2:30 p.m., central time, on January 10, 2024, in Room 2.035 of the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701.

TRD-202304983
Jessica Barta
General Counsel
Texas Department of Insurance
Filed: December 27, 2023

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Texas Lottery Commission

Correction of Error

The Texas Lottery Commission (Commission) published notice of Scratch Ticket Game Number 2563 "MEGA LOTERIA" in the December 22, 2023, issue of the *Texas Register* (48 TexReg 8048). Due to an error by the Commission, Table 1 included in the notice was incorrect. The correct table is as follows:

Figure 1: GAME NO. 2563 - 1.2D

PLAY SYMBOL	CAPTION
ARMADILLO SYMBOL	ARMADILLO
BAT SYMBOL	BAT
BICYCLE SYMBOL	BICYCLE
BLUEBONNET SYMBOL	BLUEBONNET
BOAR SYMBOL	BOAR
BUTTERFLY SYMBOL	BUTTERFLY
CACTUS SYMBOL	CACTUS
CARDINAL SYMBOL	CARDINAL
CHERRIES SYMBOL	CHERRIES
CHILE PEPPER SYMBOL	CHILE PEPPER
CORN SYMBOL	CORN
COVERED WAGON SYMBOL	COVERED WAGON
COW SYMBOL	COW
COWBOY SYMBOL	COWBOY
COWBOY HAT SYMBOL	COWBOY HAT
DESERT SYMBOL	DESERT
FIRE SYMBOL	FIRE
FOOTBALL SYMBOL	FOOTBALL
GEM SYMBOL	GEM
GUITAR SYMBOL	GUITAR
HEN SYMBOL	HEN
HORSE SYMBOL	HORSE
HORSESHOE SYMBOL	HORSESHOE
JACKRABBIT SYMBOL	JACKRABBIT
LIZARD SYMBOL	LIZARD
LONE STAR SYMBOL	LONE STAR
MARACAS SYMBOL	MARACAS
MOCKINGBIRD SYMBOL	MOCKINGBIRD
MOONRISE SYMBOL	MOONRISE
MORTAR PESTLE SYMBOL	MORTAR PESTLE
NEWSPAPER SYMBOL	NEWSPAPER
OIL RIG SYMBOL	OIL RIG

PECAN TREE SYMBOL	PECAN TREE
PIÑATA SYMBOL	PIÑATA
RACE CAR SYMBOL	RACE CAR
RATTLESNAKE SYMBOL	RATTLESNAKE
ROADRUNNER SYMBOL	ROADRUNNER
SADDLE SYMBOL	SADDLE
SHIP SYMBOL	SHIP
SHOES SYMBOL	SHOES
SOCCER BALL SYMBOL	SOCCER BALL
SPEAR SYMBOL	SPEAR
SPUR SYMBOL	SPUR
STRAWBERRY SYMBOL	STRAWBERRY
SUNSET SYMBOL	SUNSET
WHEEL SYMBOL	WHEEL
WINDMILL SYMBOL	WINDMILL
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$5,000	FVTH

