PROPOSED RULES

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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes to amend 10 Texas Administrative Code, Chapter 80, §80.41 and to repeal §80.92 relating to the regulation of the manufactured housing program. The rules are revised to comply with House Bill 2706 (88th Legislature, 2023 regular session) that amends the Manufactured Housing Standards Act and for clarification purposes.

10 Texas Administrative Code §80.41(c)(2)(A) - (C) is added to assist in enforcement of §1201.551(a)(7) when an individual attempts to cheat or assist an individual with cheating on any of the Manufactured Housing Division Licensing exams.

10 Texas Administrative Code §80.41 (g)(1) and (2) is amended to update the requirements for an exemption for a retailer's license and the circumstances under which an exemption is granted.

10 Texas Administrative Code §80.92 is repealed because the inventory finance liens are no longer required to be submitted to the Department.

Jim R. Hicks, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. There will be no effect on small or micro-businesses because of the proposed amendments. The amendments will not cause the loss of any business opportunities or have an adverse effect on the businesses. There are no additional anticipated economic costs to persons who are required to comply with the proposed rules.

Mr. Hicks also has determined that for each year of the first five years that the proposed rules are in effect the public benefit for enforcing the amendments will be to maintain the necessary resources required to improve the general welfare and safety of purchasers of manufactured housing in this state as per §1201.002 of the Manufactured Housing Standards Act.

Mr. Hicks has also determined that for each year of the first five years the proposed rules are in effect there should be no adverse effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

Mr. Hicks has also determined that for each of the first five years the proposed rules are in effect they would not have a large government growth impact. The proposed rules do not create or eliminate a government program. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rules do not require the increase or decrease in future legislative appropriations to the agency. The proposed rules eliminates a fee paid to the agency. The proposed rules do not create a new regulation. The proposed rules do not expand, limit, or repeal an existing regulation. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability. The proposed rules do not positively or adversely affect this state's economy. This statement is made pursuant to the Administrative Procedures Act, Texas Government Code, §2001.0221.

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Mr. Jim R. Hicks, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at mhproposedrulecomments@tdhca.state.tx.us. The deadline for comments is no later than 30 days from the date that these proposed rules are published in the *Texas Register.*

SUBCHAPTER D. LICENSING

10 TAC §80.41

The amendment is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.

§80.41. License Requirements.

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

(c) Education.

(1) (No change.)

(2) Each test to be administered in connection with the course(s) will consist of a representative selection of questions from

an approved set of questions approved by the Director. The test(s) will be open-book. A score of 70% correct is required to pass each test.

(A) Cheating on the Manufactured Housing Division licensure examinations will not be tolerated. Evidence of cheating on an examination shall be a cause for disciplinary action. The executive director shall be informed of such instances of suspected cheating at the earliest possible opportunity and will determine appropriate action.

(B) If the executive director determines that an examinee cheated on the Manufactured Housing Division exam, an examinee may have exam results invalidated and may be barred from taking the Manufactured Housing Division examination in Texas for a period of up to two years. Any application for licensure pending or approved for examination may be denied and will be evaluated or re-evaluated on that basis. Any examination taken and passed while barred from taking an examination in Texas will not be acceptable for licensure purposes in Texas.

(C) A licensee or applicant suspected of cheating, or a licensee assisting others with cheating may be charged with violating §1201.551 of the Act and applicable Manufactured Housing Division rules, which may result in the denial, suspension, or revocation of their license.

(3) - (8) (No change.)

(d) - (f) (No change.)

(g) Exemption for Retailer's License Requirement.

(1) Application for Exemption of Retailer's License Requirement.

(A) A person requesting exemption from the Retailer's licensing requirement of §1201.101(b) of the Tex. Occ. Code, shall submit the required application outlining the circumstances under which they are requesting exemption from licensure.

(B) Applications should identify the HUD label or serial number(s): [~~of up to three (3) homes being sold under the exemption;~~]

(i) of up to 3 homes being sold under the exemption found in Tex. Occ. Code §1201.1025(a); or

(ii) of all homes sold under the exemption Tex. Occ. Code §1201.1025(a-1).

(C) Applications will be processed within seven (7) business days after receipt of all required information.

(2) The circumstances under which this exemption is granted are:

(A) One-time sale of up to three (3) manufactured homes in a 12-month period as personal property;

(B) Non-profit entity transferring ownership of up to three (3) manufactured homes in a 12-month period; [~~and/or~~]

(C) No other manufactured homes have been purchased and resold in the previous twelve (12) months, even with a previous exemption; or [~~.~~]

(D) All manufactured homes for sale or offered to be sold by the person are located in a manufactured home community, and for sale or offered for sale to the same purchaser in connection with a sale of the real property of the community.

(3) (No change.)

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

Filed with the Office of the Secretary of State on September 22, 2023.

TRD-202303518
Jim R. Hicks
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: November 5, 2023
For further information, please call: (512) 475-2206

SUBCHAPTER G. STATEMENTS OF OWNERSHIP

10 TAC §80.92

The repeal is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add,and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed repeal.

§80.92. Inventory Finance Liens.

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

Filed with the Office of the Secretary of State on September 22, 2023.

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Jim R. Hicks
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2206

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 7. GAS SERVICES

SUBCHAPTER D. CUSTOMER SERVICE AND PROTECTION

16 TAC §7.460, §7.480

The Railroad Commission of Texas (Commission) proposes new §7.480 relating to Energy Conservation Programs. The Commission proposes the new rule pursuant to House Bill 2263, 88th Legislative Session (2023) which added new Subchapter J, Natural Gas Energy Conservation Programs, in Chapter 104, Texas

Utilities Code. The Commission also proposes amendments to §7.460 relating to Suspension of Gas Utility Service Disconnection During an Extreme Weather Emergency, pursuant to Texas Utilities Code §105.023, which requires the Commission to adopt a classification table to guide courts in issuing civil penalties against gas utilities who disconnect service to residential customers during an extreme weather emergency.

House Bill 2263 relates to energy conservation programs that may be offered by a local distribution company (LDC) to its residential and commercial customers. Proposed new subsection (a) explains the energy conservation program authority given to an LDC to offer such programs to current and prospective residential and commercial customers. Subsection (a) also states that the Commission has exclusive original jurisdiction over energy conservation programs implemented by LDCs. Further, proposed subsection (a) states that a political subdivision shall not limit, restrict, or otherwise prevent an eligible customer from participating in an LDC's programs based on the type or source of energy delivered to the LDC's customers.

Proposed new subsection (b) defines administrative costs, Director, energy conservation program (ECP), energy conservation program rate, Gas Services, local distribution company (LDC), ECP portfolio, portfolio costs, and program year.

Proposed new subsection (c) lists the general requirements for an LDC to recover its costs of an ECP if approved by the Commission. An LDC must apply for each service area in which it seeks to implement an ECP. If the Commission approves the original application or approves an application with modifications, the LDC may begin to recover costs prudently incurred to implement the portfolio. Costs are subject to review by the Commission and may be refunded if imprudent or recovered from customers without Commission approval.

Proposed new subsection (d) lists the contents of the application based on whether the application is the LDC's initial or subsequent application for an ECP portfolio. Section 104.403 of the Texas Utilities Code requires an LDC to apply to the Commission (1) before the LDC begins to recover ECP portfolio costs; and (2) at least once every three years after the date the LDC first applies for cost recovery. Proposed subsection (d)(1) lists the items to be included in the initial application and proposed subsection (d)(2) lists the items to be included in the subsequent application. For its subsequent ECP portfolio approvals, an LDC must file its application at least 90 days prior to the third anniversary of the LDC's program year. Proposed subsection (d)(3) explains the process for an LDC to add new programs to its existing ECP portfolio.

Proposed new subsection (e) requires an LDC to print the notice of its application for an ECP portfolio in type large enough for easy reading and for that notice to be the only information contained on the piece of paper, or in the emailed notice if applicable. The proposed new subsection requires the notice to be provided in English and in Spanish, and the subsection lists the information that must be included in the notice. The proposed new subsection further requires any promotional materials to be provided in English and in Spanish.

Proposed new subsection (f) describes what the ECP portfolio must accomplish, including that it be designed to overcome barriers to the adoption of energy-efficient equipment, technologies, and processes, and to change customer behavior as necessary. The ECP portfolio may also include measures such as direct financial incentives, technical assistance, discounts or rebates, and weatherization for low-income customers.

Proposed new subsection (g) outlines the cost recovery mechanism. An LDC's application must include the proposed ECP rate. The proposed new subsection specifies the limits of the cost recovery rate and the administrative costs. Proposed subsection (g)(1) includes the formula LDCs must use to calculate a separate ECP rate for each customer class. Upon Commission approval of an ECP rate, the LDC shall update its residential and commercial tariffs to reflect the approved ECP rate.

Proposed new subsection (h) specifies the procedure for review by the Director of Gas Services to ensure that ECP applications are reviewed for compliance with the rule and with Texas Utilities Code, §§104.401-104.403. The Director shall prepare a written recommendation and provide it to the LDC; the recommendation may include approval of the ECP application as filed, approval of the ECP application with modifications, or rejection of the ECP application. The recommendation shall be submitted to the Commission for decision at a scheduled open meeting. If the Commission approves an ECP portfolio at an open meeting, the LDC shall file the applicable rate schedules in accordance with proposed new subsection (i).

Proposed new subsection (i) requires an LDC to include proposed rate schedules with its application for an ECP portfolio. If an LDC's proposed ECP portfolio is approved by the Commission, the approved ECP rate schedule shall be electronically filed by the LDC in accordance with §7.315 of this title (relating to Filing of Tariffs). An ECP rate approved by the Commission at an open meeting and implemented by the LDC shall be subject to refund unless and until the rate schedule is electronically filed and accepted by Gas Services.

Proposed new subsection (j) requires an LDC to file an annual ECP report each year an approved ECP portfolio is implemented. The report shall be filed no later than 45 days following the end of the LDC's program year. The proposed new subsection outlines the items to be included in the annual report and prohibits the LDC from implementing any adjusted ECP rates until 30 days after submitting the annual report.

Proposed new subsection (k) states the procedure for an LDC implementing an approved ECP portfolio to reimburse the Commission for the LDC's share of the Commission's estimated costs related to administration of reviewing and approving or denying cost recovery applications under this section. The Director shall estimate the LDC's share of the Commission's annual costs related to the processing of such applications. The LDC shall reimburse the Commission for the amount so determined within 30 days after receipt of notice of the reimbursement amount.

In conjunction with the proposed new rule, the Commission proposes amendments to §7.460(b). Proposed amendments in subsection (b)(1) add a reference to Texas Utilities Code §105.023, which provides that the Office of the Attorney General of Texas on its own initiative or at the request of the Commission may file suit to recover a civil penalty for violation of Texas Utilities Code §104.258(c). Section 105.023 requires that the Commission establish a classification system to be used by a court for violations of §104.258(c) that includes a range of penalties that may be recovered for each class of violations. Subsection (b)(1) includes the required classification table, outlining certain violation factors and values for each factor to determine the dollar amount of penalties to be sought.

Mark Evarts, Director, Gas Services Section of the Oversight and Safety Division, has determined that for each year of the first five years that the new rule and amendments will be in effect, there will be no additional economic costs for persons required to comply with the proposed new §7.480 because energy conservation programs are optional. Further, the classification system proposed in amendments to §7.460 does not create new requirements for persons required to comply, but instead creates a range of penalties for rule violators. The Commission notes that although the persons required to comply with new §7.480 (i.e., LDCs) will not incur economic costs due to the rule, residential and commercial customers of an LDC that implements an approved ECP will be required to pay a monthly charge associated with the ECP. House Bill 2263 allows LDCs to implement that monthly charge.

Mr. Evarts has determined that for each year of the first five years that the new rule and amendments will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering new §7.480. However, proposed subsection (k) requires LDCs to reimburse the Commission for costs incurred in reviewing ECP portfolio applications. There is no additional cost estimated as a result of enforcing and administering §7.460. There will be no fiscal effect on local government.

Mr. Evarts has determined that for each year of the first five years that the new rule and amendments will be in effect, the public benefit will be implementation of required legislation.

In accordance with Texas Government Code, §2006.002, the Commission has determined there will be no adverse economic effect on rural communities, small businesses or micro-businesses resulting from the proposed new rule and amendments. As discussed above, there will be no additional economic costs for persons required to comply as a result of adoption of the proposed new rule and amendments; therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis required under §2006.002.

The Commission has determined that the proposed rulemaking will not affect a local economy; therefore, pursuant to Texas Government Code, §2001.022, the Commission is not required to prepare a local employment impact statement for the proposed rules.

