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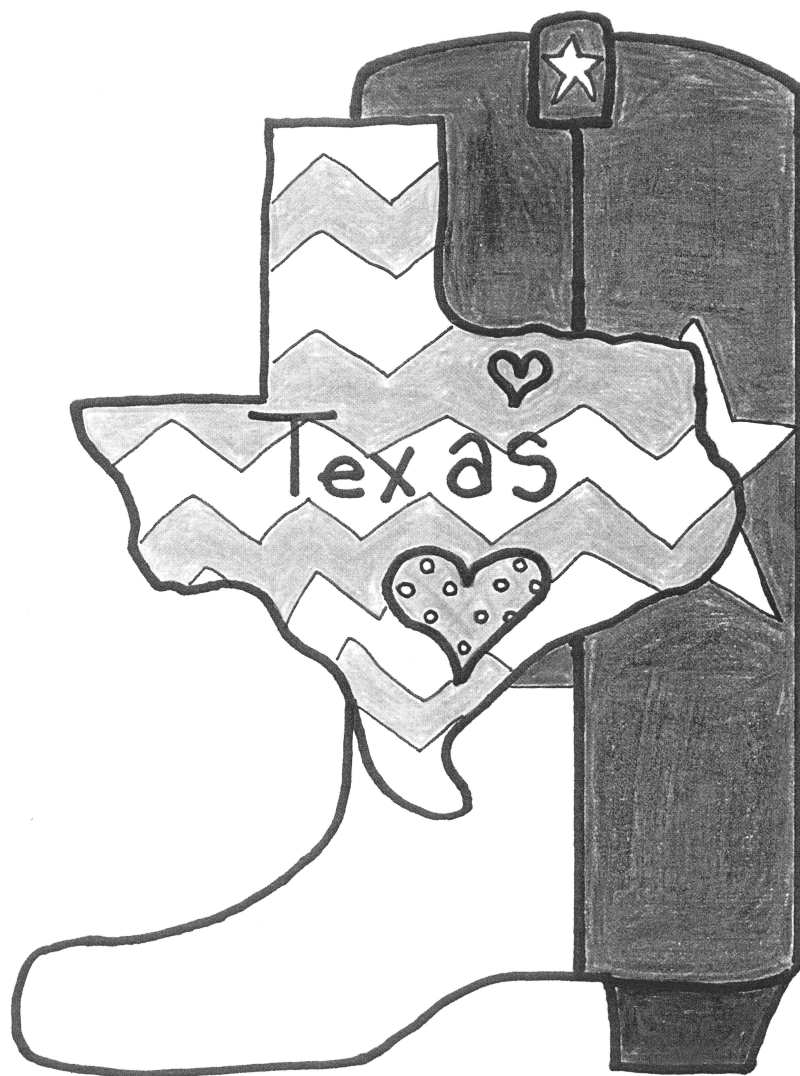
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THE GOVERNOR

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

Proclamation 41-3855

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the 87th Regular Session of the Texas Legislature convened in January of 2021 in accordance with Article III, Section 5 of the Texas Constitution and Section 301.001 of the Texas Government Code; and

WHEREAS, during that session, the Legislature approved eight joint resolutions proposing eight particular constitutional amendments by a vote of two-thirds of all the members of each house, pursuant to Article XVII, Section I of the Texas Constitution; and

WHEREAS, pursuant to the terms of those resolutions and in accordance with the Texas Constitution, the Legislature has set the date of the election for voting on the eight proposed constitutional amendments to be November 2, 2021; and

WHEREAS, Section 3.003 of the Texas Election Code requires the election to be ordered by proclamation of the governor;

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, by the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held throughout the State of Texas on the FIRST TUESDAY AFTER THE FIRST MONDAY IN NOVEMBER, the same being the SECOND day of NOVEMBER, 2021; and

NOTICE THEREOF IS HEREBY GIVEN to the COUNTY JUDGE of each county, who is directed to cause said election to be held in the county on such date for the purpose of adopting or rejecting the eight constitutional amendments proposed by eight joint resolutions, as submitted by the 87th Texas Legislature, Regular Session, of the State of Texas.

Pursuant to Sections 52.095, 274.001, and 274.002 of the Texas Election Code, the propositions for the joint resolutions will appear as follows:

STATE OF TEXAS PROPOSITION 1

"The constitutional amendment authorizing the professional sports team charitable foundations of organizations sanctioned by the Professional Rodeo Cowboys Association or the Women's Professional Rodeo Association to conduct charitable raffles at rodeo venues."

STATE OF TEXAS PROPOSITION 2

"The constitutional amendment authorizing a county to finance the development or redevelopment of transportation or infrastructure in unproductive, underdeveloped, or blighted areas in the county."

STATE OF TEXAS PROPOSITION 3

"The constitutional amendment to prohibit this state or a political subdivision of this state from prohibiting or limiting religious services of religious organizations."

STATE OF TEXAS PROPOSITION 4

"The constitutional amendment changing the eligibility requirements for a justice of the supreme court, a judge of the court of criminal appeals, a justice of a court of appeals, and a district judge."

STATE OF TEXAS PROPOSITION 5

"The constitutional amendment providing additional powers to the State Commission on Judicial Conduct with respect to candidates for judicial office."

STATE OF TEXAS PROPOSITION 6

"The constitutional amendment establishing a right for residents of certain facilities to designate an essential caregiver for in-person visitation."

STATE OF TEXAS PROPOSITION 7

"The constitutional amendment to allow the surviving spouse of a person who is disabled to receive a limitation on the school district ad valorem taxes on the spouse's residence homestead if the spouse is 55 years of age or older at the time of the person's death."

STATE OF TEXAS PROPOSITION 8

"The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a member of the armed services of the United States who is killed or fatally injured in the line of duty."

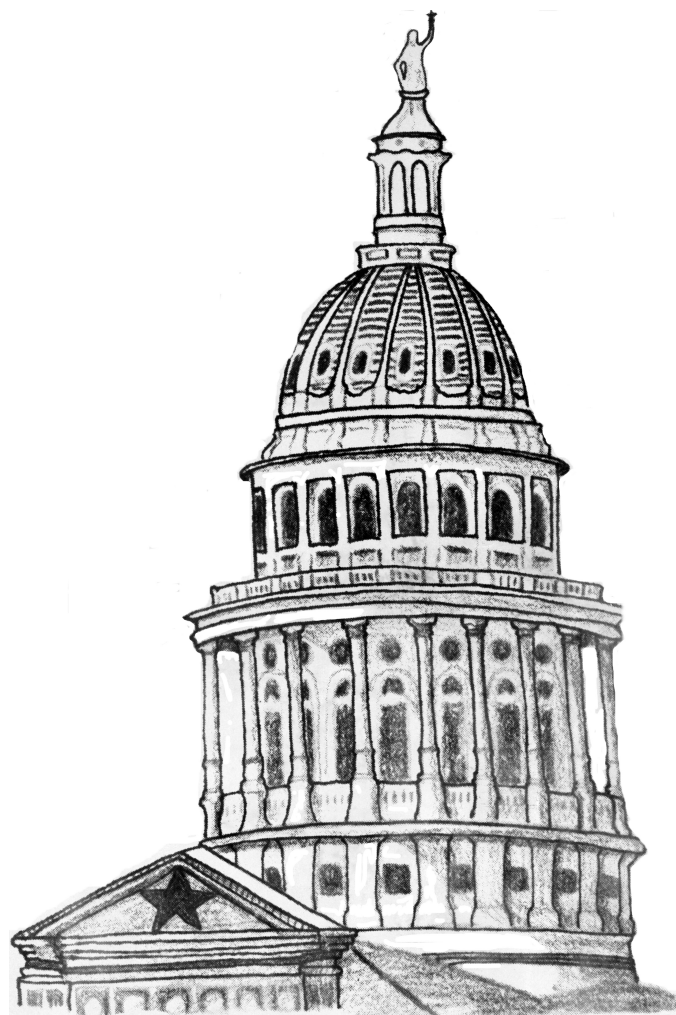
The secretary of state shall take notice of this proclamation and shall immediately mail a copy of this order to every county judge of this state, and all appropriate writs will be issued, and all proper proceedings will be followed, to the end that said election may be held and its result proclaimed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

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 13th day of August, 2021.

Greg Abbott, Governor

TRD-202103334

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, and Open Records Decisions.

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

Requests for Opinions

RQ-0424-KP

Requestor:

The Honorable Matt Krause
Chair, House Committee on General Investigating
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether a legislator or a member of the public may inspect anonymous voted ballots (RQ-0424-KP)

Briefs requested by September 16, 2021

RQ-0425-KP

Requestor:

The Honorable Donna Campbell, M.D.
Chair, Committee on Veterans Affairs & Border Security

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the Lone Star Infrastructure Protection Act prohibits a Texas transmission service provider from entering into interconnection agreements with entities owned by citizens of China or headquartered in China or with entities who lease assets from such an entity (RQ-0425-KP)

Briefs requested by August 27, 2021

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

TRD-202103332

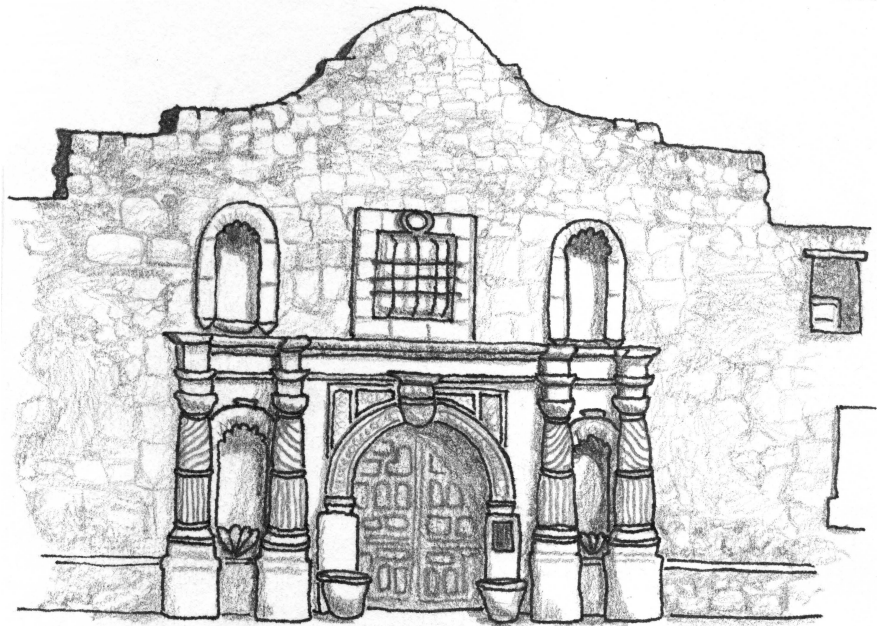
Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: August 24, 2021





EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 551. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §551.47

The Health and Human Services Commission is renewing the effectiveness of emergency new §551.47 for a 60-day period. The text of the emergency rule was originally published in the May 7, 2021, issue of the *Texas Register* (46 TexReg 2945).