TRD-202304978
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 27, 2023

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Scratch Ticket Game Number 2518 "500X LOTERIA SPECTACULAR"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2518 is "500X LOTERIA SPECTACULAR". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2518 shall be $50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2518.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: AIRPLANE SYMBOL, ARMORED CAR SYMBOL, BANK SYMBOL, BIRD SYMBOL, CARD SYMBOL, COINS SYMBOL, CROWN SYMBOL, FLAG SYMBOL, GOLD BAR SYMBOL, HEART SYMBOL, KEY SYMBOL, LAMP SYMBOL, LEMON SYMBOL, MOON SYMBOL, RAINBOW SYMBOL, RING SYMBOL, SEVEN SYMBOL, SPADE SYMBOL, SUN SYMBOL, WISHBONE SYMBOL, ARMADILLO SYMBOL, BAT SYMBOL, BICYCLE SYMBOL, BLUEBONNET SYMBOL, BOAR SYMBOL, BUTTERFLY SYMBOL, CACTUS SYMBOL, CARDINAL SYMBOL, CHERRIES SYMBOL, CHILE PEPPER SYMBOL, CORN SYMBOL, COVERED WAGON SYMBOL, COW SYMBOL, COWBOY HAT SYMBOL, COWBOY SYMBOL, DESERT SYMBOL, FIRE SYMBOL, FOOTBALL SYMBOL, GEM SYMBOL, GUITAR SYMBOL, HEN SYMBOL, HORSE SYMBOL, HORSESHOE SYMBOL, JACKRABBIT SYMBOL, LIZARD SYMBOL, LONE STAR SYMBOL, MARACAS SYMBOL, MOCKINGBIRD SYMBOL, MOONRISE SYMBOL, MORTAR PESTLE SYMBOL, NEWSPAPER SYMBOL, OIL RIG SYMBOL, PECAN TREE SYMBOL, PIÑATA SYMBOL, RACE CAR SYMBOL, RATTLESNAKE SYMBOL, ROADRUNNER SYMBOL, SADDLE SYMBOL, SHIP SYMBOL, SHOES SYMBOL, SOCCER BALL SYMBOL, SPEAR SYMBOL, SPUR SYMBOL, STRAWBERRY SYMBOL, SUNSET SYMBOL, WHEEL SYMBOL, WINDMILL SYMBOL, BAR SYMBOL, BELL SYMBOL, BILL SYMBOL, CAMERA SYMBOL, CANDY SYMBOL, CHERRY SYMBOL, CHEST SYMBOL, CLOVER SYMBOL, DICE SYMBOL, DOLLAR SIGN SYMBOL, DRUM SYMBOL, GEM SYMBOL, GIFT SYMBOL, MELON SYMBOL, NECKLACE SYMBOL, PEARL SYMBOL, SHELL SYMBOL, STAR SYMBOL, VAULT SYMBOL, WATER BOTTLE SYMBOL, $50.00, $75.00, $100, $150, $200, $250, $500, $1,000, $5,000, $25,000 and $3,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2518 - 1.2D

PLAY SYMBOL	CAPTION
AIRPLANE SYMBOL	AIRPLANE
ARMORED CAR SYMBOL	ARMCAR
BANK SYMBOL	BANK
BIRD SYMBOL	BIRD
CARD SYMBOL	CARD
COINS SYMBOL	COINS
CROWN SYMBOL	CROWN
FLAG SYMBOL	FLAG
GOLD BAR SYMBOL	GOLDBAR
HEART SYMBOL	HEART
KEY SYMBOL	KEY
LAMP SYMBOL	LAMP
LEMON SYMBOL	LEMON
MOON SYMBOL	MOON
RAINBOW SYMBOL	RAINBOW
RING SYMBOL	RING
SEVEN SYMBOL	SEVEN
SPADE SYMBOL	SPADE
SUN SYMBOL	SUN
WISHBONE SYMBOL	WISHBONE
ARMADILLO SYMBOL	ARMADILLO
BAT SYMBOL	BAT
BICYCLE SYMBOL	BICYCLE
BLUEBONNET SYMBOL	BLUEBONNET
BOAR SYMBOL	BOAR
BUTTERFLY SYMBOL	BUTTERFLY
CACTUS SYMBOL	CACTUS

CARDINAL SYMBOL	CARDINAL
CHERRIES SYMBOL	CHERRIES
CHILE PEPPER SYMBOL	CHILE PEPPER
CORN SYMBOL	CORN
COVERED WAGON SYMBOL	COVERED WAGON
COW SYMBOL	COW
COWBOY HAT SYMBOL	COWBOY HAT
COWBOY SYMBOL	COWBOY
DESERT SYMBOL	DESERT
FIRE SYMBOL	FIRE
FOOTBALL SYMBOL	FOOTBALL
GEM SYMBOL	GEM
GUITAR SYMBOL	GUITAR
HEN SYMBOL	HEN
TH HORSE SYMBOL	HORSE
HORSESHOE SYMBOL	HORSESHOE
JACKRABBIT SYMBOL	JACKRABBIT
LIZARD SYMBOL	LIZARD
LONE STAR SYMBOL	LONE STAR
MARACAS SYMBOL	MARACAS
MOCKINGBIRD SYMBOL	MOCKINGBIRD
MOONRISE SYMBOL	MOONRISE
MORTAR PESTLE SYMBOL	MORTAR PESTLE
NEWSPAPER SYMBOL	NEWSPAPER
OIL RIG SYMBOL	OIL RIG
PECAN TREE SYMBOL	PECAN TREE
PIÑATA SYMBOL	PIÑATA
RACE CAR SYMBOL	RACE CAR
RATTLESNAKE SYMBOL	RATTLESNAKE