The Commission has determined that the proposed new rule and amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the rule and amendments would be in effect, the proposed new rule and amendments would not: create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; increase fees paid to the agency; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or affect the state's economy. As discussed above, the proposed new rule creates a program pursuant to HB 2263 to allow LDCs to apply for Commission approval of energy conservation programs, and the proposed amendments clarify potential penalties for rule violators.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at https://rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings/; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Wednesday, October 25, 2023. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's web site more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call the Gas Services Section at (512) 463- 7167. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

The Commission proposes the amendment and new rule pursuant to Texas Utilities Code, §§104.401-104.403 and §105.023.

Statutory authority: Texas Utilities Code, §§104.401-104.403 and §105.023.

Cross-reference to statute: Texas Utilities Code, Chapters 104 and 105.

§7.460. Suspension of Gas Utility Service Disconnection During an Extreme Weather Emergency.

(a) Applicability and scope. This rule applies to gas utilities, as defined in Texas Utilities Code, §101.003(7) and §121.001, and to owners, operators, and managers of mobile home parks or apartment houses who purchase natural gas through a master meter for delivery to a dwelling unit in a mobile home park or apartment house, pursuant to Texas Utilities Code, §§124.001-124.002, within the jurisdiction of the Railroad Commission pursuant to Texas Utilities Code, §102.001. For purposes of this section, all such gas utilities and owners, operators and managers of master meter systems shall be referred to as "providers." Providers shall comply with the following service standards. A gas distribution utility shall file amended service rules incorporating these standards with the Railroad Commission in the manner prescribed by law.

(b) Disconnection prohibited. Except where there is a known dangerous condition or a use of natural gas service in a manner that is dangerous or unreasonably interferes with service to others, a provider shall not disconnect natural gas service in the following circumstances. [~~to:~~]

(1) A provider shall not disconnect a delinquent residential customer during an extreme weather emergency. An extreme weather emergency means a day when the previous day's highest temperature did not exceed 32 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Station for the county where the customer takes service. In accordance with Texas Utilities Code §105.023, the Office of the Attorney General of Texas on its own initiative or at the request of the Commission may file suit to recover a civil penalty for a violation of this paragraph. The table in this paragraph contains a classification system to be used by a court when such a suit is filed.
Figure: 16 TAC §7.460(b)(1)

(2) A provider shall not disconnect a delinquent residential customer for a billing period in which the provider receives a written pledge, letter of intent, purchase order, or other written notification from an energy assistance provider that it is forwarding sufficient payment to continue service.[~~; or~~]

(3) A provider shall not disconnect a delinquent residential customer on a weekend day, unless personnel or agents of the provider

are available for the purpose of receiving payment or making collections and reconnecting service.

(c) Payment plans. Providers shall defer collection of the full payment of bills that are due during an extreme weather emergency until after the emergency is over, and shall work with customers to establish a payment schedule for deferred bills as set forth in §7.45 of this title (relating to Quality of Service).

(d) Notice. Beginning in the September or October billing periods utilities and owners, operators, or managers of master metered systems shall give notice as follows:

(1) Each utility shall provide a copy of this rule to the social services agencies that distribute funds from the Low Income Home Energy Assistance Program within the utility's service area.

(2) Each utility shall provide a copy of this rule to any other social service agency of which the provider is aware that provides financial assistance to low income customers in the utility's service area.

(3) Each utility shall provide a copy of this rule to all residential customers of the utility and customers who are owners, operators, or managers of master metered systems.

(4) Owners, operators, or managers of master metered systems shall provide a copy of this rule to all of their customers.

(e) In addition to the minimum standards specified in this section, providers may adopt additional or alternative requirements if the provider files a tariff with the Commission pursuant to §7.315 of this title (relating to Filing of Tariffs). The Commission shall review the tariff to ensure that at least the minimum standards of this section are met.

§7.480. Energy Conservation Programs.

(a) Energy conservation program authority. A local distribution company may offer to residential and commercial customers and prospective residential and commercial customers and provide to those customers an energy conservation program pursuant to this section and Texas Utilities Code, §§104.401-104.403. The Commission has exclusive original jurisdiction over energy conservation programs implemented by local distribution companies. A political subdivision served by a local distribution company that implements an energy conservation program approved by the Commission pursuant to this section shall not limit, restrict, or otherwise prevent an eligible customer from participating in the energy conservation program based on the type or source of energy delivered to its customers.

(b) Definitions.

(1) Administrative costs--The costs of creating, managing, and administering an ECP portfolio.

(2) Director--The Director of the Gas Services Department of the Oversight and Safety Division or the Director's delegate.

(3) Energy conservation program (ECP)--A particular program that promotes energy conservation or energy efficiency.

(4) Energy conservation program rate--The energy conservation program rate approved by the Commission in the form of a monthly customer charge.

(5) Gas Services--The Gas Services Department of the Oversight and Safety Division of the Commission.

(6) Local distribution company (LDC)--An investor-owned gas utility that operates a retail gas distribution system.

(7) ECP portfolio--The entire group of energy conservation programs offered by a local distribution company as described in subsection (f) of this section. The portfolio may consist of one or more programs.

(8) Portfolio costs--Costs prudently incurred by an LDC to design, market, implement, administer, and deliver an ECP portfolio that has been approved by the Commission, including but not limited to payment of rebates, material costs, the costs associated with installation and removal of replaced materials and/or equipment, and the cost of education and customer awareness materials related to conservation or efficiency.

(9) Program year--The 12-month period beginning the first day of the month following the Commission's approval of the program.

(c) General requirements.

(1) An LDC may recover costs of an ECP portfolio if it is approved by the Commission pursuant to this section and the LDC complies with the approved ECP portfolio. An LDC seeking to implement an ECP portfolio in one or more of its service areas shall apply with Gas Services and receive a final order from the Commission before beginning to recover the costs.

(2) An LDC applying for an ECP portfolio shall submit an application for each service area in which it seeks to implement an ECP.

(3) If the Commission approves the LDC's application or approves the application with modifications, the LDC may recover costs prudently incurred to implement the ECP portfolio, including costs incurred to design, market, implement, administer, and deliver the ECP portfolio. Any costs included in an ECP portfolio approved by the Commission shall be fully subject to review by the Commission for reasonableness and prudence. ECP portfolio costs that are imprudent or recovered from customers without approval of the Commission are subject to refund as determined by the Commission.

(d) Contents of application. An LDC may apply for approval of an ECP portfolio by submitting an application to Gas Services.

(1) Initial ECP portfolio application. An initial application for approval of an ECP portfolio shall include:

(A) a list and detailed description of each proposed ECP;

(B) the objectives for each proposed ECP;

(C) the proposed annual budget for each ECP and the ECP portfolio;

(D) the proposed administrative costs for each ECP and the ECP portfolio;

(E) the proposed proportion of ECP portfolio costs to be funded by customers;

(F) the proposed proportion of ECP portfolio costs to be funded by shareholders;

(G) the projected annual consumption reduction per customer class for each ECP and the ECP portfolio;

(H) the projected annual cost savings per customer class for each ECP and the ECP portfolio;

(I) a copy of the notice to customers and an affidavit stating the method of notice and the date or dates on which the notice was given;

(J) copies of written correspondence received by the LDC in response to the notice;

(K) copies of any proposed advertisements or promotional materials that the LDC intends to distribute to customers if an ECP portfolio is approved;

(L) copies of the proposed ECP rate schedule or schedules; and

(M) the name of the LDC's representative, business address, telephone number, and email address.

(2) Subsequent ECP portfolio application. An LDC shall re-apply for approval of its ECP portfolio every three years. The subsequent application shall be filed 90 days prior to the third anniversary of the LDC's program year. A subsequent application for approval of an ECP portfolio shall include:

(A) a list and detailed description of each proposed ECP;

(B) the objectives for each ECP;

(C) the proposed annual budget for each ECP and ECP portfolio;

(D) the proposed administrative costs for each ECP and the ECP portfolio;

(E) the actual historical annual budget for each ECP and the ECP portfolio;

(F) the actual historical administrative costs for each ECP and the ECP portfolio;

(G) the proposed proportion of ECP portfolio costs to be funded by customers;

(H) the proposed proportion of ECP portfolio costs to be funded by shareholders;

(I) the projected and actual historical annual consumption reduction per customer class for each ECP and the ECP portfolio;

(J) the projected and actual historical annual cost savings per customer class for each ECP and the ECP portfolio;

(K) copies of any proposed advertisements or promotional materials that the LDC intends to distribute to customers if the ECP portfolio is approved;

(L) copies of the proposed rate schedule or schedules;

(M) the name of the LDC's representative, business address, telephone number, and email address; and

(N) if the LDC proposes a new ECP, or proposes changes to an existing ECP such that costs to customers increase, the LDC shall provide notice in accordance with subsection (e) of this section and include in its subsequent application the documents required by paragraph (1)(I) and (J) of this subsection.

(3) Addition of new programs to existing ECP portfolio. An initial or subsequent application may contain information on one or more ECPs. If an LDC proposes to add a new ECP to its portfolio after approval of its initial application, the LDC shall propose the new ECP in its subsequent application and include the information required by paragraph (1) of this subsection for the proposed new ECP.

(e) Notice and promotional materials.

(1) Notice. An LDC shall print the notice of its application for an ECP portfolio in type large enough for easy reading. The notice shall be the only information contained on the piece of paper on which it is written or in the emailed notice if applicable. An LDC may give the notice required by this section either by separate mailing or by otherwise delivering the notice with its billing statements. Notice may be provided by email if the customer to receive the notice has consented to receive notices by email. Notice by mail shall be presumed to be complete three days after the date of deposit of the paper upon which it is written, enclosed in a postage-paid, properly addressed wrapper, in a post office or official depository under the care of the United States Postal Service. The notice shall be provided in English and Spanish. The notice to customers shall include the following information:

(A) a description of each ECP in its proposed portfolio;

(B) the effect the proposed ECP portfolio is expected to have on the rates applicable to each affected customer class and on an average bill with and without gas cost for each affected customer class;

(C) the service area or areas in which the proposed ECP portfolio would apply;

(D) the date the proposed ECP portfolio application was or will be filed with the Commission;

(E) the LDC's address, telephone number, and web site where the application for approval of an ECP portfolio may be obtained; and

(F) a statement that any affected person may file written comments or a protest concerning a proposed ECP portfolio with Gas Services by email to MOS@rrc.texas.gov and to an email address for the LDC company included in its notice.

(2) Promotional materials. Any promotional materials shall be provided to customers in English and Spanish.

(f) Portfolio. An ECP portfolio:

(1) shall be designed to overcome barriers to the adoption of energy-efficient equipment, technologies, and processes, and be designed to change customer behavior as necessary; and

(2) may include measures such as:

(A) direct financial incentives;

(B) technical assistance and information, including building energy performance analyses performed by the LDC or a third party approved by the LDC;

(C) discounts or rebates for products; and

(D) weatherization for low-income customers.

(g) Cost recovery mechanism. The application for approval of an ECP portfolio shall include a proposed ECP rate. Cost recovery shall be limited to the incremental costs of providing an ECP portfolio that are not already included in the then-current cost of service rates of the LDC. Administrative costs in excess of 15% of the total costs of the portfolio shall not be included in the ECP rate or recovered from customers in any way.

(1) A separate ECP rate shall be calculated for each customer class in accordance with the following formula: ECP rate = (CCR per Class + BA per Class)/Number of Annual Bills per Class, where:

(A) CCR, Current Cost Recovery, is all projected costs attributable to the local distribution company's energy conservation portfolio for the program year;

(B) BA, Balance Adjustment, is the computed difference between CCR collections by class and expenditures by class, including the pro-rata share of common administrative costs for each class for the program year and collection of the over/under recovery during the prior program year; and

(C) Class is the customer class to which the ECP rate will apply.

(2) Upon the Commission's approval of the ECP rate, the LDC shall update its residential and commercial tariffs to reflect the approved ECP rate.

(h) Procedure for review. The Director of Gas Services shall ensure that applications for ECP portfolios are reviewed for compliance with the requirements of Texas Utilities Code, §§104.401-104.403 and this section. Upon completion of the review, Gas Services will prepare a written recommendation, which shall be provided to the applicant LDC.

(1) The recommendation may include:

(A) approval of the application for an ECP portfolio as filed;

(B) approval of the application for an ECP portfolio with modifications; or

(C) rejection of the application for an ECP portfolio.

(2) The recommendation shall be submitted to the Commission for decision at a scheduled open meeting.

(3) If the Commission approves an ECP portfolio at an open meeting, the LDC shall file the applicable rate schedules implementing the ECP portfolio in accordance with subsection (i) of this section.