Filed with the Office of the Secretary of State on August 20, 2021.

TRD-202103268

Nycia Deal

Attorney

Health and Human Services Commission

Original effective date: April 23, 2021

Expiration date: October 19, 2021

For further information, please call: (512) 438-3161



CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES SUBCHAPTER K. COVID-19 EMERGENCY RULE

26 TAC §553.2003

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities, Subchapter K, COVID-19 Emergency Rule, new §553.2003, concerning an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in a facility. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government

Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for Assisted Living Facility COVID-19 Response--Expansion of Reopening Visitation.

To protect assisted living facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require limited indoor and outdoor visitation in an assisted living facility. The purpose of the new rule is to describe the requirements related to such visits.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055, and Texas Health and Safety Code §§247.025 and 247.026. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by HHSC. Texas Health and Safety Code §§247.025 and 247.026 require the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 247 and to adopt rules prescribing minimum standards to protect the health and safety of assisted living facility residents.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 247.

§553.2003. Assisted Living Facility COVID-19 Response--Expansion of Reopening Visitation.

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

(1) COVID-19 negative--The status of a person who has either tested negative for COVID-19, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus in the last 14 days.

(2) COVID-19 positive--The status of a person who has tested positive for COVID-19 and does not yet meet the Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(3) End-of-life visit--A personal visit between a personal visitor and a resident who is receiving hospice services or who is at or near the end of life, with or without receiving hospice services, or whose prognosis does not indicate recovery. An end-of-life visit is permitted for all residents at or near the end of life.

(4) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, clergy member, private personal caregiver, or court-appointed guardian, who is at least 18 years old and has been designated by the resident or legal representative.

(5) Essential caregiver visit--A personal visit between a resident and an essential caregiver. An essential caregiver visit is permitted for all residents with any COVID-19 status.

(6) Facility-acquired COVID-19 infection--COVID-19 infection that is acquired after admission in a facility and was not present at the end of the 14-day period following admission or readmission.

(7) Fully vaccinated person--A person who received the second dose in a two-dose series or a single dose of a one dose COVID-19 vaccine and 14 days have passed since this dose was received.

(8) Indoor visit--A personal visit between a resident and one or more personal visitors that occurs in-person in a dedicated indoor space.

(9) Outbreak--One or more laboratory confirmed cases of COVID-19 identified in either a resident or paid or unpaid staff.

(10) Outdoor visit--A personal visit between a resident and one or more personal visitors that occurs in-person in a dedicated outdoor space.

(11) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, and family members or friends of residents at the end of life, and designated essential caregivers.

(12) Persons with legal authority to enter--Law enforcement officers, representatives of the long-term care ombudsman's office, and government personnel performing their official duties.

(13) Physical distancing--Maintaining a minimum distance between persons as recommended by the CDC, avoiding gathering in groups in accordance with state and local orders, and avoiding unnecessary physical contact.

(14) PPE--Personal protective equipment.

(15) Providers of essential services--Contract doctors or nurses, home health and hospice workers, health care professionals, contract professionals, and clergy members and spiritual counselors, whose services are necessary to ensure resident health and safety.

(16) Salon services visit--A personal visit between a resident and a salon services visitor.

(17) Salon services visitor--A barber, beautician, or cosmetologist providing hair care or personal grooming services to a resident.

(18) Unknown COVID-19 status--The status of a person, except as provided by the CDC for a fully-vaccinated resident who has recovered from COVID-19, who:

(A) is a new admission or readmission;

(B) has spent one or more nights away from the facility;

(C) has had known exposure or close contact with a person who is COVID-19 positive; or

(D) is exhibiting symptoms of COVID-19 while awaiting test results.

(b) An assisted living facility must screen all visitors prior to allowing them to enter the facility in accordance with subsection (c) of this section, except emergency services personnel entering the facility or facility campus in an emergency. Visitor screenings must be documented in a log kept at the entrance to the facility, which must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(c) Visitors must be screened in accordance with HHSC guidance.

(d) An assisted living facility must allow persons providing critical assistance, including essential caregivers, and persons with legal authority to enter the facility if they pass the screening described in subsection (c) of this section.

(e) A person providing critical assistance who has had contact with a person with COVID-19 positive or COVID-19 unknown status, but does not meet the CDC definition of close contact or unprotected exposure, must not be denied entry to the facility unless the person providing critical assistance does not pass the screening criteria described in subsection (c) of this section, or any other screening criteria based on CDC guidance.

(f) The facility must offer a complete series of a one- or two-dose COVID-19 vaccine to residents and staff and document each resident's choice to vaccinate or not vaccinate.

(g) The facility must allow essential caregiver visits, end-of-life visits, indoor visits, and outdoor visits as required in this subsection. If a facility fails to comply with the requirements of this subsection, HHSC may take action in accordance with Subchapter H of this chapter (relating to Enforcement).

(1) The following limits apply to all visitation allowed under this section.

(A) An assisted living facility may ask about a visitor's COVID-19 vaccination or test status. However, a facility must not require a visitor to provide documentation of a COVID-19 negative test or COVID 19 vaccination status as a condition of visitation or entering the facility.

(B) A facility must develop and enforce policies and procedures that ensure infection control practices, including whether the visitor and the individual must wear a face mask, face covering, or appropriate PPE.

(C) To permit indoor visitation, an assisted living facility must have separate areas, which include enclosed rooms such as bedrooms, or activities rooms, units, wings, halls, or buildings, designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status resident cohorts.

(D) An assisted living facility must provide instructional signage throughout the facility and proper visitor education regarding:

(i) the signs and symptoms of COVID-19;

(ii) infection control precautions; and

(iii) other applicable facility practices (e.g., use of facemasks and other appropriate PPE, specified entries and exits, routes to designated areas, and hand hygiene).

(E) Visitation must be facilitated to allow time for cleaning and sanitization of the visitation area between visits and to ensure infection prevention and control measures are followed. An assisted living facility may schedule personal visits in advance or permit personal visits that are not scheduled in advance. Scheduling in advance must not be so restrictive as to prohibit or limit visitation for residents.

(F) Except as provided in subparagraph (G) of this paragraph, indoor visits and outdoor visits are permitted only for residents who have COVID-19 negative status.

(G) Essential caregiver visits and end-of-life visits are permitted for residents who have COVID-19 negative, COVID-19 positive, or unknown COVID-19 status.

(H) Except as provided in subparagraph (I), a resident and his or her personal visitor may have close or personal contact in accordance with CDC guidance. The visitor must maintain physical distancing between themselves and all other persons in the facility.

(I) Essential caregiver visitor and end of life visitors may have close or personal contact with the resident they are visiting. The visitor must maintain physical distancing between themselves and all other persons in the facility.

(J) Visits are permitted where adequate space is available as necessary to ensure physical distancing between visitation groups and safe infection prevention and control measures, including the resident's room. The facility must limit the movement of the visitor through the facility to ensure interaction with other persons in the facility is minimized.

(K) A facility must ensure equal access by all residents to personal visitors, end-of life visitors, and essential caregivers.

(L) A facility must allow visitors of any age.

(M) A facility must ensure a comfortable and safe outdoor visitation area for outdoor visits, considering outside air temperature and ventilation.

(N) A facility must inform visitors of the facility's infection control policies and procedures related to visitation.

(O) A facility must provide hand washing stations, or hand sanitizer, to the visitor and resident before and after visits.

(P) The visitor and the resident must practice hand hygiene before and after the visit.

(2) The following requirements apply to essential caregiver visits.

(A) There may be up to two permanently designated essential caregiver visitors per resident.

(B) Up to two essential caregivers may visit a resident at the same time.

(C) The visit may occur outdoors, in the resident's bedroom, or in another area in the facility that limits the visitor movement through the facility and interaction with other residents and staff.

(D) Essential caregiver visitors do not have to maintain physical distancing between themselves and the resident they are visiting but must maintain physical distancing between themselves and all other residents and staff.

(E) The facility must develop and enforce essential caregiver visitation policies and procedures, which include:

(i) a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures, and requirements;

(ii) training each essential caregiver on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(iii) expectations regarding using only designated entrances and exits as directed, if applicable; and

(iv) limiting visitation to the area designated by the facility in accordance with subparagraph (C) of this paragraph.

(F) An assisted living facility must:

(i) inform the essential caregiver of applicable policies, procedures, and requirements;

(ii) maintain documentation of the essential caregiver's agreement to follow the applicable policies, procedures, and requirements;

(iii) maintain documentation of the essential caregiver's training as required in subparagraph (E)(ii) of this paragraph;

(iv) maintain documentation of the identity of each essential caregiver in the resident's records; and

(v) prevent visitation by the essential caregiver visitor if the essential caregiver visitor has signs and symptoms of COVID-19 or an active COVID-19 infection.

(G) The facility may cancel the essential caregiver visit if the essential caregiver fails to comply with the facility's policy regarding essential caregiver visits or applicable requirements in this section.

(h) A facility may allow a salon services visitor to enter the facility to provide services to a resident only if:

(1) the salon services visitor passes the screening described in subsection (c) of this section;

(2) the salon services visitor agrees to comply with the most current version of the Minimum Standard Health Protocols - Checklist for Cosmetology Salons/Hair Salons, located on website: open.texas.gov; and

(3) the requirements of subsection (i) of this section are met.

(i) The following requirements apply to salon services visits.

(1) A salon services visit may be permitted for all residents with COVID-19 negative status.

(2) The visit may occur outdoors, in the resident's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other persons in the facility.

(3) Salon services visitors do not have to maintain physical distancing between themselves and each resident they are visiting, but they must maintain physical distancing between themselves and all other persons in the facility.

(4) The facility must develop and enforce salon services visitation policies and procedures, which include:

(A) a written agreement that the salon services visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(B) training each salon services visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(C) expectations regarding using only designated entrances and exits as directed; and

(D) limiting visitation to the area designated by the facility in accordance with paragraph (2) of this subsection.

(5) The assisted living facility must:

(A) inform the salon services visitor of applicable policies, procedures, and requirements;

(B) maintain documentation of the salon services visitor's agreement to follow the applicable policies, procedures and requirements;

(C) maintain documentation of the salon services visitor's training as required in paragraph (4)(B) of this subsection;

(D) document the identity of each salon services visitor in the facility's records;

(E) prevent visitation by the salon services visitor if the resident has an active COVID-19 infection; and

(F) cancel the salon services visit if the salon services visitor fails to comply with the facility's policy regarding salon services visits or applicable requirements in this section.

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

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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Expiration date: December 18, 2021

For further information, please call: (512) 438-3161



CHAPTER 558. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

SUBCHAPTER I. RESPONSE TO COVID-19 AND PANDEMIC-LEVEL COMMUNICABLE DISEASE

26 TAC §558.950

The Health and Human Services Commission is renewing the effectiveness of emergency new §558.950 for a 60-day period. The text of the emergency rule was originally published in the May 7, 2021, issue of the *Texas Register* (46 TexReg 2960).