ROADRUNNER SYMBOL	ROADRUNNER
SADDLE SYMBOL	SADDLE
SHIP SYMBOL	SHIP
SHOES SYMBOL	SHOES
SOCCER BALL SYMBOL	SOCCER BALL
SPEAR SYMBOL	SPEAR
SPUR SYMBOL	SPUR
STRAWBERRY SYMBOL	STRAWBERRY
SUNSET SYMBOL	SUNSET
WHEEL SYMBOL	WHEEL
WINDMILL SYMBOL	WINDMILL
BAR SYMBOL	BAR
BELL SYMBOL	BELL
BILL SYMBOL	BILL
CAMERA SYMBOL	CAMERA
CANDY SYMBOL	CANDY
CHERRY SYMBOL	CHERRY
CHEST SYMBOL	CHEST
CLOVER SYMBOL	CLOVER
DICE SYMBOL	DICE
DOLLAR SIGN SYMBOL	DOLLAR
DRUM SYMBOL	DRUM
GEM SYMBOL	GEM
GIFT SYMBOL	GIFT
MELON SYMBOL	MELON
NECKLACE SYMBOL	NECKLACE
PEARL SYMBOL	PEARL
SHELL SYMBOL	SHELL
STAR SYMBOL	STAR

VAULT SYMBOL	VAULT
WATER BOTTLE SYMBOL	WATER
$50.00	FFTY$
$75.00	SVFV$
$100	ONHN
$150	ONFF
$200	TOHN
$250	TOFF
$500	FVHN
$1,000	ONTH
$5,000	FVTH
$25,000	25TH
$3,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2518), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2518-0000001-001.

H. Pack - A Pack of the "500X LOTERIA SPECTACULAR" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 020 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "500X LOTERIA SPECTACULAR" Scratch Ticket Game No. 2518.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly eighty-five (85) Play Symbols. A prize winner in the "500X LOTERIA SPECTACULAR" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: PLAY AREA 1 INSTRUCTIONS (BONUS): If the player reveals 2 matching symbols in the BONUS $100, the player wins $100. If the player reveals 2 matching symbols in the BONUS $200, the player wins $200. If the player reveals 2 matching symbols in the BONUS $500, the player wins $500. If the player reveals 2 matching symbols in the BONUS $1,000, the player wins $1,000. PLAY AREA 2 INSTRUCTIONS (PLAYBOARD): (1) The player completely scratches the CALLER'S CARD to reveal 27 symbols. (2) The player scratches ONLY the symbols on the PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. (3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. PLAY AREA 3 INSTRUCTIONS (GAMES 1 - 8): The player scratches ONLY the symbols on GAMES 1 - 8 that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 2 symbols in the same GAME, the player wins the PRIZE for that GAME. PLAY AREA 4 INSTRUCTIONS (2X, 5X, 10X, 50X, 500X MULTIPLIER): The player scratches the 2X, 5X, 10X, 50X and 500X MULTIPLIER boxes to reveal 2 symbols in each box. If the player reveals 2 matching symbols in the same MULTIPLIER box, the player multiplies the total prize won on the ticket by that MULTIPLIER and wins that amount. For example, revealing 2 "STAR" Play Symbols in the 10X MULTIPLIER box will multiply the total prize won by 10 TIMES. INSTRUCCIONES PARA ÁREA DE JUEGO 1 (BONO): Si el jugador revela 2 símbolos iguales en el área de BONO $100, el jugador gana $100. Si el jugador revela 2 símbolos iguales en el área de BONO $200, el jugador gana $200. Si el jugador revela 2 símbolos iguales en el área de BONO $500, el jugador gana $500. Si el jugador revela 2 símbolos iguales en el área de BONO $1,000, el jugador gana $1,000. INSTRUCCIONES PARA ÁREA DE JUEGO 2