(i) Rate schedules. The LDC shall include proposed rate schedules with its application for an ECP portfolio. Each ECP rate schedule shall be made on a form approved by the Commission and made available on the Commission's website. If the LDC's proposed ECP portfolio is approved by the Commission, the approved rate schedules shall be electronically filed by the LDC in accordance with §7.315 of this title (relating to Filing of Tariffs). An ECP rate approved by the Commission at an open meeting and implemented by the LDC shall be subject to refund unless and until the rate schedules are electronically filed and accepted by Gas Services in accordance with §7.315 of this title.

(j) ECP annual report.

(1) An LDC implementing an approved ECP portfolio pursuant to this section shall file an ECP annual report with the Commission. The report shall be filed each year of an approved ECP portfolio is implemented and shall be filed no later than 45 days following the end of the LDC's program year. The ECP annual report shall be in the format prescribed by the Commission and shall include the following:

(A) an overview of the LDC's ECP portfolio;

(B) a description of each ECP offered under the portfolio that includes the program's performance for the preceding year, actual program expenditures, and program results;

(C) the LDC's planned ECPs for the upcoming year; and

(D) schedules detailing program expenditures for the program year, actual amounts collected for the program year, and the calculation of the adjusted ECP rate for each applicable customer class.

(2) The LDC shall not implement any adjusted ECP rates until 30 days after submitting the annual report.

(k) Reimbursement. An LDC implementing an approved ECP portfolio pursuant to this section shall reimburse the Commission for the LDC's share of the Commission's estimated costs related to administration of reviewing and approving or denying cost recovery applications under this section. The Director shall estimate the LDC's share of the Commission's annual costs related to the processing of such applications. The LDC shall reimburse the Commission for the amount so determined within 30 days after receipt of notice of the amount of the reimbursement.

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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Haley Cochran
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 76. WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

16 TAC §§76.22, 76.24, 76.25, 76.27, 76.70, 76.80

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 76, §§76.22, 76.24, 76.25, 76.27, 76.70, and 76.80, regarding the Water Well Drillers and Pump Installers program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 76, implement Texas Occupations Code, Chapter 1901, Water Well Drillers, and Chapter 1902, Water Well Pump Installers.

Implementation of HB 3744

The proposed rules implement HB 3744, 88th Legislature, Regular Session (2023). This legislation establishes that a license issued under Sections 1901.155 and 1902.155 of the Texas Occupations Code, relating to water well drillers and water well pump installers, is valid for one or two years, as determined by commission rule.

The proposed rules are necessary to establish a change in the length of the license terms for certain license holders. Beginning on January 1, 2024, the license terms for initial licenses for the driller, pump installer, and combination driller and pump installer license types change from one to two years.

Additionally, the proposed rules are necessary to establish that existing licenses renewed by the Department are valid for one year if renewed before March 1, 2024, or for two years if renewed on or after March 1, 2024. The proposed rules will allow for the change in the license terms to be phased in as the license holders renew their licenses. The continuing education requirements and the fees are also adjusted accordingly for holders of those licenses.

Changes to State Well Reports

Lastly, the proposed rules implement staff changes. The proposed establish that well drillers shall now deliver a copy of their well log to the Department electronically through the Texas Well Report Submission and Retrieval System (TWRSRS). The proposed rules are necessary to streamline the state well report process, which will save well drillers and the state resources.

Advisory Council Recommendations

The proposed rules were presented to and discussed by the Water Well Drillers and Pump Installers Advisory Council at its meeting on September 21, 2023. The Advisory Council voted and recommended that the proposed rules be published in the *Texas Register* for public comment with additional recommended changes to §76.25(c). The Advisory Council recommended to increase the number of continuing education hours for an apprentice registrant from one hour to four hours, with one hour dedicated to statutes and rules and three hours dedicated to topics directly related to the water well industry. The Department did not include the Advisory Council's recommendation regarding §76.25(c) in this proposal, but will take it into consideration for a future rulemaking.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §76.22. Applications for Licenses and Renewals. The proposed rules establish that, beginning on January 1, 2024, a license issued by the Department will no longer expire annually from the date issued. Instead, licenses issued by the Department are valid for two years from the date issued. Any license issued before January 1, 2024, will continue to be valid for one year.

The proposed rules amend §76.24. License Renewal. The proposed rules remove the requirement of paying an annual fee to the Department for license renewal and establishes that it must instead be paid on or before the expiration date of the license. Licensees must show proof of continuing education to renew. Licenses that are renewed before March 1, 2024, are valid for one year while those renewed on or after March 1, 2024, are valid for two years. This change ensures revenue from licensees are received in odd-numbered and even-numbered years.

The proposed rules amend §76.25. Continuing Education. The proposed rules update the continuing education hour requirements for licensees to correspond with the changes in the license terms. For licensees who renew before March 1, 2024, four (4) hours of continuing education are required to renew a license: one (1) hour of instruction dedicated to Water Well Driller/Pump Installer statutes and rules and three (3) hours of topics directly related to the water well industry. For licensees who renew on or after March 1, 2024, eight (8) hours of continuing education are required to renew a license: one (1) hour of instruction dedicated to Water Well Driller/Pump Installer statutes and rules and seven (7) hours of topics directly related to the water well industry.

The proposed rules amend §76.27. Registration for Driller and/or Pump Installer Apprenticeship. The proposed rules rename the section "Registration for Driller and/or Pump Installer Apprenticeship; Renewal." The proposed rules establish that an apprentice registration issued by the Department is valid for one year and establish the renewal requirements for apprentices.

The proposed rules amend §76.70. Responsibilities of the Licensee""State Well Reports. The existing rules establish that every driller who drills, deepens, or alters a well shall maintain a State of Texas Well Report and provide a copy of the well log to: the Department; the Texas Commission on Environmental Quality; the owner of the well or the person for whom the well was drilled; and the groundwater conservation district in which the well is located, if any. The proposed rules establish that the driller shall deliver a copy of the well log to: the Department, electronically, through the Texas Well Report Submission and Retrieval System; the owner of the well or the person for whom the well was drilled; and the groundwater conservation district in which the well is located, if any. The proposed rules remove the requirement of delivering a copy of the well log to the Texas Commission on Environmental Quality.

The proposed rules amend §76.80. Fees. The proposed rules update the application and renewal fees for licensees. Beginning January 1, 2024, application fees are doubled to reflect the change from a one-year to two-year license. Licenses that are renewed before March 1, 2024, will not see an increase in renewal fees, but for licenses that are renewed on or after March 1, 2024, the renewal fees are doubled to reflect the change from a one-year to two-year license. This change ensures revenue from licensees are received in odd-numbered and even-numbered years.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Any activities required to implement the change in license term from one year to two years are one-time program administration tasks that are routine in nature, such as modifying or revising the licensing system, amending applications, publications and/or website information, which will also not result in an increase or decrease in program costs since they will not necessitate an increase or decrease in personnel or resources.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for the second half of the first fiscal year, there is an estimated increase in revenue to the state government as a result of enforcing or administering the proposed rules. The proposed rules will double the length of the license term for driller, pump installer, and combination driller and pump installer license holders. The applications fees for these licenses will need to double as well, to keep the amount of revenue for the administration of the program consistent.

Applicants who apply for or renew a license in the first half of the first fiscal year, or prior to March 1, 2024, will pay the current application fee amount and the licenses issued during that period will have a one-year term. Applicants who apply or renew in the second half of the first fiscal year, on or after March 1, 2024, will pay the new application fee amount and the licenses issued during that period will have a two-year term. Because the half the population that has a one-year license term will need to renew in the second fiscal year and will pay the increased fees and receive licenses with two-year terms, the revenue for the program will stay consistent over the years, with half the license population applying or renewing in alternate years.

The only increase in revenue will be in occur in the second half of the first fiscal year, when half of the population will pay application fees that are doubled, when, prior to the adoption of the proposed rules, these applicants would not have paid doubled fees. Based on an average of license applications submitted over the past five years, approximately 412 driller license applicants and holders and pump installer license applicants and

license holders will apply or renew in the second half of the first fiscal year. The previous fees paid during this period would have totaled $$88,580. However, with the new fee amounts, the total fees paid during this period will be $177,160. Based on an average of license applications submitted over the past five years, approximately 296 combination driller license and pump installer license applicants and license holders will apply or renew in the second half of the first fiscal year. The previous fees paid during this period would have totaled $96,200. However, with the new fee amounts, the total fees paid during this period will be $192,400.

The increase in revenue during this six-month period will be $184,780. The revenue in all subsequent fiscal years will be approximately the same and current revenue amounts.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated loss in revenue to the state government as a result of enforcing or administering the proposed rules. The proposed rules do not create a revenue loss, as they do not eliminate or decrease any fees assessed by the licensing program.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments. There is no impact to local government costs because the proposed rules do not affect any regulation of water well drilling and pump installing by local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

The proposed rules have no anticipated impact on the local economy because they are not anticipated to increase or decrease employment opportunities for professionals licensed water well drillers or pump installers in any area of the state or increase or decrease the number of individuals who may choose to become licensed water well drillers or pump installers.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that the proposed rules change the license terms for the driller, pump installer, and combination driller and pump installer license holders, thereby allowing them to renew their licenses every other year instead of renewing every year. This also would free up some agency resources from licensing tasks, since only half of license holders would renew in any year and allow those resources to be redirected to area such as water well quality assurance and abandoned and deteriorated wells mitigation to better protect the public's groundwater resources.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

The current application fee and the renewal fee for a driller license or pump installer license is $215 for a one-year license. Following the adoption of the proposed rules, the fee for a two-year driller license or pump installer license will be $430. The current application fee and the renewal fee for a combination driller and pump installer license is $325 for a one-year license. Following the adoption of the proposed rules, the fee for a two-year combination driller and pump installer license will be $650. However, the proposed rules have no economic costs to persons that are licensees, businesses, or the general public in Texas. The rules do not impose additional fees upon licensees, nor do they create requirements that could cause licensees to expend funds for equipment, technology, staff, supplies or infrastructure.

The proposed rules modify the continuing education hour requirements for the driller, pump installer, and combination driller and pump installer license holders, changing the number of required hours from four hours every year to eight hours every two years. Some continuing education providers might adjust the content and length of their courses to better fit the needs of the license holders, however, these adjustments are purely voluntary and a business decision. Any cost associated with the adjustments are expected to be minimal, if any, and will be offset by the resulting fees paid by attending students.

The proposed rules state that the required submission of a copy of the well log to TDLR must be transmitted electronically through the Texas Well Report Submission and Retrieval System. There will be no cost to any license holders who are not currently submitting well logs through the system since there is no cost to submit well logs through the system.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

The Water Well Driller and Pump Installer Program regulates individuals who perform drilling and pump installing services, some of whom could be set up as small or micro-businesses. The proposed rules have no anticipated adverse economic effect on those small businesses or micro-businesses. The rules do not impose additional fees upon licensees or small or micro-businesses, nor do they create requirements that would cause licensees or those businesses to expend funds for equipment, staff, supplies, or infrastructure.

The proposed rules modify the continuing education hour requirements for the driller, pump installer, and combination driller and pump installer license holders, changing the number of required hours from four hours every year to eight hours every two years. Some continuing education providers, some of which could be small or micro-business, might adjust the content and length of their courses as a result of the continuing education requirement adjustment. Any cost associated with these adjustments are voluntary and expected to be minimal, and any cost will not have an adverse economic effect on those businesses.

The proposed rules have no anticipated adverse economic effect on rural communities because the rule will not decrease the availability of water well drilling or pump installing services in rural communities, nor will the rules increase the cost of those services in rural communities. Additionally, the proposed rules do

not impose additional requirements of licensees located in rural communities.

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

6. The proposed rules do not expand, limit, or repeal an existing regulation.

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

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 1901, and 1902 which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 1901, and 1902. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 3744, 88th Legislature, Regular Session (2023).

§76.22. Applications for Licenses and Renewals.

(a) Application must be made on forms approved by the department.

(b) The application must include the applicant's statement that he has drilled or installed pumps under supervision of a driller or pump installer licensed under the Code and this chapter.

(c) The applicant is eligible to take the examination when the department determines the application and qualifications submitted meet requirements.

(d) A license issued by the department is valid for: [~~will expire annually from the date issued (as provided in §76.24).~~]

(1) one year, if the license was issued before January 1, 2024; or

(2) two years, if the license was issued on or after January 1, 2024.

§76.24. License Renewal.

(a) On or before the expiration date of the license, the licensee must pay a [~~an annual~~] renewal fee to the department and submit an application for renewal.

(b) To renew a license, the licensee must show proof of [~~four (4) hours of~~] continuing education in compliance with §76.25(b).