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Nycia Deal

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER D. HOME AND COMMUNITY- BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

40 TAC §9.198, §9.199

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Part 1, Texas Administrative Code, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, new §9.198 and §9.199, concerning emergency rules in response to COVID-19. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of these Emergency Rules for Program Provider Response to COVID-19 and Home and Community-based Services (HCS) Expansion of Reopening Visitation.

To protect individuals receiving HCS and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting emergency rules to reduce the risk of spreading COVID-19 to individuals in the HCS program. These new rules describe the requirements HCS program providers must immediately put into place and the requirements they must follow for visitation, essential caregivers, and day habilitation.

STATUTORY AUTHORITY

The emergency rules are adopted under Texas Government Code §§2001.034, 531.0055, and 531.021 and Texas Human Resources Code §32.021. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Government Code §531.021 provides HHSC with the authority to administer federal Medicaid funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Texas Human Resources Code §32.021 provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections implement Texas Government Code §531.0055 and §531.021, and Texas Human Resources Code §32.021.

§9.198. Program Provider Response to COVID-19 Emergency Rule.

(a) Applicability. Based on state law and federal guidance, Texas Health and Human Services Commission (HHSC) finds COVID-19 to be a health and safety risk and requires a program provider to take the following measures. The screening required by this section does not apply to emergency services personnel entering the residence in an emergency situation.

(b) Definitions. The following words and terms, when used in this section, have the following meanings.

(1) Individual--A person enrolled in the Home and Community-based Services (HCS) program.

(2) Isolation--Practices that separate persons who are sick to protect those who are not sick.

(3) Fully vaccinated person--A person who received the second dose in a two-dose series or a single dose of a one dose COVID-19 vaccine and 14 days have passed since this dose was received.

(4) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, and family members or friends of individuals at the end of life and designated essential caregivers as described in §9.199(f) of this subchapter (relating to HCS Provider Response to COVID-19-Expansion of Reopening Visitation).

(5) Persons with legal authority to enter--Law enforcement officers, representatives of Disability Rights Texas, and government personnel performing their official duties.

(6) Physical distancing--Maintaining a minimum distance between persons as recommended by the Centers for Disease Control and Prevention (CDC), avoiding gathering in groups in accordance with state and local orders, and avoiding unnecessary physical contact.

(7) Probable case of COVID-19--A case that meets the clinical criteria for epidemiologic evidence as defined and posted by the Council of State and Territorial Epidemiologists.

(8) Provider of essential services--Contract doctors or nurses, home health and hospice workers, health care professionals, contract professionals, clergy members and spiritual counselors, guardians, advocacy professionals, and individuals operating under the authority of a local intellectual and developmental disability authority (LIDDA) or a local mental health authority (LMHA), whose services are necessary to ensure individual health and safety.

(9) Residence--A host home/companion care, three-person, or four-person residence, as defined by the HCS Billing Guidelines, unless otherwise specified.

(c) Screening requirements.

(1) A program provider must screen all visitors and individuals outside of the residence prior to allowing them to enter, except emergency services personnel entering the property in an emergency. Visitor screenings must be documented in a log, which must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(2) Visitors who meet any of the following screening criteria must leave the residence and reschedule the visit:

(A) fever, defined as a temperature of 100.4 Fahrenheit or above;

(B) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(C) any other signs and symptoms identified by the CDC in Symptoms of Coronavirus at [cdc.gov](https://www.cdc.gov);

(D) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, regardless of whether the person is fully vaccinated, unless the visitor is seeking entry to provide critical assistance; or

(E) testing positive for COVID-19 in the last 10 days.

(3) A program provider must allow persons providing critical assistance, including essential caregivers and persons with legal authority to enter the residence if they pass the screening in paragraph (2) of this subsection.

(4) A program provider must not prohibit an individual who lives in the residence from entering the residence even if the individual meets any of the screening criteria.

(d) Communication.

(1) Program providers must contact their local health department, or the Department of State Health Services (DSHS) if there is no local health department, if the program provider knows an individual has COVID-19.

(2) Within 24 hours of becoming aware of an individual or staff member with confirmed COVID-19, a program provider must notify HHSC via encrypted or secure email to waiversurvey.certification@hhsc.state.tx.us. If a program provider is not able to send a secure or encrypted email, the program provider should notify HHSC by emailing waiversurvey.certification@hhsc.state.tx.us. A program provider is not required to provide identifying information of a staff member to HHSC when reporting a positive COVID-19 test result and must comply with applicable law regarding patient privacy. A program provider must comply with any additional HHSC monitoring requests.

(3) A program provider must notify an individual's legally authorized representative (LAR) if the individual is confirmed to have COVID-19, or if the presence of COVID-19 is confirmed in the residence.

(4) A program provider must notify any individual who lives in the residence, and his or her LAR, if the program provider is

aware of probable or confirmed cases among program provider staff or individuals living in the same residence.

(5) A program provider must not release personally identifying information regarding confirmed or probable cases.

(e) Infection Control.

(1) A program provider must develop and implement an infection control policy to prevent the spread of COVID-19 that:

(A) prescribes a cleaning and disinfecting schedule for the residence, including high-touch areas and any equipment used to care for more than one individual;

(B) is updated to reflect current CDC or DSHS guidance;

(C) may include the use of face masks; and

(D) is revised if a shortcoming is identified.

(2) A program provider must provide training to service providers on the infection control policy initially and upon updates.

(3) A program provider must educate staff and individuals on infection prevention, including hand hygiene, physical distancing, the use of personal protective equipment (PPE) and cloth face coverings, and cough etiquette.

(4) A program provider must encourage physical distancing according to CDC guidance in the community whenever reasonably possible.

(5) A program provider must require staff to:

(A) wear appropriate PPE as defined by the CDC if providing care to an individual with COVID-19; and

(B) maintain physical distance according to CDC guidance as practicable.

(6) Provider staff who have confirmed or probable COVID-19 may not provide services to individuals, except that:

(A) a host home/companion care provider may provide services to an individual who has also tested positive for COVID-19; or

(B) live-in staff providing supervised living services may provide services to an individual who has also tested positive for COVID-19 in accordance with §9.174(a)(37) of this subchapter (relating to Certification Principles: Service Delivery).

(7) A program provider must monitor the health status of a staff person providing services under paragraph (6) of this subsection to verify that the staff person continues to be able to deliver services. If the staff person's condition worsens, the program provider must activate the service back-up plan to ensure the individual receives services.

(8) A program provider must isolate individuals with confirmed or probable COVID-19 in accordance with CDC guidance. The program provider should isolate the individual within the residence, if possible. If individuals cannot be isolated within the residence, the program provider must convene the service planning team to identify alternative residential arrangements.

(9) A program provider must screen individuals for the criteria in section (c)(2)(A)-(D) once a day in accordance with CDC guidance.

(f) A program provider must update the emergency plan developed in accordance with §9.178(d) of this subchapter (relating to Cer-

tification Principles: Quality Assurance) to address COVID-19. The updated plan must include:

(1) plans for maintaining infection control procedures and supplies of PPE during evacuation;

(2) a list of locations and alternate locations for evacuation both for individuals with confirmed or probable COVID-19 and for individuals with negative or unknown COVID-19 status; and

(3) a list of supplies needed if required to shelter in place, including PPE.

(g) A program provider must develop and implement a staffing policy that addresses how the program provider plans to minimize the movement of staff between health care providers and encourage communication among providers regarding COVID-19 probable and confirmed cases. The policy must limit sharing of staff between residences, unless doing so will result in staff shortages.

(h) Except as provided in subsection (e)(6) of this section, if a service provider at a host home, three-person or four-person home, or a staff member at a respite or Community First Choice Personal Assistance Services/Habilitation (CFC PAS/HAB) setting, has confirmed or probable COVID-19, the service provider or staff member must discontinue providing services until eligible to return to work in accordance with the CDC guidance document, "Criteria for Return to Work for Healthcare Personnel with Suspected or Confirmed COVID-19." The program provider must activate the back-up service plan.

(i) A program provider may conduct the annual inspection required by §9.178(c) of this subchapter by video conference. A program provider must conduct an on-site inspection required by §9.178(c) of this subchapter within 30 days of the expiration or repeal of the public health emergency.

(j) A program provider must develop a safety plan for a four-person residence if the annual fire marshal inspection required by §9.178(c)(3)(A) of this subchapter is expired and document attempts to obtain the fire marshal inspection. The safety plan should require:

(1) verification that fire extinguishers are fully charged;

(2) a schedule for fire watches and plan to increase fire drills if the residence does not have a sprinkler system installed or monitored fire panel;

(3) verification of staff training on the needs of the individual in the event of an emergency; and

(4) verification that emergency plans are updated to reflect needs as listed in paragraph (3) of this subsection.

(k) Flexibilities in federal requirements granted by the Centers for Medicare and Medicaid Services during the COVID-19 pandemic, including waivers under the Social Security Act §1135, activation of Appendix K amending a 1915(c) home and community-based waiver, and other federal flexibilities or waivers are applied to corresponding state certification principles for HCS. HHSC will identify and describe federal flexibilities and flexibility in corresponding state certification principles in guidance issued through HCS provider letters.

(l) If this emergency rule is more restrictive than any minimum standard relating to the HCS program, this emergency rule will prevail so long as this emergency rule is in effect.

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

§9.199. HCS Provider Response to COVID-19-Expansion of Reopening Visitation.

(a) Applicability. This section does not apply to host home/companion care, unless otherwise specified.

(b) Definitions. The following words and terms, when used in this section, have the following meanings.

(1) COVID-19 negative--The status of an individual who has either tested negative for COVID-19 or who exhibits no symptoms of COVID-19 and has had no known exposure to the virus in the last 14 days.

(2) COVID-19 positive--The status of an individual who has tested positive for COVID-19 or who is presumed positive for COVID-19 and who has not yet met the Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(3) End-of-life visit--A personal visit between a personal visitor and an individual who is receiving hospice services or is at or near end of life, with or without receiving hospice services; or whose prognosis does not indicate recovery. An end-of-life visit is permitted for all individuals at or near the end of life.

(4) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, clergy member, private personal caregiver, or court-appointed guardian, who is at least 18 years old, designated to provide regular care and support to an individual.

(5) Essential caregiver visit--A personal visit between an individual and an essential caregiver as described in subsection (f)(1) of this section. An essential caregiver visit is permitted for all individuals with any COVID-19 status.

(6) Fully vaccinated person--A person who received the second dose in a two-dose series or a single dose of a one dose COVID-19 vaccine and 14 days have passed since this dose was received.

(7) Individual--A person enrolled in the Home and Community-based Services (HCS) program.

(8) Indoor visit--A personal visit between an individual and one or more personal visitors that occurs in-person in a dedicated indoor space.

(9) Outbreak--One or more confirmed or probable cases of COVID-19 identified in either an individual or paid or unpaid staff.

(10) Outdoor visit--A personal visit between an individual and one or more personal visitors that occurs in-person in a dedicated outdoor space.

(11) Physical distancing--Maintaining a minimum distance between persons as recommended by the CDC, avoiding gathering in groups in accordance with state and local orders, and avoiding unnecessary physical contact.