(TABLA DE JUEGO): (1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 27 símbolos. (2) El jugador SOLAMENTE raspa los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. (3) Si el jugador revela una línea completa, horizontal, vertical o diagonal, el jugador gana el premio para esa línea. INSTRUCCIONES PARA ÁREA DE JUEGO 3 (JUEGOS 1 - 8): El jugador SOLAMENTE raspa los símbolos en los JUEGOS 1 - 8 que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 2 símbolos en el mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. INSTRUCCIONES PARA ÁREA DE JUEGO 4 (MULTIPLICADOR 2X, 5X, 10X, 50X, 500X): El jugador raspa las cajas de MULTIPLICADOR 2X, 5X, 10X, 50X y 500X para revelar 2 símbolos en cada caja. Si el jugador revela 2 símbolos iguales en la misma caja de MULTIPLICADOR, el jugador multiplica el premio total ganado en el boleto por ese MULTIPLICADOR y gana esa cantidad. Por ejemplo, revelando 2 Símbolos de Juego de "ESTRELLA" en la caja MULTIPLICADOR 10X multiplicará por 10 el premio total ganado. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly eighty-five (85) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly eighty-five (85) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the eighty-five (85) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty-five (85) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to fifteen (15) times in accordance with the prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. PLAY AREA 1 (BONUS)/ÁREA DE JUEGO 1 (BONO): There will never be matching Play Symbols in the BONUS/BONO play areas, unless used as a winning play.

D. PLAY AREA 2 (PLAYBOARD)/ÁREA DE JUEGO 2 (TABLA DE JUEGO): There will be no matching Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

E. PLAY AREA 2 (PLAYBOARD)/ÁREA DE JUEGO 2 (TABLA DE JUEGO): At least eight (8) but no more than twelve (12) CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a Play Symbol on the PLAYBOARD/TABLA DE JUEGO play area.

F. PLAY AREA 2 (PLAYBOARD)/ÁREA DE JUEGO 2 (TABLA DE JUEGO): No identical Play Symbols are allowed on the same PLAYBOARD/TABLA DE JUEGO play area.

G. PLAY AREA 4 (2X, 5X, 10X, 50X, 500X MULTIPLIER)/ÁREA DE JUEGO 4 (MULTIPLICADOR 2X, 5X, 10X, 50X, 500X): There will never be matching Play Symbols in the MULTIPLIER/MULTIPLICADOR play areas, unless used as a winning play.

2.3 Procedure for Claiming Prizes.

A. To claim a "500X LOTERIA SPECTACULAR" Scratch Ticket Game prize of $50.00, $75.00, $100, $150, $200, $250, $300 or

$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $75.00, $100, $150, $200, $250, $300 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "500X LOTERIA SPECTACULAR" Scratch Ticket Game prize of $1,000, $5,000, $10,000 or $25,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "500X LOTERIA SPECTACULAR" Scratch Ticket Game top level prize of $3,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers in Austin, Dallas, Fort Worth, Houston or San Antonio, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification and proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). The Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "500X LOTERIA SPECTACULAR" Scratch Ticket Game prize, including the top level prize of $3,000,000, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "500X LOTERIA SPECTACULAR" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "500X LOTERIA SPECTACULAR" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 2518. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2518 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$50.00	804,000	10.00
$75.00	402,000	20.00
$100	402,000	20.00
$150	402,000	20.00
$200	201,000	40.00
$250	201,000	40.00
$300	50,250	160.00
$500	40,200	200.00
$1,000	1,675	4,800.00
$5,000	469	17,142.86
$10,000	67	120,000.00
$25,000	20	402,000.00
$3,000,000	4	2,010,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.21. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2518 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2518, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202304977
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 27, 2023

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Scratch Ticket Game Number 2553 "WINNING 7s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2553 is "WINNING 7s". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2553 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2553.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 7 SYMBOL, 77 SYMBOL, 777 SYMBOL, ARMORED CAR SYMBOL, BANK SYMBOL, BAR SYMBOL, BELL SYMBOL, CHECK SYMBOL, CHEST SYMBOL, COINS SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, KEY SYMBOL, SAFE SYMBOL, STAR SYMBOL, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, $250, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2553 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
28	TWET
29	TWNI
30	TRTY

31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
7 SYMBOL	WIN$
77 SYMBOL	DBL
777 SYMBOL	TRP
ARMORED CAR SYMBOL	ARMCAR
BANK SYMBOL	BANK
BAR SYMBOL	BAR

BELL SYMBOL	BELL
CHECK SYMBOL	CHECK
CHEST SYMBOL	CHEST
COINS SYMBOL	COINS
CROWN SYMBOL	CROWN
DIAMOND SYMBOL	DIAMOND
KEY SYMBOL	KEY
SAFE SYMBOL	SAFE
STAR SYMBOL	STAR
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$250	TOFF
$500	FVHN
$1,000	ONTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2553), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2553-0000001-001.