(c) A license renewed by the department is valid for:

(1) one (1) year, if the license was renewed before March 1, 2024; or

(2) two (2) years, if the license was renewed on or after March 1, 2024.

§76.25. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a license as a driller or pump installer, a licensee must complete [~~four (4) hours of~~] continuing education [~~in~~] courses approved by the department, which [~~. The continuing education hours~~] must include the following:

(1) one (1) hour of instruction dedicated to the Water Well Driller/Pump Installer statutes and rules; and

(2) the following number of hours of instruction dedicated to [~~three (3) hours of instruction in~~] topics directly related to the water well industry, including but not limited to well and water well pump standards, geologic characteristics of the state, state groundwater laws and related regulations, well construction and pump installation practices and techniques, health and safety, environmental protection, technological advances, or business management: [~~.~~]

(A) three (3) hours for renewal before March 1, 2024; or

(B) seven (7) hours for renewal on or after March 1, 2024.

(c) To renew a registration as an apprentice, a registrant must complete a one (1) hour department-approved continuing education

course dedicated to the Water Well Driller and Pump Installer statutes and rules.

(d) The continuing education hours must have been completed within the term of the current license or registration, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one (1) year period immediately prior to the date of the late renewal.

(e) A licensee or registrant may not receive continuing education credit for attending the same course more than once during their license term.

(f) Licensees and registrants must retain a copy of the certificate of course completion for one year after the date of completion. In conducting any inspection or investigation of the licensee or registrant, the department may examine the licensee's or registrant's records to determine compliance with this subsection.

(g) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the topics listed in subsection (b), and the provider must be registered under Chapter 59 of this title.

(h) A licensee whose license has been placed on "inactive" status pursuant to Texas Occupations Code, §51.4011 is not required to complete continuing education as required by this section until the licensee seeks to change to "active" status.

§76.27. Registration for Driller and/or Pump Installer Apprenticeship; Renewal.

(a) A person who wishes to participate in a driller or installer apprentice program under the supervision of a licensed well driller and/or a licensed pump installer who has been licensed for a minimum of two (2) years, must submit a registration form to the department, provide a detailed copy of the training program, including the effective commencement and termination date, and provide proof that the licensed well driller and/or pump installer has agreed to accept the responsibility of supervising the training.

(b) To qualify for an apprentice registration the person must:

(1) Be at least eighteen (18) years old;

(2) Participate in an apprentice program developed by a licensed driller or installer who has been licensed as a driller or installer for at least two years;

(3) Submit an application on a department-approved form, and

(4) Pay the registration fee.

(c) The application form for an apprentice shall include:

(1) the name, business address, and permanent mailing address of the apprentice;

(2) the name and license number of the licensed driller and/or pump installer who will supervise the training;

(3) a detailed description of the training program, including the types of wells to be drilled and/or the classifications of pumps to be installed, the effective commencement and termination dates of the program, equipment used, safety training and procedures, and experience, knowledge, and qualification benchmarks while under the apprenticeship;

(4) a statement by the licensed driller and/or pump installer that the licensed driller or installer takes responsibility for the apprentice's acts under the Code and this Chapter for the activities of the apprentice associated with the training program; and

(5) the signatures of the apprentice and the licensed driller and/or pump installer and the certification of the licensee and apprentice that the information provided is true and correct.

(d) An apprentice registration issued by the department is valid for one year.

(e) To renew an apprentice registration, an apprentice must:

(1) submit an application on a department approved form;

(2) show proof of continuing education in compliance with §76.25(c); and

(3) pay the renewal fee.

§76.70. Responsibilities of the Licensee--State Well Reports.

Every well driller who drills, deepens, or alters a well, within this state shall record and maintain a legible and accurate State of Texas Well Report on a department-approved form. Each copy of a State of Texas Well Report, other than a department copy, shall include the name, mailing address, web address and telephone number of the department.

(1) Not later than the 60th day after the date of the completion or cessation of drilling, deepening, or otherwise altering the well, the driller shall deliver [~~, send by first class mail, or provide electronically,~~] a copy of the well log to:

(A) The department, by transmitting electronically through the Texas Well Report Submission and Retrieval System;

[~~(B) The Texas Commission on Environmental Quality (if the log was not submitted to the department electronically);~~]

(B) [~~(C)~~] The owner of the well or the person for whom the well was drilled; and

(C) [~~(D)~~] The groundwater conservation district in which the well is located, if any.

(2) Each State of Texas Well Report and Plugging Report shall include the specific geographic coordinates with the longitude and latitude of the subject well.

(3) The person that plugs a well shall, within thirty (30) days after plugging is complete, transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by first-class mail, a copy of the State of Texas Plugging Report to the department. The person that plugs the well shall deliver, transmit electronically, or send by first-class mail a copy of the State of Texas Plugging Report to the groundwater conservation district in which the well is located, if any. The person that plugs the well shall deliver, transmit electronically, or send by first-class mail a copy of the State of Texas Plugging Report to the owner or person for whom the well was plugged.

(4) The department shall furnish State of Texas Plugging Reports on request.

(5) The executive director shall prescribe the contents of the State of Texas Plugging Reports.

§76.80. Fees.

(a) Application Fees

(1) Driller license--$430 [~~215~~]

(2) Installer license--$430 [~~215~~]

(3) Combination Driller and Installer license--$650 [~~325~~]

(4) Apprentice registration--$65

(5) Combination Apprentice registration--$115

(b) Renewal Fees

(1) Driller license--$215 for renewal before March 1, 2024; $430 for renewal on or after March 1, 2024

(2) Installer license--$215 for renewal before March 1, 2024; $430 for renewal on or after March 1, 2024

(3) Combination Driller and Installer license--$325 for renewal before March 1, 2024; $650 for renewal on or after March 1, 2024

(4) Apprentice registration--$65

(5) Combination Apprentice registration--$115

(6) Late renewal fees for licenses issued under this Chapter are provided in §60.83 of this title.

(c) Lost, revised, or duplicate license--$25

(d) Adding an endorsement to a current license--$25

(e) Variance request fee--$100

(f) Inactive License Status

(1) The fee for an inactive license--No charge.

(2) The fee to renew a license marked "inactive" is the renewal fee as stated in subsection (b).

(3) The fee to change from an inactive license to an active license is $25.

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

Filed with the Office of the Secretary of State on September 25, 2023.

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: November 5, 2023
For further information, please call: (512) 475-4879

CHAPTER 85. VEHICLE STORAGE FACILITIES

16 TAC §85.722

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 85, §85.722, regarding the Vehicle Storage Facilities Program. These proposed changes are referred to as "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

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

The proposed rule amendments address the maximum amounts for vehicle storage and impoundment fees that may be charged by a vehicle storage facility company. The proposed 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 1 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 proposed 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 proposed rules.

Advisory Board Recommendations

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.

SECTION-BY-SECTION SUMMARY

The proposed 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 proposed 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.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rule will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit from the mandated update in the allowable fees for storage and impoundment of vehicles based on the percentage increase in the Consumer Price Index during the previous state fiscal biennium will be to allow vehicle storage facilities to keep pace with inflation and current costs for operating a facility, and therefore be more financially secure in their operations and able to provide their services to the public. The proposed rule also puts the public on notice of the fees that could be incurred if a towed vehicle is stored at vehicle storage facility.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there will be additional costs to persons who are required to comply with the proposed rules. The statutorily authorized increase in the amount of fees allowed to be charged for vehicle storage and impoundment would have an increased economic cost on those who pay to have a stored vehicle released from a vehicle storage facility. However, the maximum additional amount a person would be required to pay is $3.65 or $5.01 on the first day in combined increases in the daily storage fee plus the impoundment fee, depending on the size of the vehicle, and $1.82 or $3.19 each day afterward in storage fees. This small increase would have a minimal effect on any vehicle owner or other person paying for the release of a vehicle.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rule does not create or eliminate a government program.

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

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

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

5. The proposed rule does not create a new regulation.

6. The proposed rule does not expand, limit, or repeal an existing regulation.

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

8. The proposed rule does not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

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

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

§85.722. Responsibilities of Licensee--Storage Fees and Other Charges.

(a) For the purposes of this section, "VSF" includes a garage, parking lot, or other facility that is:

(1) owned by a governmental entity; and

(2) used to store or park at least 10 vehicles each year.

(b) The fees outlined in this section have precedence over any conflicting municipal ordinance or charter provision.

(c) Notification fee.

(1) A VSF may not charge a vehicle owner or authorized representative more than $50 for notification under these rules. If a notification must be published, and the actual cost of publication exceeds 50% of the notification fee, the VSF may recover the additional amount of the cost of publication. The publication fee is in addition to the notification fee.

(2) If a vehicle is removed by the vehicle owner or authorized representative within 24 hours after the date the VSF receives the vehicle, notification is not required by these rules.

(3) If a vehicle is removed by the vehicle owner or authorized representative before notification is sent or within 24 hours from the time VSF receives the vehicle, the VSF may not charge a notification fee to the vehicle owner.

(d) Daily storage fee. A VSF may charge $20 for each day or part of a day for storage of a vehicle that is 25 feet or less in length and may charge $35 for each day or part of a day for storage of a vehicle that exceeds 25 feet in length, subject to a biennial adjustment as set forth in Texas Occupations Code §2303.1552(b)(1).

(1) Per the 2023 [~~2021~~] biennial adjustment, the maximum amount that a VSF may charge for a daily storage fee is as follows:

(A) Vehicle that is 25 feet or less in length: $22.85 [~~$21.03~~].

(B) Vehicle that exceeds 25 feet in length: $39.99 [~~$36.80~~].

(2) A daily storage fee may be charged for any part of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the VSF less than 12 hours. In this paragraph a day is considered to begin and end at midnight.

(3) A VSF that has accepted into storage a vehicle registered in this state shall not charge for more than five days of storage fees until a notice, as prescribed in §85.703 of these rules, is mailed or published.

(4) A VSF that has accepted into storage a vehicle not registered in Texas shall not charge for more than five days of storage before the date the request for owner information is sent to the appropriate governmental entity or to the private entity authorized by that governmental entity to obtain title, registration, and lienholder information using a single vehicle identification inquiry.

(5) A VSF shall charge a daily storage fee after notice, as prescribed in §85.703, is mailed or published for each day or portion of a day the vehicle is in storage until the vehicle is removed and all accrued charges are paid.

(e) Impoundment fee. A VSF may charge a vehicle owner or authorized representative an impoundment fee of $20, subject to a biennial adjustment as set forth in Texas Occupations Code §2303.1552(b)(1). Per the 2023 [~~2021~~] biennial adjustment, the maximum amount that a VSF may charge for an impoundment fee is $22.85 [~~$21.03~~]. If the VSF charges a fee for impoundment, the written bill for services must specify the exact services performed for that fee and the dates those services were performed.

(f) Governmental or law enforcement fees. A VSF may collect from a vehicle owner or authorized representative any fee that must be paid to a law enforcement agency, the agency's authorized agent, or a governmental entity.

(g) Additional fees. A VSF may not charge additional fees related to the storage of a vehicle other than fees authorized by these rules or a nonconsent-towing fee authorized by Texas Occupations Code, §2308.2065.

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

Filed with the Office of the Secretary of State on September 22, 2023.

TRD-202303522
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: November 5, 2023
For further information, please call: (512) 463-7750

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

DIVISION 1. IMPLEMENTATION OF ASSESSMENT INSTRUMENTS

19 TAC §101.3011

The Texas Education Agency (TEA) proposes an amendment to §101.3011, concerning the implementation and administration of academic content area assessment instruments. The proposed amendment would clarify the policies relating to the administration mode of certain required assessments.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 101.3011 addresses state and federal requirements relating to the implementation and administration of academic content area assessments. The proposed amendment to §101.3011 would clarify state policies relating to the administration mode of certain required assessments.

Texas Education Code (TEC), §39.0234, requires that TEA administer the State of Texas Assessments of Academic Readiness (STAAR®) online beginning with the 2022-2023 school year. House Bill (HB) 1225, passed by the 88th Texas Legislature, Regular Session, 2023, now allows two exceptions to online testing for STAAR®: (1) a student who qualifies for a special paper administration of an online assessment, and (2) any student whose parent, guardian, or teacher requests a paper version of the assessment. The number of students who are provided a paper-by-request administration of STAAR® may not exceed 3% of the number of eligible students enrolled in the district who are administered each assessment. The number of students who receive a paper-by-request administration is separate and distinct from the students who are eligible for a special paper administration of STAAR®.

FISCAL IMPACT: Lily Laux, deputy commissioner for school programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal. However,

there will be additional costs to state government for the first five years the proposal is in effect.