(12) Probable case of COVID-19--A case that meets the clinical criteria for epidemiologic evidence as defined and posted by the Council of State and Territorial Epidemiologists.

(13) Unknown COVID-19 status--The status of a person, except as provided by the CDC for individuals who are fully vaccinated for COVID-19 or recovered from COVID-19, who:

(A) is a new admission or readmission;

(B) has spent one or more nights away from the residence;

(C) has had known exposure or close contact with a person who is COVID-19 positive; or

(D) is exhibiting symptoms of COVID-19 while awaiting test results.

(c) The program provider must offer a complete series of a one- or two-dose COVID-19 vaccine to individuals and staff and document each individual's choice to vaccinate or not vaccinate.

(d) The program provider must develop and enforce policies and procedures that ensure infection control practices for visitors, including whether the visitor and the individual must wear a face mask or face covering and whether the visitor should wear appropriate personal protective equipment (PPE).

(e) A program provider may ask about a visitor's COVID-19 vaccination status and COVID-19 test results but must not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the residence.

(f) The program provider must allow essential caregiver visits, end-of-life visits, indoor visits, and outdoor visits as required in this section. If a program provider fails to comply with the requirements of this section, the Texas Health and Human Services Commission (HHSC) may take action in accordance with §9.171 of this subchapter (relating to HHSC Surveys and Residential Visits of a Program Provider) and §9.181 of this subchapter (relating to Administrative Penalties).

(1) The following limits apply to all visitation allowed under this section:

(A) Visitation must be facilitated to allow time for cleaning and sanitization of the visitation area between visits and to ensure infection prevention and control measures are followed. A provider may schedule personal visits in advance to facilitate cleaning and sanitization of the visitation area. A provider may permit personal visits that are not scheduled in advance. Scheduling visits in advance must not be so restrictive as to prohibit or limit visitation for individuals.

(B) Except as provided in subparagraph (C) of this paragraph, indoor visits and outdoor visits are permitted only for individuals with a COVID-19 negative status.

(C) Essential caregiver visits and end-of-life visits are permitted for individuals with COVID-19 negative, COVID-19 positive, or unknown COVID-19 status.

(D) Except as provided in subparagraph (E) of this paragraph, the individual and their personal visitor may have close or personal contact in accordance with CDC guidance. The visitor must maintain physical distancing of at least six feet between themselves and all other persons in the residence.

(E) Essential caregiver visitors and end-of-life visitors do not have to maintain physical distancing between themselves and the individual they are visiting but must maintain physical distancing between themselves and all other persons in the residence.

(F) Visits are permitted where adequate space is available as necessary to ensure physical distancing between visitation groups and safe infection prevention and control measures, including the individual's room. The program provider must limit the movement of the visitor through the residence to ensure interaction with other persons in the residence is minimized.

(G) A program provider must ensure equal access by all individuals to visitors and essential caregivers.

(H) A program provider must allow visitors of any age.

(I) A program provider must ensure a comfortable and safe outdoor visitation area for outdoor visits, considering outside air temperature and ventilation.

(J) A program provider must inform visitors of the provider's infection control policies and procedures related to visitation.

(K) A program provider must provide hand washing stations, or hand sanitizer, to the visitor and individual before and after visits.

(L) The visitor and the individual must practice hand hygiene before and after the visit.

(2) The following requirements apply to essential caregiver visits.

(A) There may be up to two permanently designated essential caregivers per individual.

(B) Up to two essential caregiver visitors may visit an individual at the same time.

(C) The visit may occur outdoors, in the individual's bedroom, or in another area in the home that limits the essential caregiver visitor's movement through the residence and interaction with other individuals and staff.

(D) Essential caregiver visitors do not have to maintain physical distancing between themselves and the individual they are visiting but must maintain physical distancing between themselves and all other individuals and staff.

(E) The program provider must develop and enforce essential caregiver visitation policies and procedures, which include:

(i) a written agreement that the essential caregiver visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(ii) training each essential caregiver visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(iii) limiting visitation to the area designated by the program provider in accordance with subparagraph (C) of this paragraph.

(F) The program provider must:

(i) inform the essential caregiver visitor of applicable policies, procedures, and requirements;

(ii) maintain documentation of the essential caregiver visitor's agreement to follow the applicable policies, procedures, and requirements;

(iii) maintain documentation of the essential caregiver visitor's training as required in subparagraph (E)(ii) of this paragraph;

(iv) maintain documentation of the identity of each essential caregiver visitor in the individual's records; and

(v) prevent visitation by the essential caregiver visitor if the essential caregiver has signs and symptoms of COVID-19, active COVID-19 infection.

(G) The program provider may cancel the essential caregiver visit if the essential caregiver visitor fails to comply with the program provider's policy regarding essential caregiver visits or applicable requirements in this section.

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

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: August 21, 2021

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For further information, please call: (512) 438-3161

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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 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 5. GENERAL ADMINISTRATION

SUBCHAPTER C. REGULATORY COMPLIANCE DIVISION

1 TAC §§5.206, 5.209 - 5.211, 5.213

The Regulatory Compliance Division of the Office of the Governor ("Division") proposes amendments to 1 TAC §§5.206, 5.209, 5.210, and 5.213, concerning the Division's procedure for reviewing a supplemental amendment to a previously reviewed proposed rule. The Division also proposes a new rule at 1 TAC §5.211, concerning the Division's ability to request information from a state agency when deciding whether to direct the state agency to submit a proposed rule for review.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW RULE

The Division is responsible for conducting an independent review of certain state agencies' proposed rules that affect market competition under Texas Occupations Code, Chapter 57, Subchapter C. Pursuant to Texas Occupations Code §57.105(c), during a review of a proposed rule, the Division already requires a state agency to provide to the Division any amendments to the proposed rule that the state agency intends to adopt. The Division reviews those amendments in conjunction with the text of the proposed rule as published in the *Texas Register* and issues a determination letter approving or disapproving the proposed rule, as intended to be amended. It has been brought to the Division's attention that state agencies occasionally need or desire to further amend a proposed rule after the Division has issued a determination letter on the proposed rule. The proposed amendments to 1 TAC Chapter 5, Subchapter C, create a procedure for state agencies to provide to the Division additional amendments to a previously reviewed proposed rule and to be issued an addendum to the determination letter regarding the permissibility of adopting and implementing the additional amendments.

The proposed amendments to §5.206 authorize the provision of an additional amendment to the Division so long as it does not include a change that would require the rule to be re-proposed in the *Texas Register*. At its discretion, the Division may review the additional amendment and issue an addendum to the determination letter addressing the amendment, or it may require the amendment be resubmitted as a new submission. The proposed amendments to §5.209 set out the procedures and timeline for issuing an addendum to a determination letter. The proposed amendments to §5.210 explain how a state agency may adopt and implement a proposed rule if an addendum is issued, and

the proposed amendments to §5.212 require that any addenda issued by the Division be maintained on the Division's website.

Pursuant to Texas Occupations Code §57.106(g), the Division may initiate a review of a proposed rule if the Division has reason to believe that the proposed rule may have an anticompetitive market effect. However, the potential effects of a proposed rule are not always ascertainable from the explanation and text of the proposed rule published in the *Texas Register*. When deciding whether to initiate a review, Texas Occupations Code §57.106(h)(1) allows the Division to consider evidence or communications that are submitted in writing from an identified person. The proposed new §5.111 makes clear that the Division may request information from a state agency to determine whether a proposed rule affects competition. Such information must be made in writing by identified agency personnel and will be made available to the public.

FISCAL NOTE

Erin Bennett, Director, Regulatory Compliance Division, has determined that during each year of the first five years in which the proposed amendments and new rule are in effect, there will be no expected fiscal impact on state and local governments as a result of enforcing or administering the proposed amendments and new rule.

Ms. Bennett does not anticipate any measurable effect on local employment or the local economy as a result of the proposed amendments and new rule.

PUBLIC BENEFIT AND COSTS

Ms. Bennett has also determined that during each year of the first five years in which the proposed amendments and new rule are in effect, the public benefits anticipated as a result of the proposed amendments and new rule are reduced delays in state agency rulemaking due to minor amendments to previously reviewed proposed rules and increased efficiency in the Division's identification of proposed rules that may have an anticompetitive market effect.

Ms. Bennett has determined there are no measurable anticipated economic costs to persons required to comply with the proposed amendments and new rule.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Since the Division has determined that the proposed amendments and new 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, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Bennett has determined that during each year of the first five years in which the proposed amendments and new rule are in effect, the proposed amendments and new rule:

- 1) will not create or eliminate a government program;
- 2) will not require the creation of new employee positions or the elimination of existing employee positions;
- 3) will not require an increase or decrease in future legislative appropriations to the Office of the Governor;
- 4) will not require an increase or decrease in fees paid to the Office of the Governor;
- 5) do include the creation of a new regulation;
- 6) will expand, limit, or repeal existing regulations;
- 7) will not increase or decrease the number of individuals subject to the applicability of the rules; and
- 8) will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT

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

SUBMISSION OF COMMENTS

Written comments regarding the proposed amendments and new rule may be submitted to Erin Bennett, Director, Regulatory Compliance Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711 or by email to RegulatoryCompliance@gov.texas.gov with the subject line "Division Rules." The deadline for receipt of comments is 5:00 p.m., Central Time, on October 2, 2021. All requests for a public hearing on the proposed amendments and new rule, submitted under the Administrative Procedure Act, must be received by the Division no more than fifteen (15) days after the notice of the proposed amendments and new rule has been published in the *Texas Register*.

STATUTORY AUTHORITY

The proposed amendments and new rule are proposed under Texas Occupations Code §57.107, which provides that the Division may adopt rules to carry out its functions under that subchapter.

CROSS REFERENCE TO STATUTE

Subchapter C, Chapter 57, Texas Occupations Code.

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

§5.206. *Supplementation of Proposed Rule Submission.*

(a) While a proposed rule is being reviewed by the division, the state agency must provide to the division:

- (1) copies of any administrative records regarding the proposed rule created, received, or consulted by the state agency after submission of the proposed rule to the division, including any information or comments received from the public after the submission; and

(2) any amendments to the proposed rule that the state agency intends to adopt and that were not included in the proposed rule submission.

(b) If a state agency supplements a proposed rule submission under subsection (a) of this section with a substantial amount of administrative records or with an amendment that significantly changes the proposed rule in nature or scope, the division may:

(1) require the submission of an updated rule submission memorandum;

(2) reopen [re-open] or extend the public comment period on the proposed rule; and

(3) deem the supplemented submission a new submission, including restarting the 90-day period for the division to issue a determination letter approving or rejecting the proposed rule.

(c) After the division has issued a determination letter approving a proposed rule or disapproving a proposed rule with precise instructions, the state agency may provide to the division an amendment to the proposed rule that the state agency intends to adopt but did not previously provide to the division, if the amendment does not include a change to the proposed rule that would require the rule to be re-proposed in the *Texas Register*.