H. Pack - A Pack of the "WINNING 7s" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "WINNING 7s" Scratch Ticket Game No. 2553.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "WINNING 7s" Scratch

Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-four (54) Play Symbols. BONUS PLAY INSTRUCTIONS: If a player reveals 2 matching Play Symbols in the same BONUS Play Area, the player wins the prize for that BONUS. WINNING 7s PLAY INSTRUCTIONS: If the player matches any of the YOUR NUMBERS Play Symbols to any of the LUCKY NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "7" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "77" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "777" Play Symbol, the player wins TRIPLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-four (54) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-four (54) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-four (54) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-four (54) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to twenty-three (23) times in accordance with the prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. KEY NUMBER MATCH: Each Ticket will have five (5) different LUCKY NUMBERS Play Symbols.

E. KEY NUMBER MATCH: Non-winning YOUR NUMBERS Play Symbols will all be different.

F. KEY NUMBER MATCH: Non-winning Prize Symbols will never appear more than three (3) times.

G. KEY NUMBER MATCH: The "7" (WIN$), "77" (DBL) and "777" (TRP) Play Symbols will never appear in the LUCKY NUMBERS or "BONUS" Play Symbol spots.

H. KEY NUMBER MATCH: The "77" (DBL) and "777" (TRP) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

I. KEY NUMBER MATCH: Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

K. BONUS 1 - 3: Matching "BONUS" Play Symbols will only appear in a winning "BONUS" play area as dictated by the prize structure.

L. BONUS 1 - 3: A "BONUS" Play Symbol will not be used more than one (1) time per Ticket across the "BONUS" play areas, unless used in a winning combination.

M. BONUS 1 - 3: The "BONUS" Play Symbols will never appear in the LUCKY NUMBERS or YOUR NUMBERS Play Symbol spots.

N. BONUS 1 - 3: In the "BONUS" play areas, non-winning Play Symbols will not be the same as winning Play Symbols.

O. BONUS 1 - 3: Non-winning "BONUS" Prize Symbols will never appear more than one (1) time across the "BONUS" play areas.

P. BONUS 1 - 3: Non-winning "BONUS" Prize Symbols will never be the same as the winning "BONUS" Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "WINNING 7s" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $100, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WINNING 7s" Scratch Ticket Game prize of $1,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WINNING 7s" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "WINNING 7s" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "WINNING 7s" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2553. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2553 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	768,000	9.38
$10.00	384,000	18.75
$15.00	288,000	25.00
$20.00	192,000	37.50
$30.00	96,000	75.00
$50.00	46,200	155.84
$100	19,800	363.64
$250	2,400	3,000.00
$500	480	15,000.00
$1,000	45	160,000.00
$100,000	6	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.01. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2553 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2553, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202304975

Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 27, 2023

♦ ♦ ♦

Texas Parks and Wildlife Department

Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

Matthew Mackel has applied to the Texas Parks and Wildlife Department (TPWD) for an Individual Permit pursuant to Texas Parks and Wildlife Code, Chapter 86 to remove or disturb 1,137 cubic yards of sedimentary material within Lake Mc Queeney in Guadalupe County. The purpose is to replace an existing bulkhead and dredge a 3'x 20'x 512' area perpendicular to the wall on the lakeside 4-5 feet below the Conservation Pool Elevation (528.93 msl). Lake McQueeney is currently drained for dam repair. The location is 1825 Terminal Loop Rd.,

Lake McQueeney, Texas at 29.603864, - 098.033672. Notice is being published and mailed pursuant to 31 TAC §69.105(b).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on Friday, January 26, 2024, at TPWD headquarters, located at 4200 Smith School Road, Austin, Texas 78744. A remote participation option will be available upon request. Potential attendees should contact Beth Bendik at (512) 389-8521 or at beth.bendik@tpwd.texas.gov for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register*. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to the TPWD Sand and Gravel Program by mail: Attn: Beth Bendik, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; or e-mail sand.gravel@tpwd.texas.gov.

TRD-202304945
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: December 21, 2023

♦ ♦ ♦


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 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

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 "49 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 49 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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