HB 1225, 88th Texas Legislature, Regular Session, 2023, permits school districts to administer assessment instruments in a paper format to any student upon request by the student's parent, guardian, or teacher for up to 3% of the number of enrolled students in a district. In addition, the bill specifies that the 3% of paper-by-request students is separate from the students whose admission, review, and dismissal committees determine that the students require accommodations that must be delivered in a paper format.

To provide approximately 3% of the student population with paper test materials, TEA will incur a cost of approximately $1,657,062 each year. Additionally, if approximately half of the students receiving special education services require accommodations that must be delivered in a paper format, the costs will be about $2,761,770 annually. Combining these two costs, TEA will incur a cost of approximately $4,418,832 each year for fiscal years 2024-2028.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by permitting local education agencies to offer paper versions of assessments and increase the number of individuals subject to its applicability by allowing certain students to be administered a paper version of the assessment.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not decrease the number of individuals subject to the rule's applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Laux has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to allow certain students the opportunity to be administered a paper version of the assessment. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would not have a new data or reporting impact. School districts and open-enrollment charter schools are currently required to register their students in the Test Information Distribution Engine (TIDE), the contractor's online test management system. With the new criteria for paper administrations, district testing personnel will be required to mark specific fields in TIDE to indicate which students will receive a paper version of the assessment.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins October 6, 2023, and ends November 6, 2023. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 6, 2023. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §39.023(a), (b), (c), and (l), which specify the required assessments for students in Grades 3-8, students enrolled in high school courses, and emergent bilingual students whose primary language is Spanish, respectively; TEC, §39.0234, which requires that assessment instruments under TEC, §39.023(a), (c), and (l); Grades 3-8; end-of-course; and Spanish assessments, respectively, be administered online, unless otherwise provided by commissioner rule; TEC, §39.02342(a), as added by House Bill (HB) 1225, 88th Texas Legislature, Regular Session, 2023, which permits school districts to administer assessments required under TEC, §39.023(a), (c), and (l); Grades 3-8; end-of-course; and Spanish assessments, respectively, in a paper format to any student whose parent, guardian, or teacher in the applicable subject area requests a paper format; and TEC, §39.02342(c), added by HB 1225, 88th Texas Legislature, Regular Session, 2023, which limits the number of students who take a paper-by-request version of the assessments during each administration to 3% of the students enrolled in the district, excluding students whose admission, review, and dismissal committee determines that the student requires an accommodation that must be delivered in a paper format.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§39.023(a), (b), (c), and (l); 39.0234; and 39.02342(a) and (c), as added by House Bill 1225, 88th Texas Legislature, Regular Session, 2023.

§101.3011. Implementation and Administration of Academic Content Area Assessment Instruments.

(a) The Texas Education Agency (TEA) shall administer each assessment instrument under Texas Education Code (TEC), §39.023(a), (b), (c), and (l), in accordance with the rules governing the assessment program set forth in Chapter 101 of this title (relating to Assessment).

(1) For purposes of federal accountability as allowed by subsection (d) of this section, a Grade 3-8 student shall not be administered a grade-level assessment if the student:

(A) is enrolled in a course or subject intended for students above the student's enrolled grade level and will be administered a grade-level assessment instrument developed under TEC, §39.023(a), that aligns with the curriculum for that course or subject within the same content area; or

(B) is enrolled in a course for high school credit in a subject intended for students above the student's enrolled grade level and will be administered an end-of-course assessment instrument developed under TEC, §39.023(c), that aligns with the curriculum for that course or subject within the same content area.

(2) For purposes of federal accountability as allowed by subsection (d) of this section, a Grade 3-8 student who is accelerated in mathematics, reading/language arts, or science and on schedule to complete the high school end-of-course assessments in that same content area prior to high school shall be assessed at least once in high school with the ACT® or the SAT®.

(3) A student is only eligible to take an assessment instrument intended for use above the student's enrolled grade if the student is on schedule to complete instruction in the entire curriculum for that subject during the semester the assessment is administered.

(4) A student shall be administered the assessments under TEC, §39.023(a), (c), and (l), online as required by TEC, §39.0234, except for a student:

(A) who requires specific accommodations that cannot be provided online as specified in the test administration materials; or

(B) whose parent, guardian, or teacher in the applicable subject area requests a paper administration of an assessment. Requests must be submitted to the school district or open-enrollment charter school by the dates indicated in TEC, §39.02342(b). Requests from a district or charter school may not exceed 3% of eligible students enrolled in the district or charter school who are administered each assessment.

[~~(4) As specified in TEC, §28.0211(p), a Grade 5 or 8 student described by paragraph (1)(A) or (B) of this subsection may not be denied promotion on the basis of failure to perform satisfactorily on an assessment instrument not required to be administered to the student.~~]

(b) The TEA shall administer alternative assessment instruments under TEC, §39.023(b), that correspond to:

(1) the assessment instruments required under TEC, §39.023(a); and

(2) the following assessment instruments required under TEC, §39.023(c): English I, English II, Algebra I, biology, and U.S. history.

(c) Test administration procedures shall be established by the TEA in the applicable test administration materials. A school district, an open-enrollment charter school, or a private school administering the tests required by TEC, Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials.

(d) In accordance with TEC, §39.023(a)(5), the TEA shall administer to students assessments in any other subject and grade required by federal law.

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

Filed with the Office of the Secretary of State on September 25, 2023.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: November 5, 2023
For further information, please call: (512) 475-1497

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER RR. VALUATION MANUAL

28 TAC §3.9901

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.9901, concerning the adoption of a valuation manual for reserving and related requirements. The amendment to §3.9901 implements Insurance Code §425.073.

EXPLANATION. The amendment to §3.9901 is necessary to comply with Insurance Code §425.073, which requires the commissioner to adopt a valuation manual that is substantially similar to the National Association of Insurance Commissioners (NAIC) Valuation Manual.

Under Insurance Code §425.073, the commissioner must adopt the valuation manual, and any changes to it, by rule.

Under Insurance Code §425.073(c), when the NAIC adopts changes to its valuation manual, the commissioner must adopt substantially similar changes. This subsection also requires the commissioner to determine that NAIC's changes were approved by an affirmative vote representing at least three-fourths of the voting NAIC members, but not less than a majority of the total membership. In addition, the NAIC members voting in favor of amending the valuation manual must represent jurisdictions totaling greater than 75% of the direct written premiums as reported in the most recently available life, accident, and health/fraternal annual statements and health annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016, in compliance with Insurance Code §425.073. On August 16, 2023, the NAIC voted to adopt changes to the valuation manual. Fifty jurisdictions, representing jurisdictions totaling 89.48% of the relevant direct written premiums, voted in favor of adopting the amendments to the valuation manual. The vote adopting changes to the NAIC Valuation Manual meets the requirements of Insurance Code §425.073(c).

This proposal includes provisions related to NAIC rules, regulations, directives, or standards. Under Insurance Code §36.004, TDI must consider whether authority exists to enforce or adopt the NAIC's changes. In addition, under Insurance Code §36.007, the commissioner cannot adopt or enforce a rule implementing an interstate, national, or international agreement that infringes on the authority of this state to regulate the business of insurance in this state, unless the agreement is approved by the Texas Legislature. TDI has determined that neither §36.004 nor §36.007 prohibit this proposal because Insurance Code

§425.073 requires the Texas insurance commissioner to adopt a valuation manual that is substantially similar to the valuation manual approved by the NAIC, and §425.073(c) expressly requires the commissioner to adopt changes to the valuation manual that are substantially similar to changes adopted by the NAIC.

In addition to clarifying existing provisions, the 2024 NAIC Valuation Manual includes changes that:

- require reporting on actuarial items, including company inflation assumptions;

- revise required hedge modeling for index credit hedging, a fundamentally different type of hedging from the type of hedging that existing requirements were designed to reflect; and

- update the required timing for companies to submit mortality experience data to allow for more timely creation of industry mortality tables.

The NAIC's adopted changes to the valuation manual can be viewed at https://content.naic.org/sites/default/files/pbr_data_valuation_manual_future_edition_redline.pdf.

Section 3.9901. The amendment to §3.9901 strikes the date on which the NAIC adopted its previous valuation manual and inserts the date on which the NAIC adopted its current valuation manual, adopting by reference the new valuation manual dated August 16, 2023.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendment, other than that imposed by the statute. Ms. Walker made this determination because the proposed amendment does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendment.

Ms. Walker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Ms. Walker expects that administering the proposed amendment will have the public benefit of ensuring that TDI's rules conform to Insurance Code §425.073.

Ms. Walker expects that the proposed amendment will not increase the cost of compliance with Insurance Code §425.073 because it does not impose requirements beyond those in the statute. Insurance Code §425.073 requires that changes to the valuation manual be adopted by rule and be substantially similar to changes adopted by the NAIC. As a result, any cost associated with adopting the changes to the valuation manual is a direct result of Insurance Code §425.073 and not the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses, or on rural communities. This is because the amendment does not impose any requirements beyond those required by statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. In addition, no other rule amendments are required under Government Code §2001.0045 because the proposed amendment is necessary to implement legislation. The proposed rule implements Insurance Code §425.073, as added by Senate Bill 1654, 84th Legislature, 2015.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendment is in effect, the amendment:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

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

- will not create a new regulation;

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

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on November 6, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the TDI no later than 5:00 p.m., central time, on November 6, 2023. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes the amendment to §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the commissioner to, by rule, adopt changes to the valuation manual previously adopted by the commissioner that are substantially similar to any changes adopted by NAIC to its valuation manual.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the

powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.9901 implements Insurance Code §425.073.

§3.9901. Valuation Manual.

(a) The Commissioner adopts by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that were adopted by the NAIC through August 16, 2023, [~~August 13, 2022,~~] as required by Insurance Code §425.073.

(b) The operative date of the NAIC Valuation Manual in Texas is January 1, 2017.

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

Filed with the Office of the Secretary of State on September 22, 2023.

TRD-202303517
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: November 5, 2023
For further information, please call: (512) 676-6555

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE
SUBCHAPTER F. INLAND MARINE INSURANCE, [~~AND~~] MULTI-PERIL INSURANCE, AND COMMERCIAL LINES
DIVISION 3. EXEMPT COMMERCIAL LINES

28 TAC §5.5201

The Texas Department of Insurance (TDI) proposes to amend the title of Subchapter F of 28 TAC Chapter 5 and to add new Division 3, containing new 28 TAC §5.5201, concerning exempt commercial lines. The new section implements Senate Bill 1367, 87th Legislature, 2021.

EXPLANATION. This proposal implements SB 1367, which exempts certain commercial lines of insurance from rate and form filing r equirements. SB 1367 also authorizes the commissioner to exempt additional commercial lines of insurance to promote enhanced competition or more effectively use TDI resources that might otherwise be used to review commercial lines filings.

As part of the implementation of 1367, a proposed amendment revises the title of Subchapter F to reflect that a section in it addresses commercial lines and adds new Division 3 to address exempt commercial lines.

Proposed new §5.5201 identifies 12 additional commercial lines of property and casualty insurance and exempts them from the rate and form filing r equirements i n I nsurance C ode Chapter 2251, Subchapter C, and Insurance Code Chapter 2301, Subchapter A. The rule does not exempt these insurance lines from any other applicable statute or rule.

These lines are appropriate to exempt because TDI receives comparatively few rate and form filings or policyholder complaints involving them. These factors indicate that there is less need for TDI to review forms and rates for these lines. Further, exempting these lines of insurance will promote enhanced competition and allow TDI to more effectively use its resources to review other commercial lines filings, as contemplated by SB 1367.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Mark Worman, deputy commissioner of the Property and Casualty Division, has determined that during each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the new section, other than that imposed by the statute. Mr. Worman made this determination because the proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new section.

Mr. Worman does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new section is in effect, Mr. Worman expects that administering it will have the public benefits of ensuring that TDI's rules conform to Insurance Code §2251.0031 and §2301.0031 and promoting more effective use of TDI resources.

Mr. Worman expects that the proposed new section will not increase the cost of compliance with Insurance Code §2251.0031 and §2301.0031 because it does not impose requirements beyond those in the statute. Insurance Code §2251.0031 and §2301.0031 exempt certain lines of insurance from rate and form filing requirements and authorize the commissioner to exempt additional commercial lines of insurance to promote enhanced competition or more effectively use TDI resources that might otherwise be used to review commercial lines filings. Because it will reduce the lines of insurance subject to filing requirements, the proposed new section will likely reduce the cost of compliance.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new section will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a cost on regulated persons. Even if it did, no additional rule amendments are required under Government Code §2001.0045 because proposed new §5.5201 is necessary to implement legislation. The proposed rule implements Insurance Code §2251.0031 and §2301.0031, as added by SB 1367.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

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

- will not create new regulations;

- will limit existing regulations;

- will not increase the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

This rule will limit existing regulations by exempting additional lines of insurance from rate and form filing requirements.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on November 6, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on November 6, 2023. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes new §5.5201 under Insurance Code §§2251.0031, 2301.0031, 36.001, and 36.002.