(d) If a state agency supplements a proposed rule submission under subsection (c) of this section, the division may, at its discretion, issue an addendum to the determination letter addressing the amendment to the proposed rule, as provided in §5.209(c) of this subchapter, or require the state agency to re-submit the proposed rule and amendment as a new submission under §5.204 of this subchapter.

§5.209. *Determination by Division on Proposed Rule.*

(a) Not later than the 90th day after the postmark date of a state agency's mailed proposed rule submission or the date on which the division receives a state agency's hand delivered or emailed proposed rule submission, the division shall issue a determination letter approving or rejecting the proposed rule.

(b) The division shall include in the determination letter an explanation of the division's reasons for approving or rejecting the proposed rule, including a discussion of the division's determination regarding the consistency of the proposed rule with applicable state policy. If the division rejects a proposed rule, the division shall include in the determination letter instructions for revising the proposed rule to be consistent with applicable state policy. At its discretion, the division may provide either precise or general instructions for revising the proposed rule and must identify its instructions as such.

(c) The division shall send the determination letter to the state agency head, the presiding officer of the governing body of the state agency, and, if different from the state agency head or presiding officer, the agency staff or governing body member who submitted the proposed rule to the division, and shall make the determination letter available to the public on the division's website.

(d) A determination letter issued by the division is not subject to appeal.

(e) The division may issue an addendum to a determination letter approving or rejecting an amendment to the proposed rule provided to the division under §5.206(c) of this subchapter. In issuing an addendum, the division shall follow the procedures in subsections (b) and (c) of this section and must issue the addendum not later than the 30th day after the division's receipt of the amendment.

§5.210. *Final Adoption and Implementation of Proposed Rule.*

(a) A state agency may finally adopt and implement a proposed rule required to be submitted to the division under §5.204 of this subchapter only if:

(1) the division issues a determination letter approving the proposed rule under §5.209 of this subchapter; or

(2) the division issues a determination letter rejecting the proposed rule under §5.209 of this subchapter with precise instructions for the revision of the proposed rule and the state agency revises the proposed rule according to the division's instructions.

(b) If an addendum to a determination letter is issued under §5.209(e) of this subchapter, the state agency may finally adopt and implement the proposed rule, as amended, if:

(1) the division issues an addendum approving the amendment; or

(2) the division issues an addendum rejecting the amendment with precise instructions for revision and the state agency revises the proposed rule, as amended, according to the division's instructions.

(c) ~~[(b)]~~ In adopting a proposed rule pursuant to ~~[subsection (a) of]~~ this section, a state agency may make technical and nonsubstantive changes to the language of the proposed rule and any amendments to the proposed rule reviewed by the division. For purposes of ~~subsections [subsection] (a)(2) and (b)(2)~~ of this section, a state agency may also make technical and nonsubstantive changes to the proposed rule when incorporating the division's precise instructions.

(d) ~~[(e)]~~ A rule finally adopted and implemented in accordance with subsection (a)(2) or (b)(2) of this section is deemed to have been approved by the division for purposes of Section 57.106(e) of the Texas Occupations Code.

§5.211. Division Information Requests.

When deciding whether to direct a state agency to submit a proposed rule to the division under §5.204(a)(2) of this subchapter, the division may request information from the state agency relating to the proposed rule. Any information provided in response to such a request must be submitted in writing from an identified agency staff or governing body member and will be made available to the public by the division.

§5.213. Division Website.

The division shall maintain a website on which the division makes available to the public:

(1) the rule submission memorandum for each proposed rule that is currently under review by the division;

(2) the deadline and instructions for submitting public comments on each proposed rule that is currently under review by the division;

(3) all determination letters issued by the division, including any addenda to determination letters issued by the division;

(4) a means through which any person may sign up to be notified when the division receives a proposed rule submission or issues a determination letter on any proposed rule; and

(5) a means through which any person may request publicly available documents not maintained on the division's website.

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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Erin Bennett

Director, Regulatory Compliance Division

Office of the Governor

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For further information, please call: (512) 463-8500



TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 7. TEXAS FINANCIAL EDUCATION ENDOWMENT FUND

7 TAC §7.102

The Finance Commission of Texas (commission) proposes amendments to §7.102 (relating to TFEE Responsibilities), in 7 TAC, Chapter 7, concerning Texas Financial Education Endowment Fund.

The rules in 7 TAC Chapter 7 govern the Texas Financial Education Endowment (TFEE). The Texas Legislature established TFEE under Texas Finance Code, §393.628(c), in order to "support statewide financial education and consumer credit building activities and programs."

In general, the purpose of the proposed rule changes to 7 TAC Chapter 7 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC, Chapter 7 was published in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3425). The commission received no comments in response to that notice.

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

Proposed amendments to §7.102 relate to the consumer credit commissioner's authority to designate other persons to perform functions related to TFEE. New text in subsection (a) would explain that the investment officer's responsibilities include maintaining compliance. The proposal would also amend subsection (a) to move text on executing grant agreements into a new sentence. The updated text would provide some flexibility and clarify the commissioner's authority to designate another person (not necessarily the investment officer) to execute grant agreements.

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

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefit anticipated as a result of the changes will be that the commissions' rules will be more easily understood by stakeholders, and will more clearly specify the responsibilities of the TFEE investment officer.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse

economic effect on small businesses, micro-businesses, or rural communities.

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

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing credit access businesses). In addition, Texas Finance Code, §393.628 authorizes the commission to adopt rules regarding TFEE.

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

§7.102. TFEE Responsibilities.

(a) Finance commission and Office of Consumer Credit Commissioner (OCCC). The finance commission administers all aspects of TFEE, including the grant program, gifts, donations, funding and policy decisions. The OCCC is responsible for collection of assessment fees, disbursement and tracking of TFEE funds, and maintaining financial records of revenue, expenditures, and reconciliation of funds. The Consumer Credit Commissioner (commissioner) or the commissioner's designee serves as the investment officer appointed by the finance commission to maintain compliance [execute grant agreements], accept gifts and donations, and invest TFEE funds. The commissioner may designate a person to execute grant agreements.

(b) Grant Advisory Committee (GAC) and grant coordinator. The GAC serves in an advisory role and makes program recommendations to the grant coordinator and finance commission audit committee regarding TFEE administration. The grant coordinator serves under the direction of the commissioner, provides information regarding grant activity to the GAC and finance commission, and serves as the liaison between grantees and the GAC.

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

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Matthew Nance

Deputy General Counsel, Office of Consumer Credit Commissioner
Finance Commission of Texas

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For further information, please call: (512) 936-7660



PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 52. DEPARTMENT ADMINISTRATION

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes new rules in 7 TAC Chapter 52, Department Administration. This proposal and the new rules as proposed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The rules under 7 TAC Chapter 52 generally govern the department's internal processes and procedures including existing rules concerning consumer complaints filed with the department, the resolution of contested cases by informal settlement conference, and the use of advisory committees as provided by Finance Code §13.018. The proposed rules, if adopted, would establish new rules governing certain other internal processes and procedures related to: (i) the recovery fund administered by the department's commissioner (commissioner) under Finance Code Chapter 156, Subchapter F (recovery fund); (ii) the mortgage grant fund administered by the commissioner under Finance Code Chapter 156, Subchapter G (mortgage grant fund); and (iii) claims made against the mortgage grant fund as provided by Finance Code §156.555.

New Rules Concerning the Recovery Fund

Pursuant to Finance Code §13.016 and Chapter 156, Subchapter F, the commissioner is required to administer and maintain a fund against which persons may make a claim to recover actual out-of-pocket damages incurred because of acts committed by an individual licensed by the department as a residential mortgage loan originator under Finance Code Chapter 157. The proposed rules, if adopted, would: (i) create definitions necessary to administer the recovery fund, derived from similar definitions contained in existing 7 TAC §81.2 (relating to Definitions); (ii) clarify that a person seeking to make a claim against the recovery fund must file a sworn written application using the current form prescribed by the commissioner and posted on the department's website; (iii) clarify when the commissioner disburses funds on an approved claim (after the opportunity to appeal the commissioner's decision has lapsed); (iv) clarify that, in order to get paid from the recovery fund, a claimant must provide the necessary information and documentation necessary to be a valid payee for the purposes of the Texas Comptroller of Public Accounts; (v) clarify that a licensed residential mortgage loan originator against whom a claim was made and approved may have an administrative penalty imposed on him or her; and (vi) establish a process and procedure for paying approved claims in the event funds in the recovery fund are unavailable at the time the claim is approved.

New Rules Concerning the Mortgage Grant Fund

During the 87th Legislature (Regular Session), House Bill 3617 (HB3617) was enacted into law (eff. September 1, 2021) which, among other things, amended Finance Code Chapter 156 to create a new Subchapter G, creating a new mortgage grant fund for the commissioner to administer, funded primarily by excess contributions made to the recovery fund. The primary purpose of the mortgage grant fund is to promote financial education relating to mortgage loans and to support other statewide financial education, activities, and programs. The proposed rules, if adopted, would: (i) create definitions necessary to administer the mortgage grant fund; (ii) clarify the commissioner's role as manager of the mortgage grant fund, including providing periodic reports to the commission; (iii) provide for the creation of a manual reflecting the commissioner's policies and procedures governing administration of the mortgage grant fund; (iv) provide for the appointment of an employee of the department to serve as a grant coordinator to assist the commissioner in managing the mortgage grant fund; (v) provide for the creation of an advisory committee to make recommendations to the commissioner and the grant coordinator concerning management of the mortgage grant fund; and (vi) establish various processes and procedures for grantees to apply for, receive disbursements, and return misused funds, from the mortgage grant fund.

New Rules Concerning Recovery Claims Made Against the Mortgage Grant Fund

HB3617 further amended Finance Code Chapter 156 by creating a new Section 156.555, allowing for claims to be made against the mortgage grant fund to compensate persons for actual out-of-pocket damages incurred because of fraud committed by an individual who acted in the capacity of a residential mortgage loan originator but did not hold the license required under Finance Code Chapter 157. The proposed rules, if adopted, would: (i) create definitions necessary to administer claims made against the mortgage grant fund; (ii) clarify that a person seeking to make a claim against the mortgage grant fund must file a sworn written application using the current form prescribed by the commissioner and posted on the department's website; (iii) clarify when the commissioner disburses funds on an approved claim (after the opportunity to appeal the commissioner's decision has lapsed); (iv) clarify that, in order to get paid from the mortgage grant fund, a claimant must provide the necessary information and documentation to be a valid payee for the purposes of the Texas Comptroller of Public Accounts; (v) clarify that an unlicensed individual against whom a claim was made and approved may have an administrative penalty imposed on him or her, and that failure to pay such penalty constitutes grounds for denial of licensure under Finance Code Chapter 157; (vi) establish a process and procedure for paying approved claims in the event funds in the mortgage grant fund are unavailable at the time the claim is approved; (vii) clarify certain eligibility requirements for making a claim against the mortgage grant fund required by application of the requirements for making a claim against the mortgage grant fund as provided by Finance Code §156.555(b); and (viii) clarify how the statute of limitations period for making claims on the recovery fund applies to claims made on the mortgage grant fund, thereby expressly allowing for claims prior to the effective date of Finance Code §156.555 and inception of the mortgage grant fund.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in

costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there will be no foreseeable losses or increases in revenue to the state or local governments as a result of enforcing or administering the proposed rules.

Public Benefits

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing the proposed rules will be for the public to have a clearer understanding of the processes and procedures governing the department's administration of the recovery fund, the mortgage grant fund, and recovery claims made against the mortgage grant fund.

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

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules. The proposed rules related to New Rules Concerning the Recovery Fund clarify existing authority for the commissioner, in his or her sole discretion, to pursue an administrative penalty against a licensed residential mortgage loan originator whose acts or omissions caused funds to be disbursed from the recovery fund, in order to recover such funds and replenish the recovery fund. However, authority for the commissioner to seek recovery of funds disbursed is authorized by Finance Code §156.506(a-1), is discretionary by the commissioner, and not required by the proposed rules. Furthermore, pursuant to Finance Code §156.501(b), an approved claim made against the recovery fund is inherently the result of a violation of law by such residential mortgage loan originator, thereby necessarily constituting grounds for the commissioner to pursue disciplinary action, including an administrative penalty. Moreover, a licensed residential mortgage loan originator can avoid any such potential costs arising from an administrative penalty by conforming to the laws and rules governing use of his or her residential mortgage loan originator license. The proposed rules related to New Rules Concerning Recovery Claims Made Against the Mortgage Grant Fund similarly clarify existing authority for the commissioner, in his or her sole discretion, to pursue an administrative penalty against an unlicensed individual whose fraudulent acts caused funds to be disbursed from the mortgage grant fund, in order to recover such funds and replenish the mortgage grant fund. Specifically, pursuant to Finance Code §157.023 and §157.031, the commissioner is authorized to seek an administrative penalty against an individual engaging in unlicensed activity under Finance Code Chapter 157. Finance Code §156.551(b), meanwhile, allows such administrative penalty to be deposited in the mortgage grant fund. An unlicensed individual may similarly avoid any such administrative penalty contemplated by the proposed rules by forbearing from engaging in unlicensed activity or behavior that constitutes fraud. Taking the foregoing into consideration, the proposed rules do not impose economic costs on persons required to comply with the proposed rules.

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions. The proposed rules related to New Rules Concerning the Mortgage Grant Fund contemplate an employee of the department serving as grant coordinator for the mortgage grant fund, however, the department anticipates an existing employee of the department will absorb and perform such duties and thus the proposed rules will not require the creation of a new employee position. The proposed rules do not require the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to New Rules Concerning the Recovery Fund and New Rules Concerning Recovery Claims Made Against the Mortgage Grant Fund establish a new requirement clarifying an existing statutory requirement, pursuant to Finance Code §156.504(a) (including by application of Finance Code §156.555(b), with respect to claims made against the mortgage grant fund), for a claimant making a claim against the recovery fund or the mortgage grant fund to file a sworn written application by requiring such application be made using the current form prescribed by the commissioner and posted on the department's website. The proposed rules related to New Rules Concerning the Recovery Fund and New Rules Concerning Recovery Claims Made Against the Mortgage Grant Fund further establish a new requirement generally requiring a claimant whose claim has been approved by the commissioner to cooperate with department staff's instructions for effectuating disbursement of funds from the recovery fund or mortgage grant fund, including a requirement to provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts; (6) the proposed rules do not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

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

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

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

Takings Impact Assessment

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

Public Comments

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

SUBCHAPTER D. RECOVERY FUND

7 TAC §§52.100 - 52.104

Statutory Authority

This proposal is made under the authority of Finance Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. This proposal is also made under the authority of Finance Code §156.102(b-1) which authorizes the commission to adopt rules to promote the fair and orderly administration of the recovery fund consistent with the purposes of Finance Code Chapter 156, Subchapter F.

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§52.100. Purpose and Applicability.

The rules contained in 7 TAC Chapter 52, Subchapter D govern the Commissioner's administration of the recovery fund the Commissioner is required to establish, administer and maintain in accordance Tex. Fin. Code §13.016 and Finance Code Chapter 156, Subchapter F.

§52.101. Definitions.

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

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

(2) "Claimant" means a mortgage applicant making or seeking to make a claim on the recovery fund in accordance with Tex. Fin. Code §156.504.

(3) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

(4) "Department" means the Department of Savings and Mortgage Lending.

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

(6) "Originator" has the meaning assigned by Tex. Fin. Code §180.002 in defining the term "residential mortgage loan originator."

(7) "Recovery fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Tex. Fin. Code §13.016 and Finance Code Chapter 156, Subchapter F.

(8) "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as residence.

§52.102. Claims.

(a) Application Required. As provided by Tex. Fin. Code §156.504, a claimant seeking to recover from the recovery fund must file a sworn written application with the Department which must be made on the current form prescribed by the Commissioner and posted on the Department's website (sml.texas.gov).

(b) Payment of Approved Claims. Upon approval of a claim made on the recovery fund, the Commissioner will issue an order disbursing funds from the recovery fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date upon which such order becomes final and unappealable for purposes of Government Code Chapter 2001.

(c) Cooperation by Claimant Required. The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the recovery fund. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

§52.103. Administrative Penalty Against Originator.

In accordance with Tex. Fin. Code §156.506(c) and §157.0241(b), in order to effect reimbursement of amounts disbursed from the recovery fund, if the Commissioner approves a claim made under Tex. Fin. Code §156.504, the Commissioner may impose an administrative penalty on the originator whose acts or omissions caused the claim in an amount not less than the approved recovery fund claim amount. Upon payment of the administrative penalty, the Commissioner will cause the funds to be deposited in the recovery fund.

§52.104. Liability for Unpaid Claims.

(a) No Liability. The recovery fund, the Commissioner, and the Department are not liable to a claimant for a claim approved by the Commissioner under Tex. Fin. Code §156.504 if the assets of the recovery fund are insufficient to pay such claim.

(b) Payment of Unpaid Claims. If the recovery fund contains insufficient assets to pay a claim approved by the Commissioner under Tex. Fin. Code §156.504, the Commissioner will:

(1) record the time and date the claim was approved; and

(2) pay approved but unpaid claims for which a recordation was made under paragraph (1) as funds in the recovery fund become available, in the order of the recorded time and date of such claims.

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

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Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1535



SUBCHAPTER E. MORTGAGE GRANT FUND

7 TAC §§52.200 - 52.205

Statutory Authority

This proposal is made under the authority of Finance Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. This proposal is also made under the authority of Finance Code §156.556 which authorizes the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G including rules to: (i) ensure that a grant awarded from the mortgage grant fund is used for a public purpose; and (ii) provide a means of recovering money awarded from the mortgage grant fund that is not used for a public purpose.

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§52.200. Purpose and Applicability.

The rules contained in 7 TAC Chapter 52, Subchapter E govern the Commissioner's administration of the Mortgage Grant Fund as provided by Finance Code Chapter 156, Subchapter G other than claims made against the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555 which are governed by the rules contained in 7 TAC Chapter 52, Subchapter F (relating to Mortgage Grant Fund: Recovery Claims for Unlicensed Activity).

§52.201. Definitions.

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

(1) "Auxiliary mortgage loan activity company" has the meaning assigned by Tex. Fin. Code §156.002.

(2) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

(3) "Department" means the Department of Savings and Mortgage Lending.

(4) "Finance Commission" means the Finance Commission of Texas.

(5) "Grant Coordinator" means the individual appointed as the Grant Coordinator for purposes of §52.203 of this title (relating to Grant Coordinator).

(6) "Mortgage Grant Advisory Committee" or "MGAC" means the Mortgage Grant Advisory Committee formed to advise the Commissioner concerning administration of the fund, as provided by §52.204 of this title (relating to Mortgage Grant Advisory Committee).

(7) "Mortgage Grant Administration Manual" means the manual created by the Commissioner to reflect the various policies and procedures governing administration of the Mortgage Grant Fund grant program as provided by §52.202 of this title (relating to Commissioner as Manager).

(8) "Mortgage Grant Fund" or "fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Finance Code Chapter 156, Subchapter G.

§52.202. Commissioner as Manager.

(a) Manager. As provided by Tex. Fin. Code §156.553, the Commissioner serves as manager of the fund and administers all aspects of the fund.

(b) Periodic Reports to the Finance Commission. Unless the Finance Commission directs otherwise, the Commissioner or his or her designee (including but not limited to the Grant Coordinator) will report to the Finance Commission audit committee concerning the status and activities of the fund at each regularly called meeting of the Finance Commission audit committee, or otherwise at the request of the Finance Commission or its audit committee.

(c) Mortgage Grant Administration Manual. The Commissioner will develop and create a manual reflecting the Commissioner's policies and procedures governing administration of the fund and the Mortgage Grant Fund grant program to be known and referred to as the Mortgage Grant Administration Manual (MGAM). The MGAM, and any amendments to the MGAM, must be approved by the Finance Commission audit committee.

(d) Website. The Commissioner is expressly authorized to establish and maintain a website in connection with administering the fund, through which the Commissioner may disseminate information to the public and prospective grantees concerning the fund.

(e) Promotional Materials. The Commissioner is expressly authorized to develop and distribute various informational materials to promote the fund to the public or otherwise raise awareness of the purpose and activities of the fund.

§52.203. Grant Coordinator.

The Commissioner may appoint an employee of the Department to serve as grant coordinator to assist the Commissioner in discharging his or her duties related to the fund. The Grant Coordinator serves under the direction of the Commissioner and acts as liaison between grantees and the Mortgage Grant Advisory Committee (MGAC). The Commissioner may delegate any authority of the Commissioner to act as manager of the fund to the Grant Coordinator, including any specific duties listed under Tex. Fin. Code §156.553 except the authority to appear at hearings or judicial proceedings related to the fund.

§52.204. Mortgage Grant Advisory Committee.

(a) Formation. The Mortgage Grant Advisory Committee (MGAC) is created to serve in an advisory role and makes program recommendations to the Commissioner and Grant Coordinator regarding administration of the fund and the grant awards to be made from the fund. MGAC will continue in existence until the abolishment date set by §52.30 of this title (relating to Advisory Committees and Informal Conferences).

(b) Governance. MGAC will be governed by the provisions of the Mortgage Grant Administration Manual, including composition, eligibility, appointment, and membership terms.

(c) Reporting. MGAC will make and report written recommendations to the Commissioner and Grant Coordinator for review and consideration concerning all aspects of administering the fund including:

(1) evaluating grant applications to determine whether the application should be approved, and if so, a specific grant amount to award;

(2) monitoring ongoing grant awards to determine compliance;

(3) considering potential amendments to the Mortgage Grant Administration Policy Manual; and

(4) evaluating potential candidates for appointment to MGAC.

§52.205. Grant Program.