Insurance Code §2251.0031 exempts certain lines of insurance from rate filing requirements and provides that the commissioner may by rule exempt additional commercial lines of insurance to promote enhanced competition or more effectively use TDI resources. Section 2251.0031 also provides that the commissioner may adopt reasonable and necessary rules to implement §2251.0031.

Insurance Code §2301.0031 exempts certain lines of insurance from form filing requirements and provides that the commissioner may by rule exempt additional commercial lines of insurance to promote enhanced competition or more effectively use TDI resources. Section 2301.0031 also provides that the commissioner may adopt reasonable and necessary rules to implement §2301.0031.

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.

Insurance Code §36.002 provides that the commissioner may adopt reasonable rules that are necessary to effect the purposes of Insurance Code Chapter 2251 and Chapter 2301, Subchapter A.

CROSS-REFERENCE TO STATUTE. Section 5.5201 implements Insurance Code §2251.0031 and §2301.0031.

§5.5201. Exempt Commercial Lines.

(a) The purpose of this section is to identify commercial lines of insurance that the commissioner of insurance has determined should be exempt from the rate filing requirements in Insurance Code Chapter 2251, Subchapter C, concerning Rate Filings, and the form filing requirements in Insurance Code Chapter 2301, Subchapter A, concerning Policy Forms Generally. These exemptions are in addition to the exceptions for certain lines of insurance listed in Insurance Code §2251.0031(a), concerning Exceptions for Certain Lines, and Insurance Code §2301.0031(a), concerning Exceptions for Certain Lines.

(b) The rate filing requirements in Insurance Code Chapter 2251, Subchapter C, and the form filing requirements in Insurance Code Chapter 2301, Subchapter A, do not apply to any line of the following kinds of insurance written under a commercial insurance policy or contract:

(1) commercial credit insurance products that cover outstanding commercial debt, including trade credit insurance and commercial guaranteed auto protection (GAP) insurance;

(2) crime insurance;

(3) fidelity and surety products, whether referred to as a bond or insurance, including products that cover crime, forgery, and employee dishonesty;

(4) financial guaranty;

(5) glass insurance;

(6) hail insurance on farm crops;

(7) rain insurance;

(8) employee benefits liability;

(9) liquor liability;

(10) owners and contractors protective liability;

(11) railroad protective liability; or

(12) commercial tuition withdrawal insurance.

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

Filed with the Office of the Secretary of State on September 19, 2023.

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Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: November 5, 2023
For further information, please call: (512) 676-6555

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

The Texas Department of Insurance (TDI) proposes to amend 28 TAC Chapter 5, Subchapter H, §§5.7005, 5.7007, 5.7011, 5.7012, and 5.7013, and new §§5.7101 - 5.7110. As part of this proposal, TDI will divide Subchapter H into two new divisions. New Division 1 will contain §§5.7001 - 5.7018. New Division 2 will contain new §§5.7101 - 5.7110. The amendments and new sections implement:

- Senate Bill 1602, 87th Legislature, 2021, which requires insurers to nonrenew private passenger automobile policies if an insured fails or refuses to cooperate;

- House Bill 1900, 88th Legislature, 2023, which updates notice requirements for nonrenewal and cancellation of private passenger automobile policies; and

- House Bill 2065, 88th Legislature, 2023, which specifies that mandatory nonrenewal applies to third-party liability claims and removes a reference to named insured.

EXPLANATION. Proposed amendments to §§5.7005, 5.7007, 5.7011, 5.7012, and 5.7013 implement Insurance Code §551.104(f) and §551.105, as amended by HB 1900. Insurance Code §551.104(f) requires insurers to send notice of cancellation of a personal automobile insurance policy not later than 60 days before the effective date of cancellation, rather than the 30th day, as required by the previous version of the statute. Likewise, amended Insurance Code §551.105 requires insurers to send notice of nonrenewal of a personal automobile insurance policy not later than the 60th before a policy expires, rather than the 30th day.

Amended §5.7005 also includes a change to implement HB 2065, which amended Insurance Code §551.1053 to address mandatory nonrenewal of a private automobile insurance policy when an insured fails to cooperate in--or cannot be contacted regarding--the investigation, settlement, or defense of a third-party liability claim or action.

SB 1602 amended Insurance Code §551.1053 effective September 1, 2021. However, most personal automobile insurance policy forms filed for review and approval since that effective date have not initially complied with §551.1053. Therefore, new §§5.7101 - 5.7110 are proposed to specify requirements to make it easier for insurers and TDI staff to ensure that forms and claim handling practices comply with Insurance Code §551.1053. In addition, to assist consumers, the new sections offer sample plain language notices and require that insurers give insureds at least 10 days from the date the notice is sent to cooperate in a claim.

Insurance Code §551.1053 gives rise to some complex situations for insurers when noncooperation occurs near the end of the policy period. Insurers may have already developed methods to deal with these issues, but the new sections will promote consistency in handling these complex situations.

To provide clarity and structure to the requirements in Subchapter H, TDI proposes to divide the subchapter into two new divisions. Division 1, titled "Miscellaneous," will include the current sections in Subchapter H, consisting of §§5.7001 - 5.7018. Division 2, titled "Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies," will include new §§5.7101 - 5.7110.

The proposed amendments to §§5.7005, 5.7007, 5.7011, 5.7012, and 5.7013 and new §§5.7101 - 5.7110 are described in the following paragraphs, organized by division.

Division 1. Miscellaneous.

Sections 5.7005 and 5.7007. Amendments to §5.7005 and §5.7007 conform the sections to Insurance Code §551.104(f) and §551.105 by extending the deadline by which an insurer must give written notice of cancellation from 30 days to 60 days. The amendments also revise text to simplify language, address nonrenewal, and note that exceptions to the sections are provided in new §§5.7101 - 5.7110.

Section 5.7011. Amendments to §5.7011 simplify language and change the word "subchapter" to "division" to account for new Division 2, clarifying that the scope of the section is unchanged.

Section 5.7012. Amendments to §5.7012 remove redundant and outdated statutory references. The current versions of statutes listed in §5.7012 are included in 28 TAC §5.7001(c), which provides the general applicability for Subchapter H. An amendment also changes "Board of Insurance" to "Texas Department of Insurance."

Section 5.7013. To conform to Insurance Code Chapter 35, for general liability and certain commercial automobile insurance policies, amendments to §5.7013(a) and (b) remove the requirement that notices must be mailed. Section 5.7013(a) is also amended to remove the specific number of days for notice of cancellation and add a reference to Insurance Code §551.053. Similarly, amendments to §5.7013(b) remove the specific number of days for notice of nonrenewal and add references to Insurance Code §551.054 and §551.1053. New §5.7013(c) is added to replace text removed from §5.7013(a) and (b). New §5.7013(c) provides that an insurer may comply with the section by requiring or permitting its agent to notify the policyholder, but that it is the insurer's responsibility to give notice to the policyholder if the agent fails to notify the policyholder.

Amendments to the sections also reorganize some text and include nonsubstantive plain language revisions to conform the text to current agency drafting style.

Division 2. Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies.

Section 5.7101. New §5.7101 states the purpose and applicability of new Division 2. Division 2 does not apply to policies written through the Texas Automobile Insurance Plan Association (TAIPA) because Insurance Code §551.102 specifically excludes TAIPA from the applicability of Insurance Code Chapter 551, Subchapter C.

Section 5.7102. New §5.7102 defines "notice" to mean the notice of nonrenewal and opportunity to cooperate required by Insurance Code §551.1053(a). This will streamline the rule text, making it easier to read.

Section 5.7103. New §5.7103 reiterates the Insurance Code §551.1053(a) requirement that insurers use reasonable efforts to contact and encourage cooperation from an insured who fails or refuses to cooperate in the investigation, settlement, or defense of a claim or action. The section does not define "reasonable efforts" because what is "reasonable" depends on the facts of each claim.

Section 5.7104. New §5.7104 requires an insurer to send a notice to the named insured within five days after determining an insured is uncooperative. Specifying this timing requirement promotes prompt and transparent communication between the parties and consistency in claims handling across insurers. It also keeps the claims process moving.

Section 5.7105. New §5.7105 requires an insurer to give an insured at least 10 days for the insured to cooperate after the insurer sends the notice. Insurance Code §551.1053(b) sets forth a required condition for nonrenewal--that the insured continues to fail or refuse to cooperate. This means the insurer must give the insured an opportunity to cooperate before it may nonrenew.

Because §551.1053 contemplates an opportunity to cooperate, the insurer must give the insured that opportunity, even if it

means extending the policy period. A 10-day period beyond the current term is reasonable and consistent with the existing 10-day cancellation notice requirement under Insurance Code §551.104(e).

Specifying a minimum time period that the insurer must give an insured to cooperate recognizes that an insured could cooperate and avoid nonrenewal on that basis. This helps encourage cooperation.

This section also clarifies that the insured has an opportunity to cooperate at any time during the policy term in which the insurer sends the notice. For example, if an insured had an accident on the last day of the policy term, the insurer would not send the notice until the next policy term, and thus the insurer would not be able to determine whether the insured cooperates until sometime within the next policy term.

Section 5.7106. New §5.7106 requires that if an insurer sends a notice less than 10 days before the end of the policy term, it must extend the policy to give the insured at least 10 days to cooperate. The insurer may charge for the coverage extension. This is not a new concept. Some insurers already extend policy periods if they intend to nonrenew or cancel but do not send notice in time.

If insurers extend a policy period to provide the 10-day minimum period to cooperate, the section allows them to charge for the extension on a pro rata basis.

Section 5.7107. New §5.7107 lists the required contents of a notice sent by an insurer under Insurance Code §551.1053. Prescribing specific, required elements for the notice will help prevent inconsistencies and consumer confusion. These required elements are designed to ensure that the named insured gets clear, complete, and correct information about the claim; what they need to do to cooperate; and the consequences if they do not cooperate.

The section requires insurers to provide either (1) the required notice in both English and Spanish, or (2) an English version with information in Spanish about how to get a Spanish version. According to the 2020 U.S. Census, over 7 million Texas households speak Spanish as their primary language. Providing Spanish instructions will help Spanish-speaking consumers understand their obligation to cooperate. Spanish notice requirements are consistent with other rules intended to alert consumers of important rights or changes in their policies.

Section 5.7108. New §5.7108 provides examples of notices. Providing sample notices encourages clear and consistent communication, saves insurers the time and expense of having to draft language, and helps insurers comply with the law. In addition to English and Spanish notices, TDI is providing a dual-language notice. The notice is in English and contains instructions on how to contact the insurer in Spanish. Plain language examples are consistent with TDI policy and Insurance Code plain language requirements, including §2301.053 regarding plain language form requirements, and §551.056 and §551.1055 regarding cancellation and nonrenewal. Insurers are not required to use a sample notice. If they do use one, they may alter the format, except that §5.7106(a)(2) requires insurers to use at least 10-point font. TDI's website provides plain language resources with guidance on formatting.

Section 5.7109. New §5.7109 reiterates that if the insured does not cooperate after the insurer gives notice, the insurer must nonrenew the policy. However, if an insured does cooperate at any time before policy expiration or the end of the extended term, §5.7109 prohibits the insurer from nonrenewing the policy under Insurance Code §551.1053.

Section 5.7110. New §5.7110 affirms that insurers may nonrenew under other applicable statutes, even if the insured cooperates under Insurance Code §551.1053. When the insurer plans to nonrenew the policy under other applicable law, the insurer must still send a notice of nonrenewal and opportunity to cooperate. Because the notice encourages the insured to cooperate, the insurer must send the notice even when nonrenewal is certain for other reasons.

Date of compliance. Insurance Code §551.1053 became effective on September 1, 2021, and insurers must already comply with it. But to give insurers time to prepare for the requirements in new §§5.7101 - 5.7110, TDI will begin requiring compliance with those sections starting six months after the effective date of their adoption.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director, Property and Casualty Lines, has determined that during each year of the first five years the proposed amended and new sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amended and new sections other than that imposed by statute. Ms. Baker made this determination because the proposed amended and new sections do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amended and new sections.