(a) Scope. This section governs the administration of and disbursements from the fund (each of which is considered a grant disbursement) for purposes of:

(1) Tex. Fin. Code §156.554(b)(1), concerning grants to an auxiliary mortgage loan activity company or another nonprofit organization to promote financial education relating to mortgage loans; and

(2) Tex. Fin. Code §156.554(b)(3), concerning disbursements to provide support for statewide financial education, activities, and programs specifically related to mortgage loans for consumers, or for the purposes provided by Tex. Fin. Code §393.628(c).

(b) Grant Cycle. The fund may have one competitive grant cycle each year.

(1) Funding determination. The grant funding determination is made by the Commissioner by December 31 of each year. The Commissioner will determine the separate funding available and allocated to each of the purposes of Tex. Fin. Code §156.554(b)(1) and (3).

(2) Programming cycle. A new fund grant programming cycle may open on January 1 of each year, and if opened, closes on December 31 of such year.

(c) Eligibility. A grant made under Tex. Fin. Code §156.554(b)(1) and subsection (a)(1) of this section may only be given to a company licensed by the Department as an auxiliary mortgage loan activity company, or a nonprofit organization. A grant made under Tex. Fin. Code §156.554(b)(3) and subsection (a)(2) of this section may be given to a nonprofit organization, school, or for-profit entity. Grant funding is not available to entities licensed or registered by the Department other than auxiliary mortgage loan activity companies in accordance with Tex. Fin. Code §156.554(b)(1) and subsection (a)(1) of this section.

(d) Grant Application. To be considered for the grant program, an applicant must complete and submit the grant application by the deadline and in accordance with the instructions for the applicable grant cycle. Late or incomplete grant applications will not be accepted. Meeting eligibility criteria and timely submission of a grant application does not guarantee award of a grant in any amount.

(e) Review and Approval. The Commissioner, upon receipt of advice from MGAC and the Grant Coordinator, will review timely and complete applications and determine the grants to be awarded.

(f) Grant Agreement. To participate in the grant program, a grantee approved by the Commissioner to receive a grant must execute the grant agreement approved by the Commissioner for the applicable grant cycle (grant agreement).

(g) Grantee Compliance. A grantee must comply with applicable financial, administrative, and programmatic terms and conditions, and exercise proper stewardship over grant program funds. A grantee must use awarded funds in compliance with the following in effect for the applicable grant cycle:

(1) all applicable state laws and regulations;

(2) all applicable federal laws and regulations;

(3) the Mortgage Grant Administration Manual;

(4) the grant application, including all application guidelines and instructions at the time of application;

(5) the grant agreement signed by the Commissioner or the Commissioner's designee and the grantee;

(6) all reporting and monitoring requirements, as outlined in the grant agreement; and

(7) any other guidance documents posted on the Mortgage Grant Fund website for the applicable grant cycle.

(h) Reporting and Monitoring.

(1) General reporting requirements. To receive reimbursement of grant expenses a grantee must:

(A) submit periodic grant reports as provided by the grant agreement;

(B) maintain satisfactory compliance with the grant agreement and the grant activities as proposed by the grantee in its grant application;

(C) identify, track and report performance measures;
and

(D) track and report participant demographic information.

(2) Progress reports. A grantee must submit progress reports that demonstrate performance outcomes and financial information over the term of the grant in accordance with and by the deadlines set forth in the grant agreement.

(3) Six-month longitudinal report. A grantee must submit a six-month longitudinal report after program completion to demonstrate program objectives.

(4) Monitoring. The Grant Coordinator or MGAC may use the following methods to monitor a grantee's performance and expenditures:

(A) Desk review. The Grant Coordinator or MGAC may conduct a desk review of a grantee to review and compare individual source documentation and materials to summary data provided during the reporting process; or

(B) Site visits and inspection reviews. The Grant Coordinator or MGAC may conduct a scheduled site visit to a grantee's place of business to review compliance and performance issues. Site visits may be comprehensive or limited in scope.

(i) Reimbursement.

(1) Eligibility. To be eligible for reimbursement, a grantee must comply with all terms of the grant agreement, as well as all other items provided in subsection (g) of this section. To ensure that grant funds are used for a public purpose as provided by Tex. Fin. Code §156.556(1), grant funds will only be awarded on a cost reimbursement basis for all actual, allowable, and allocable costs incurred by a grantee pursuant to the grant agreement. Expenses that were incurred before the beginning or after termination of the grant agreement are not eligible for reimbursement.

(2) Procedure. To request reimbursement for work performed on grant activities, a grantee must submit a grant reimbursement report in accordance with and by the deadlines set forth in the grant agreement. A grantee must submit a detailed expense report with supporting documentation to justify the reimbursement request. The Department will review and approve requests for reimbursement that satisfy the requirements and promptly disburse funds in response to approved requests.

(j) Misuse of Grant Funds. The Commissioner may require a refund of grant funds already disbursed to the grantee and may cancel the grant agreement or disqualify the grantee from receiving future grants from the fund if:

(1) grant funds are not used for a public purpose allowable under Tex. Fin. Code §156.554;

(2) grant funds are used in an illegal manner;

(3) the grantee violates the terms or conditions of the grant agreement or otherwise violates the requirements of subsection (g) of this section; or

(4) the Commissioner discovers the grantee made any material misrepresentations in obtaining the grant or in seeking reimbursement of grant funds.

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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Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1535



SUBCHAPTER F. MORTGAGE GRANT FUND: RECOVERY CLAIMS FOR UNLICENSED ACTIVITY

7 TAC §§52.300 - 52.306

Statutory Authority

This proposal is made under the authority of Finance Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. This proposal is also made under the authority of Finance Code §156.556 which authorizes the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G.

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§52.300. *Purpose and Applicability.*

The rules contained in 7 TAC Chapter 52, subchapter F govern the Commissioner's administration of Tex. Fin. Code §156.555, allowing for claims to be made against the Mortgage Grant Fund to compensate persons for actual out-of-pocket damages incurred because of fraud committed by an individual who acted as a residential mortgage loan originator but who did not hold the required license issued under Finance Code Chapter 157.

§52.301. *Definitions.*

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

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

(2) "Claimant" means a mortgage applicant making or seeking to make a claim on the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555.

(3) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

(4) "Department" means the Department of Savings and Mortgage Lending.

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

(6) "Mortgage Grant Fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Finance Code Chapter 156, Subchapter G.

(7) "Originator" has the meaning assigned by Tex. Fin. Code §180.002 in defining the term "residential mortgage loan originator."

(8) "Recovery fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Tex. Fin. Code §13.016 and Finance Code Chapter 56, Subchapter F.

(9) "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as residence.

§52.302. Claims.

(a) Application Required. As provided by Tex. Fin. Code §156.555, adopting by reference the procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F, a claimant must file a sworn written application with the Department and must be made on the current form prescribed by the Commissioner and posted on the Department's website (sml.texas.gov).

(b) Payment of Approved Claims. Upon approval of a claim on the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.555, the Commissioner will issue an order disbursing funds from the Mortgage Grant Fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date upon which such order becomes final and unappealable for purposes of Government Code Chapter 2001.

(c) Cooperation by Claimant Required. The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.555. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

§52.303. Consequences for Unlicensed Individual.

(a) Administrative Penalty. In accordance with Tex. Fin. Code §§157.031 and 157.023, and in order to potentially effect reimbursement of amounts disbursed from the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.555, if the Commissioner approves

a claim made under Tex. Fin. Code §156.555, the Commissioner may impose an administrative penalty on the unlicensed individual whose fraudulent acts caused the claim in an amount not less than the approved Mortgage Grant Fund claim amount. As provided by Tex. Fin. Code §156.551(b), upon payment of the administrative penalty, the Commissioner may cause the funds to be deposited into the Mortgage Grant Fund, to the extent such fund has not met or exceeded the maximum amount set for the fund as provided by Tex. Fin. Code §156.551(c).

(b) Grounds for Denial. As provided by Tex. Fin. Code §180.201(1), failure by the unlicensed individual to pay the administrative penalty imposed by this section is a violation of an order of the Commissioner and therefore constitutes grounds for denial of an application from such individual for a residential mortgage loan originator license under Finance Code Chapter 157.

§52.304. Liability for Unpaid Claims.

(a) No Liability. The Mortgage Grant Fund, the Commissioner, and the Department are not liable to a claimant for a claim approved by the Commissioner under Tex. Fin. Code §156.555 if the assets of the Mortgage Grant Fund are insufficient to pay such claim.

(b) Payment of Unpaid Claims. If the Mortgage Grant Fund contains insufficient assets to pay a claim approved by the Commissioner under Tex. Fin. Code §156.555, the Commissioner will:

(1) record the time and date the claim was approved; and

(2) pay approved but unpaid claims for which a recordation was made under paragraph (1) as funds in the Mortgage Grant Fund become available, in the order of the recorded time and date of such claims; and, provided, the Commissioner determines in his or her sole discretion that disbursement from the Mortgage Grant Fund will not injure, hamper, or impede the Commissioner's administration of and disbursements from the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.554.

§52.305. Eligibility.

(a) Application of Finance Code Chapter 156, Subchapter F. Tex. Fin. Code §156.555(b), adopts by reference the eligibility and procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F. This section clarifies how certain of such requirements apply to a claim made on the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555.

(b) Actions by an Unlicensed Individual Acting as an Originator. To be eligible to recover from the Mortgage Grant Fund, the individual alleged to have caused harm to the claimant must have been acting or attempting to act in the capacity of an originator - actions for which a license under Finance Code Chapter 157 was required as provided by Tex. Fin. Code §157.012 and §81.100 of this title (relating to Licensing - General).

(c) Fraudulent Acts. Tex. Fin. §156.501, applicable to claims made on the recovery fund, provides that recovery from such fund is limited to acts by a licensed originator that constitute a violation of specific, enumerated provisions of Tex. Fin. Code §§157.024(a) and 156.304(b). As provided by Tex. Fin. Code §156.555, a claimant may make a claim against the Mortgage Grant Fund for fraudulent acts committed by an unlicensed individual who acted as an originator as provided by subsection (b) of this section. To the extent a claimant meets his or her burden of proof to establish that an unlicensed individual committed acts of fraud, such claim is deemed to be eligible for recovery for purposes of Tex. Fin. Code §156.501 under Tex. Fin. Code §157.024(a)(3), describing a violation for a licensed originator engaging in improper, fraudulent, or dishonest dealings.

§52.306. Statute of Limitations at Inception.

Tex. Fin. Code §156.555(b) adopts by reference the statute of limitations period for making claims on the recovery fund under Finance Code Subchapter F and applies it to claims made against the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555. Specifically, pursuant to Tex. Fin. Code §156.503, a claim made on the recovery fund may not be filed after the fourth anniversary of the date the acts causing the actual damages occurred or should reasonably have been discovered. Tex. Fin. Code §156.555 and the Mortgage Grant Fund came into existence effective September 1, 2021. As a result, the earliest possible date for a claim to have accrued for purposes of the limitations period applicable to claims made under Tex. Fin. Code §156.555 is September 1, 2017, and any claim accruing prior to that date is barred.