Ms. Baker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amended and new sections are in effect, Ms. Baker expects that administering them will have the public benefit of ensuring that TDI's rules conform to Insurance Code §§551.053, 551.054, 551.104, 551.105 and 551.1053. It will also have the benefit of providing consistency among insurers in implementing §551.1053. The public will benefit from consistent implementation because insureds will receive clear notices encouraging them to cooperate in a claim or be nonrenewed, thus increasing the likelihood that injured third parties will be paid. The public will also benefit from having 60 days rather than 30 days to shop for insurance when their insurer provides notice that their coverage will be nonrenewed.

Ms. Baker expects that the proposed amended and new sections may increase the cost of compliance with Insurance Code §§551.053, 551.054, 551.104, 551.105 and 551.1053. The cost to comply will vary depending on insurers' current operations. Insurers may incur programming, legal, and administrative costs to address new rule requirements, including those related to giving longer notice of nonrenewal and cancellation, developing the notice language, extending the policy period, and providing a Spanish translation of the notice.

Cost of personnel associated with programming information systems. The United States Department of Labor indicates that in Texas, the mean hourly wage for computer programmers is $44.98 (www.bls.gov/oes/current/oes_tx.htm#15-0000). TDI recognizes that costs will vary depending on each insurer's data systems and staffing strategies. Ms. Baker estimates that insurers may need 20 to 40 hours to complete the programming.

Cost of personnel associated with updating notice language in forms. The United States Department of Labor indicates that in Texas, the hourly mean wage for attorneys is $80.10 and legal support workers is $35.71 (www.bls.gov/oes/current/oes_tx.htm#15-0000). According to the 2019 survey of the State Bar of Texas on income and hourly rates, the median hourly rate for attorneys is $291 (https://tinyurl.com/mr7n3vpc). TDI recognizes that costs will vary depending on each insurer's staffing strategies. Ms. Baker estimates insurers will need 15 to 30 hours to complete the drafting necessary to update the notice language.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amended and new sections may have an adverse economic effect on small or micro businesses. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses. TDI estimates that the proposed amended and new sections could affect fewer than 150 small or micro businesses.

TDI has determined that the proposed amended and new sections will not have an adverse economic effect or a disproportionate effect on rural communities because the sections do not apply to rural communities.

TDI considered the following alternatives to minimize any adverse effect on small and micro businesses while accomplishing the proposal's objectives:

(1) not proposing new §§5.7101 - 5.7110;

(2) proposing different requirements for small and micro businesses; and

(3) postponing the applicability of new §§5.7101 - 5.7110.

Not proposing §§5.7101 - 5.7110. Policy forms filed with TDI have not complied with Insurance Code §551.1053. To address this problem, the proposal establishes uniform requirements for insurers that implement important consumer protections. Not proposing §§5.7101 - 5.7110 would result in continued insurer misunderstanding of and failure to comply with statutory requirements, which could harm consumers because they may not get the information required under Insurance Code §551.1053. For these reasons, TDI rejected this option.

Proposing different requirements for small and micro businesses. Proposing different standards for small and micro businesses would not accomplish the goal of creating a uniform procedure to implement Insurance Code §551.1053. All consumers should receive clear, consistent, timely notices regarding mandatory nonrenewal of private passenger automobile coverage. In addition, harmonizing rules with statutes is important to ensure fair competition and foster a competitive market for all insurers, to protect and ensure fair treatment of consumers, and to ensure insurance laws are executed. For these reasons, TDI rejected this option.

Postponing the applicability of new §§5.7101 - 5.7110. Providing a six-month delay before the uncooperative insured requirements of new §§5.7101 - 5.7110 apply will help alleviate some of the possible economic impacts on all insurers, including small and micro businesses, by giving insurers the ability to incorporate the requirements with other updates and process changes they are implementing. For these reasons, TDI has decided to incorporate this option into the proposal.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a possible cost on regulated persons. However, Government Code §2001.0045 does not require any rule amendments or repeals because the proposed amendments and new sections are necessary to implement legislation. The proposed rule implements Insurance Code §§551.104, 551.105, and 551.1053.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amended and new sections are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

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

- will create a new regulation;

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

- will not increase the number of individuals subject to the rule's applicability; and

- will positively affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received no later than 5:00 p.m., central time, on November 6, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on November 6, 2023. If TDI holds a public hearing, the department will consider written and oral comments presented at the hearing.

SUBCHAPTER H. CANCELLATION, DENIAL, AND NONRENEWAL OF CERTAIN PROPERTY AND CASUALTY INSURANCE

DIVISION 1. MISCELLANEOUS

28 TAC §§5.7005, 5.7007, 5.7011 - 5.7013

STATUTORY AUTHORITY. TDI proposes amendments to §§5.7005, 5.7007, 5.7011, 5.7012, and 5.7013 under Insurance Code §§551.1053, 551.112, 1951.002, and 36.001.

Insurance Code §551.1053 requires insurers to nonrenew private passenger automobile insurance policies when an insured

fails or refuses to cooperate with the insurer in the investigation, settlement, or defense of a claim or action.

Insurance Code §551.112 authorizes the commissioner to adopt rules relating to the cancellation and nonrenewal of insurance policies.

Insurance Code §1951.002 authorizes the commissioner to adopt and enforce rules necessary to carry out the provisions of Insurance Code Title 10, Subtitle C.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 5.7005, 5.7007, 5.7011, 5.7012, and 5.7013 implement Insurance Code §551.104 and §551.105.

§5.7005. Special One-Year Rule Applicable Only to Personal Automobile Policies.

(a) Purpose of rule. The [~~It is the~~] purpose of this [~~special~~] section is to:

(1) require [~~provide~~] continuity of coverage for [~~a period of~~] at least one year when the policy is written for a lesser term; and [~~. Its purpose is also to permit~~]

(2) allow cancellation at the expiration of a one-year term when coverage is written for [~~to cover a period of~~] more than one year.

(b) Cancellation or nonrenewal. An insurer [~~A company~~] may cancel or nonrenew personal automobile policies for any legal reason [~~irrespective of the reasons which prompt it to do so~~], if the purpose is to terminate coverage concurrently with the expiration of any annual period, beginning with the original effective date of the policy. The prohibition [~~contained~~] in §5.7002 of this title (relating to Cancellations) does not apply [~~is inapplicable~~] to such cancellations. An insurer that [~~It is especially provided, however, that a company which~~] cancels on the anniversary, and in accordance with [~~the provisions of~~] this subsection, must give the policyholder at least 60 [~~30~~] days prior written notice of cancellation.

(c) Except as provided in Division 2 of this subchapter (relating to Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies), personal [~~Personal~~] automobile policies that [~~which~~] are written for [~~a period of~~] less than one year must be renewed, at the option of the insured, for additional periods so as to accumulate a minimum of 12 months' continuous coverage.

§5.7007. Renewal of Policies.

(a) Except as provided in Division 2 of this subchapter (relating to Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies), a [~~A~~] policy must be renewed at expiration, at the option of the policyholder, unless the insurer [~~company~~] has mailed written notice of nonrenewal to the policyholder [~~of its intention to decline renewal~~] at least 60 [~~30~~] days before the policy's [~~in advance of the policy~~] expiration date. The insurer [~~company~~] may comply with this provision by requiring or permitting its agent to notify the policyholder. However, it is the insurer's responsibility to give [~~of giving~~] notice to the policyholder [~~insured remains with the company~~] if the agent fails [~~to carry out its instructions~~] to notify the insured.

(b) An insurer [~~A company~~] may not decline to renew personal automobile policies because of the ages of the insureds.

§5.7011. Violations.

In addition to all other remedies provided by law, any policy cancellation or restriction of coverage made in violation of this subchapter is [~~shall be~~] deemed to be null and void and of no effect. Policies on which notice of nonrenewal is not given as required by this division must [~~subchapter shall~~] be renewed at the request of the insured.

§5.7012. Reason for Declination, Cancellation, or Nonrenewal.

Insurers must provide to policyholders or applicants a written statement of the reason or reasons for the declination, cancellation, or nonrenewal of any policy regulated by the Texas Department [~~State Board~~] of Insurance [~~pursuant to the Insurance Code, Chapter 5,~~] upon request by the policyholder or applicant. [~~This section is applicable to policies prescribed or approved by the board under authority of the Insurance Code, Articles 5.06, 5.13-1, 5.15, 5.15-1, 5.35, 5.36, 5.53, 5.53-A, 5.56, 5.57, 5.81, and 5.91.~~]

§5.7013. Notice Requirements for Cancellation and Nonrenewal for General Liability and Certain Automobile Insurance Policies.

(a) An insurer may cancel general [~~General~~] liability insurance policies and commercial automobile insurance policies to which this section applies [~~may be cancelled by the company~~] by providing the notice required by Insurance Code §551.053, concerning Written Notice of Cancellation Required [~~mailing written notice to the insured of its intent to cancel at least 45 days prior to the effective date of cancellation~~], except as provided by [~~in~~] §5.7014 of this title (relating to Exceptions to Cancellations and Nonrenewal Notice Requirements for General Liability and Certain Automobile Insurance Policies). [~~However, the responsibility of giving notice to the insured remains with the company if the agent fails to carry out its instructions to notify the insured.~~]

(b) General liability insurance policies and automobile insurance policies to which this section applies must be renewed at expiration, at the option of the policyholder, unless the company has provided the [~~mailed~~] written notice required by Insurance Code §551.054, concerning Written Notice of Nonrenewal Required, or by Insurance Code §551.1053, concerning Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies. If [~~to the policyholder of its intention to decline renewal at least 45 days in advance of the policy expiration date except as provided in §5.7014(d) of this title (relating to Exceptions to Cancellation and Nonrenewal Notice Requirements for General Liability and Certain Automobile Insurance Policies). The company may comply with this provision by requiring or permitting its agent to notify the policyholder. However, the responsibility of giving notice to the insured remains with the company if the agent fails to carry out its instructions to notify the insured. Upon failure of~~] the insured does not [~~to~~] pay the renewal premium when due, the insurer's [~~company's~~] obligation to renew terminates on the policy's [~~policy on its~~] expiration date [~~terminates~~], regardless of whether the company has given [~~any~~] notice of nonrenewal [~~intent to decline renewal~~].

(c) An insurer may comply with this section by requiring or permitting its agent to notify the policyholder. However, it is the insurer's responsibility to give notice to the policyholder if the agent fails to notify the policyholder.

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

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

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Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: November 5, 2023
For further information, please call: (512) 676-6555

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DIVISION 2. MANDATORY RENEWAL OF PRIVATE PASSENGER AUTOMOBILE INSURANCE POLICIES

28 TAC §§5.7101 - 5.7110

STATUTORY AUTHORITY. TDI proposes new §§5.7101 - 5.7110 under Insurance Code §§551.1053, 551.112, 1951.002, and 36.001.

Insurance Code §551.1053 requires insurers to nonrenew private passenger automobile insurance policies when an insured fails or refuses to cooperate with the insurance company in the investigation, settlement, or defense of a claim or action.

Insurance Code §551.112 authorizes the commissioner to adopt rules relating to the cancellation and nonrenewal of insurance policies.

Insurance Code §1951.002 authorizes the commissioner to adopt and enforce rules necessary to carry out the provisions of Insurance Code Title 10, Subtitle C.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 5.7101 - 5.7110 implement Insurance Code §551.1053.

§5.7101. Division Purpose and Applicability.

(a) This division implements Insurance Code §551.1053, concerning Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies.

(b) Insurance Code §551.1053 requires insurers to nonrenew a policy if the insured fails or refuses to cooperate with an insurer in an investigation, settlement, or defense of a claim or action.

(c) This division applies to third-party liability claims and actions:

(1) involving insurers identified in Insurance Code §551.101, concerning Definition; and

(2) on private passenger automobile insurance policies that are:

(A) personal automobile insurance policies, or

(B) policies written for any governmental entity or political subdivision identified in Insurance Code §551.102(4), concerning Applicability of Subchapter.

(d) This division does not apply to policies written through the Texas Automobile Insurance Plan Association.

§5.7102. Definition.

In this division, "notice" means the notice of nonrenewal and opportunity to cooperate required by Insurance Code §551.1053(a), concerning Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies.

§5.7103. Reasonable Efforts.

An insurer must use reasonable efforts to contact and encourage cooperation from an insured who fails or refuses to cooperate in an investigation, settlement, or defense of a claim or action.

§5.7104. Notice Timing.

(a) An insurer must send a notice to the named insured within five days after determining that the insured failed or refused to cooperate.

(b) If an insurer determines that an insured is not cooperating, the insurer must send the notice even if the insurer has already sent a notice of nonrenewal for another reason.

§5.7105. Cooperation Timeframe.

(a) An insured may cooperate at any time during the policy term in which a notice is sent or during any extended term required under §5.7106 of this title (relating to Extension of Term and Additional Premium). If the insured cooperates, the insurer may not nonrenew for failure or refusal to cooperate.

(b) An insurer must give the insured at least 10 days to cooperate from the date the insurer sends the notice, regardless of when the policy term ends.

§5.7106. Extension of Term and Additional Premium.

(a) If a notice is sent less than 10 days before the end of the policy term, the insurer must extend the policy term to give the insured 10 days to cooperate.

(b) An insurer may charge additional premium for any extended term on a pro rata basis, based on the premium for the expiring term.

§5.7107. Contents of Notice.

(a) A notice must be written in:

(1) plain language (see TDI's website for plain language guidance); and

(2) at least 10-point type.

(b) The notice must inform the named insured:

(1) of the identity of the insured who failed or refused to cooperate;

(2) how the insured failed or refused to cooperate;

(3) of the insurer's attempts to contact the insured;

(4) of the claim number or action for which the insurer is requesting cooperation;

(5) that the insurer will not renew the policy if the insured continues to fail or refuse to cooperate;

(6) that the insured still has time to cooperate;

(7) that the insured must cooperate before the end of the policy term (or any extended term) to stop nonrenewal of the policy;

(8) that if the insured cooperates, then the insurer will not nonrenew the policy for failure or refusal to cooperate;

(9) that even if the insured cooperates, the insurer may nonrenew for other reasons;

(10) of the date of nonrenewal; and

(11) of any other information the insurer deems appropriate.

(c) Insurers may provide the notice either:

(1) in both English and Spanish; or

(2) in English with a statement in Spanish on the first page that the policy will be nonrenewed if the insured continues to fail or refuse to cooperate. The statement must list a phone number where an insured can speak in Spanish with the insurer's representative to discuss the items listed in subsection (b) of this section.

(d) Insurers are not required to file the notice with TDI unless requested.

(e) The notice may include additional information that does not violate other statutes or rules.

§5.7108. Sample Notice of Nonrenewal and Opportunity to Cooperate.

The figures in this section provide examples of written notices that comply with §5.7107 of this title (relating to Contents of Notice). Insurers are not limited to using the examples in this section; they may use other content and formatting as long as the notice they provide complies with this division.
Figure 1: 28 TAC §5.7108
Figure 2: 28 TAC §5.7108
Figure 3: 28 TAC §5.7108

§5.7109. Nonrenewal Under Insurance Code §551.1053.

(a) If an insured does not cooperate after the insurer provides a notice, the insurer must nonrenew the policy at the end of the policy term or at the end of the extended term under §5.7106 of this title (relating to Extension of Term and Additional Premium).

(b) Insurance Code §551.105, concerning Nonrenewal of Policies; Notice Required, and Insurance Code §551.106, concerning Renewal and Reinstatement of Personal Automobile Insurance Policies, do not apply where they conflict with the requirement to nonrenew the policy under Insurance Code §551.1053.

(c) If the insured cooperates before the end of the policy term or the end of the extended term under §5.7106 of this title, then the insurer may not nonrenew under this division.

§5.7110. Nonrenewal Under Other Statutes.

(a) An insurer may nonrenew a policy for a reason other than an insured's failure or refusal to cooperate under §5.7109 of this title (relating to Nonrenewal Under Insurance Code §551.1053) if the insurer complies with other rules and statutes governing renewal and nonrenewal, including Insurance Code §551.105, concerning Nonrenewal of Policies; Notice Required, and Insurance Code §551.106, concerning Renewal and Reinstatement of Personal Automobile Insurance Policies.

(b) To encourage cooperation, even if an insurer has already sent a notice of nonrenewal for another reason, the insurer must still send the notice required by Insurance Code §551.1053(a).

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

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §21.2819

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §21.2819, concerning extensions of time frame requirements on providers and health plans for claim submissions and payments in Insurance Code §§843.337, 843.342, 1301.102, and 1301.137--prompt pay deadlines--due to a catastrophic event. The proposed amendments to §21.2819 implement Senate Bill 1286, 88th Legislature, 2023.

EXPLANATION. This proposal implements SB 1286, which provides two ways that an entity--an HMO, a preferred provider carrier, an exclusive provider carrier, a physician, or a provider--can qualify for an extension of a prompt pay deadline after a catastrophic event. An entity can extend its prompt pay deadlines after a catastrophic event either under an extension granted by commissioner notice or by TDI approving a request for an extension submitted by the entity.

SB 1286 is a TDI biennial recommendation. During the COVID-19 pandemic, TDI issued bulletins about extensions of various deadlines. There were questions about processes for these extensions; TDI agreed clarifications were necessary and made a recommendation to the legislature in its Biennial Report. Based on this, the biennial recommendation's goal was to clarify (1) the standards for entities requesting extensions to prompt pay deadlines; (2) the duration of the extensions; and (3) TDI's authority to approve, limit, or disapprove requests. This proposal provides needed clarity in the process for requesting and receiving prompt pay deadline extensions.

Section 21.2819 provides the process for an entity to notify TDI about its need for an extension of prompt pay deadlines due to the effects of a catastrophic event on its normal business operations.

An amendment to subsection (a) clarifies the date range in which an entity must notify TDI that a catastrophic event has interfered with normal business operations.

One amendment to subsection (b) clarifies how entities will electronically communicate with TDI regarding an extension, and what information they need to provide. Rather than notifying TDI a second time at the end of the business interruption, entities will be required to provide all necessary information in their initial request. Another amendment eliminates the need for the notification to be a sworn affidavit, as that is an unnecessary additional expense to entities that are experiencing administrative challenges.

Amendments are also proposed to the required notification elements in subsection (b) to better track extension requests; for example, a physician's or provider's national provider identification number or a managed care carrier's (MCC's) NAIC number will be required. The proposed amendments also require a state-

ment that there is a substantial interference to normal business operations, to ensure that the statutory requirements are met. Some entities contract with third parties or delegees to administer their payment requirements. In that instance, the entity will notify TDI that a catastrophic event interrupted the business operations of the third party and that interruption is also affecting the entity's business operations. TDI will take this business arrangement into consideration in its review of a request.

The proposed amendments also require an entity to provide the initial date of the interference, the expected end date, and information needed to identify entities and locations that are affected by an event.

Proposed amendments to subsection (c) clarify the time frame of an extension. If the extension is related to a notice from the commissioner, the notice will specify the extension's expected end date. For extension requests independent of a commissioner notice, the applicable deadlines in 28 TAC §§21.2804, 21.2806 - 21.2809, and 21.2815 will be tolled until TDI either disapproves the request or sends an approval with a specified end date.

In addition, in new subsection (d) the proposal sets out a process for requesting an extension request, should an entity require more time than a commissioner notice or TDI approval previously allowed. The entity must submit this request at least three business days before the existing extension's expiration explaining why it needs additional time.

The proposed amendments add subsection (e) to address the possibility that TDI may need additional information when determining whether to approve a request for an extension. The new subsection also specifies that TDI may disapprove a request if the nature of the event does not meet the definition of a catastrophic event or may limit a requested extension if the duration of interruption to normal business operations is not proportional to the nature of the catastrophic event.

The amendments clarify that extensions will be based on the date the catastrophic event begins substantially interfering with normal business operations rather than requiring the date of the event itself, as events such as pandemics may affect business operations at different times.

Lastly, the proposed amendments include nonsubstantive editorial and formatting changes to conform the section to the agency's current drafting style and usage guidelines and to improve the rule's clarity. These changes include modifying the references to TDI for consistency.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of the Regulatory Initiatives Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than that imposed by statute. Ms. Bowden made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Bowden does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Bowden expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Insurance Code §§843.337, 843.342, 1301.102, and 1301.137.

Ms. Bowden expects that the proposed amendments will not increase the cost of compliance with Insurance Code §§843.337, 843.342, 1301.102, and 1301.137 because the amendments do not impose requirements beyond those in the statutes and the current rule. The existing rule addresses notifying TDI any time a governed entity is unable to meet a prompt pay deadline. SB 1286 also affords a governed entity the ability to qualify for an extension upon TDI's approval of a request. The proposed amendments specify the process for these distinct options. As a result, the costs associated with submitting notifications to TDI under the proposed amendments result from the enforcement or administration of current regulations and SB 1286.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will have no adverse effect on small or micro businesses or rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal, which explains that associated costs are attributable to SB 1286 and not the proposed rule, also applies to these small and micro businesses and rural communities.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose an increased cost on regulated persons. However, even if it did, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments to §21.2819 are necessary to implement legislation. The proposed amendments implement Insurance Code §§843.337, 843.342, 1301.102, and 1301.137, as amended by SB 1286. The cost analysis in the Public Benefit and Cost Note section of this proposal explains that any costs for regulated persons are attributable to SB 1286 and not the proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

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

- will not create a new regulation;

- will expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later

than 5:00 p.m., central time, on Nov. 6, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Chief Clerk's Office, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Chief Clerk's Office, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on Nov. 6, 2023. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §21.2819 under Insurance Code §§843.151, 843.337, 1301.007, 1301.102, and 36.001.

Insurance Code §843.151 authorizes the commissioner to adopt rules necessary to implement Chapter 843.

Insurance Code §843.337 authorizes the commissioner to adopt rules necessary to implement TDI's approval of a physician or provider's request for an extension of claim submission deadlines due to a catastrophic event that substantially interferes with normal business operations.

Insurance Code §1301.007 authorizes the commissioner to adopt rules necessary to implement Chapter 1301.

Insurance Code §1301.102 authorizes the commissioner to adopt rules necessary to implement TDI's approval of a physician or provider's request for an extension of claim submission deadlines due to a catastrophic event that substantially interferes with normal business operations.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.281 implements Insurance Code §§843.337, 843.342, 1301.102, and 1301.137.

§21.2819. Catastrophic Event.

(a) An MCC, a physician, or a provider must notify the Texas Department of Insurance (TDI) [department] if, due to a catastrophic event, it is unable to meet the deadlines in §21.2804 of this title (relating to Requests for Additional Information from Treating Preferred Provider), §21.2806 of this title (relating to Claims [Claim] Filing Deadline), §21.2807 of this title (relating to Effect of Filing a Clean Claim), §21.2808 of this title (relating to Effect of Filing [a] Deficient Claim), §21.2809 of this title (relating to Audit Procedures), and §21.2815 of this title (relating to Failure to Meet the Statutory Claims Payment Period), as applicable. The entity must send the notification required under this section [subsection] to TDI [the department] within five days of the date the catastrophic event began substantially interfering with the normal business operations of the entity, or as specified in a notice published by the commissioner regarding the catastrophic event.

(b) An [Within 10 days after the entity returns to normal business operations, the] entity must send the notification required under this section [a certification of the catastrophic event] to TDI [the Texas Department of Insurance] by email to PromptPay@tdi.texas.gov, unless an alternative electronic method is provided by TDI for a specified event [promptpay@tdi.texas.gov]. The notification [certification] must:

(1) be [in the form of a sworn affidavit] from:

(A) if for a physician or a provider, the physician, [the] provider, [the] office manager, [the] administrator, or their designee [designees]; or

(B) if for an MCC, a corporate officer or a corporate officer's designee;

(2) identify the specific nature [and date] of the catastrophic event; [and]

(3) identify the first date [length of time] the catastrophic event caused an interruption in the claims submission or processing activities of the physician, [the] provider, or [the] MCC; [.]

(4) identify the date the physician, provider, or MCC expects to resume normal business operations;

(5) state that the catastrophic event is substantially interfering with the entity's normal business operations;

(6) include the contact information for the physician, provider, or MCC, including each entity's name, email address, phone number, and:

(A) if for a physician or provider, the national provider identification number; or

(B) if for an MCC, the entity's NAIC number; and

(7) include the physical address of each business or practice location affected by the catastrophic event.

(c) A notification [valid certification to the occurrence of a catastrophic event] under this section tolls the applicable deadlines in §§21.2804, 21.2806, 21.2807, 21.2808, 21.2809, and 21.2815 of this title for the number of days between the date identified in subsection (b)(3) of this section and any date specified in a notice published by the commissioner or listed in TDI's approval of a request, or the date TDI disapproves a request. [as of the date of the catastrophic event.]

(d) If a catastrophic event continues to substantially impair an entity's normal business operations past the date in a notice published by the commissioner or in TDI's approval of an extension request, then the entity must send an additional notification meeting the requirements of this section to TDI at least three business days before the expiration of the existing extension. The new notification must explain why an additional extension is needed.

(e) TDI will contact the physician, provider, or MCC if more information is needed. TDI may disapprove a request if the nature of the event does not meet the definition of a catastrophic event that substantially interferes with the entity's normal business operations. TDI may limit a requested extension if the identified duration of interruption to normal business operations is not proportional to the nature of the catastrophic event.

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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