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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Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1535



CHAPTER 80. [TEXAS] RESIDENTIAL MORTGAGE LOAN COMPANIES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rule in 7 Texas Administrative Code (TAC) Chapter 80, Subchapter C: §80.206. The commission further proposes a new rule concerning the same or similar subject matter in 7 TAC Chapter 80, Subchapter C: §80.206. The commission further proposes amendments to existing rules in 7 TAC Chapter 80 as follows: Subchapter A, §80.2; Subchapter C, §80.203 and §80.204; and Subchapter D, §80.300. This proposal and the rules as repealed, amended, or added as a new rule by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156).

Changes Concerning Office Requirements and Remote Work

Prior to September 1, 2021, pursuant to now former Finance Code Sections 156.2041(7) and 156.2042(6), a residential mortgage loan company or credit union subsidiary organization licensed by the department under Finance Code Chapter 156 was required to "maintain a physical office in Texas" (physical office requirement). During the 87th Legislature (Regular Session), Senate Bill 1900 (SB1900) and House Bill 3617 (HB3617) were enacted into law (eff. September 1, 2021) which, among things, amended Finance Code Sections 156.2041 and 156.2042 to eliminate the physical office requirement. One stated purpose for HB3617, as reflected by the bill's House Committee Report was to address "a rise in demand for remote working." The proposed rules implement those portions of HB3617 addressing elimina-

tion of the physical office requirement and further seek to fulfill the stated purpose of HB3617 by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a "residential mortgage loan company" (as defined by Finance Code §156.002(13); mortgage company) to work remotely. The proposed rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage company such that the office must be licensed by the department. The rules, if adopted, would: (i) eliminate use of the term "physical office" throughout Chapter 80 and instead use the terms "main office" and "branch office," terms that are used in Chapter 156; (ii) eliminate existing requirements for a mortgage company to maintain records tied to the now defunct physical office requirement; (iii) create definitions for the terms "administrative office," "branch office," "licensed office," and "main office" for purposes of administering the proposed rules, including to clarify which offices of a mortgage company must be licensed by the department; (iv) clarify that the main office or a branch office must be established by the mortgage company and not a sponsored originator; (v) describe conditions under and parameters by which the employees and sponsored originators of a mortgage company are authorized to work from a remote location; (vi) create a new requirement for a mortgage company to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy; (vii) create a new requirement for a mortgage company to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (viii) create a new requirement for a mortgage company to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules; and (xi) create a new requirement for a mortgage company to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage company to work remotely.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules related to Changes Concerning Office Requirements and Remote Work, among other things, include certain definitions to clarify which offices of mortgage company must be licensed by the department. Pursuant to Tex. Fin. Code §156.212(b), the department charges a fee of \$50 for a mortgage company to hold a branch office license, thereby potentially impacting the amount of fees paid to the department. However, the proposed rules are intended to formalize and clarify existing

requirements concerning licensure of branch offices of a mortgage company, and are not anticipated to result in an increase or decrease in fees paid to the department.

Public Benefits

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of adopting the proposed rules will be to have rules that formalize and clarify in rule the parameters by which the employees and sponsored originators of a mortgage company may work remotely, including requiring training concerning such remote work, and written procedures governing such remote work, thereby ensuring the privacy of those members of the public utilizing the services of a mortgage company, and confidentiality of their personal financial information.

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

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As related above, the proposed rules related to Changes Concerning Office Requirements and Remote Work, among other things, include certain definitions to clarify which offices of mortgage company must be licensed by the department. Pursuant to Tex. Fin. Code §156.212(b), the department charges a fee of \$50 for a mortgage company to hold a branch office license, thereby potentially impacting the amount of fees paid to the department by regulated persons. However, the proposed rules are intended to formalize and clarify existing requirements concerning licensure of branch offices of a mortgage company, and are not anticipated to result in an increase or decrease in fees paid to the department by regulated persons for a branch office license. The proposed rules related to Changes Concerning Office Requirements and Remote Work require a mortgage company to provide its employees and sponsored originators with training on how to work remotely in an environment conducive and appropriate to consumer privacy, and to maintain written procedures governing such remote work. However, most, if not all, mortgage companies already operate under existing authority for their employees and sponsored originators to work remotely, including existing parameters, presently not formalized in rule, that the mortgage company employ sufficient security protocols to protect consumer information, and to exercise appropriate oversight and supervision over an employee or sponsored originator working remotely. The proposed rules require the mortgage company to adequately train its employees and sponsored originators on conducting such remote work, and to document its procedures governing such remote work. As a result, the proposed rules do not directly impose a cost on regulated persons in order to comply with the proposed rules. A mortgage company may conceivably choose to engage, at some indeterminate cost, a third party to conduct such training or to develop such written procedures concerning remote work by its employees and sponsored originators; however, this potential cost would be at the election of the mortgage company, and is not directly required by the proposed rules. Furthermore, existing applicable law at the federal level already imposes similar requirements to ensure mortgage companies licensed by the department employ appropriate safeguards to protect a consumer's financial information, including activities conducted remotely by its employees and sponsored residential mortgage loan originators. Specifically, applicable regulations of

the Federal Trade Commission (FTC) (16 C.F.R. §§314.1-314.5 require mortgage companies to employ appropriate safeguards to (i) "[i]nsure the security and confidentiality of customer information"; (ii) "[p]rotect against any anticipated threats or hazards to the security or integrity of such information"; and (iii) "[p]rotect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer" (16 C.F.R. §314.3, concerning Standards for Safeguarding Customer Information). Taking the foregoing into consideration, the proposed rules do not impose economic costs on persons required to comply with the proposed rules.

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency. the proposed rules related to Changes Concerning Office Requirements and Remote Work, among other things, include certain definitions to clarify which offices of mortgage company must be licensed by the department. Pursuant to Tex. Fin. Code §156.212(b), the department charges a fee of \$50 for a mortgage company to hold a branch office license, thereby potentially impacting the amount of fees paid to the department by regulated persons. However, the proposed rules are intended to formalize and clarify existing requirements concerning licensure of branch offices of a mortgage company, and are not anticipated to result in an increase or decrease in fees paid to the department by regulated persons for a branch office license; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning Office Requirements and Remote Work create a new rule requirement for a mortgage company to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage company to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new requirement for a mortgage company to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage company to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage company to work from remotely. The proposed rules do not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules not positively or adversely affect this state's economy.

Local Employment Impact Statement

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

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

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

Takings Impact Assessment

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

Public Comments

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

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §80.2

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act). 7 TAC §80.100(g) is also proposed under the authority of, and to implement, Finance Code §156.210.

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§80.2. Definitions.

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

(1) "Application," as used in Tex. Fin. Code §156.002(14) and paragraph (18) [(20)] of this section means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

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

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

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

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

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

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

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

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

(D) in the case of a partnership, has the right to receive upon dissolution, or had contributed, 10% or more of the partnership's capital assets.

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

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

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

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

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

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

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

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

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

(12) [(13)] "Originator" has the meaning assigned by Tex. Fin. Code §156.002 in defining "residential mortgage loan originator." Paragraphs (11) [(12)] and (18) [(20)] of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Tex. Fin. Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Tex. Fin. Code §180.051.

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

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

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

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

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

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

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

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

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Iain A. Berry
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Department of Savings and Mortgage Lending
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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§80.203, 80.204, 80.206

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§80.203. Advertising.

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

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

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

(3) signs located on or adjacent to the mortgage company's licensed office as provided by §80.206 of this title (relating to Office Locations; Remote Work) [physical office].

(d) (No change.)

§80.204. Books and Records.

(a) (No change.)

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

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

(3) General Business Records. General business records include:

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

(B) (No change.)

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

(D) - (G) (No change.)

(4) Records Concerning Administrative Offices. A mortgage company must create and maintain a list reflecting any office constituting an "administrative office" of the mortgage company for purposes of §80.206 of this title (relating to Office Locations; Remote Work). [Records Establishing Physical Office. A mortgage company must create and maintain records establishing its physical office including:]

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

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

(5) Records Concerning Remote Work. A mortgage company must create and maintain records reflecting its compliance with the requirements for remote work as provided by §80.206 of this title (relating to Office Locations; Remote Work).

(c) - (g) (No change.)

§80.206. Office Locations; Remote Work.

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

(1) "Administrative office" means any office of a mortgage company that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage company conducts residential mortgage loan business in Texas. The term does not include a "remote location" as defined by this section. The term includes:

(A) an office or location at which the employees or sponsored originators of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage company perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i); or

(C) an office or location which performs any combination of activities described by subparagraphs (A) or (B) of this paragraph.

(2) "Branch office" means any office a mortgage company maintains that is separate and distinct from its main office, whether located in Texas or not, at which it conducts residential mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas. The term does not include:

(A) an office or location at which the employees or sponsored originators of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage company perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

(C) an office or location which performs any combination of the activities described by subparagraphs (A) and (B) of this paragraph; or

(D) a "remote location" as defined by this section.

(3) "Licensed office" means a physical office of the mortgage company that is licensed by the Department as its main office or a branch office.

(4) "Main office" means the address the mortgage company has listed in its NMLS license records (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore licensed by the Department through the mortgage company's license.

(5) "Remote location" means a location other than a licensed office or an administrative office of the mortgage company from which the employees or sponsored originators of the mortgage company conduct residential mortgage loan business as provided by subsection (c) of this section.

(b) Office Requirements. A mortgage company must obtain a license for any office constituting the main office or a branch office of the mortgage company. A mortgage company must also obtain a license for any office or location it advertises or promotes to the general public as an office or location at which the mortgage company's sponsored originators meet in-person with mortgage applicants or prospective mortgage loan applicants. A licensed office of the mortgage company must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage company. A sponsored originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (c) of this section.

(c) Authorization for Remote Work. The employees of a mortgage company and its sponsored originators may conduct business and work from a location other than a licensed office or an administrative office of the mortgage company (remote location) if the mortgage company:

(1) maintains appropriate safeguards for the mortgage company and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;

(4) ensures that consumer information and records of the mortgage company, including written procedures and training for work from remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and

(6) adopts, maintains, and follows written procedures to ensure that:

(A) the mortgage company and its employees and sponsored originators comply with this section; and

(B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a licensed office or administrative office of the mortgage company.

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

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Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

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7 TAC §80.206

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§80.206. *Physical Office.*

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

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SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §80.300

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§80.300. *Examinations.*

(a) (No change.)

(b) Notice of Examination. Except when the Department determines that giving advance notice would impair the examination, the Department will give the primary contact person [qualifying individ-

ual] of the mortgage company listed in NMLS or a person designated by the primary contact person advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's [qualifying individual's] mailing address or email address of record with NMLS and will specify the date on which the Department's examiners are scheduled to begin the examination. Failure to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made [the mortgage company or sponsored originator must make] available to facilitate the examination.

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

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

(2) all office locations [at which such activities are conducted] are properly licensed or [and] registered, as provided by §80.206 of this title (relating to Office Locations; Remote Work) [with NMLS];

(3) - (5) (No change.)

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

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

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

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Iain A. Berry

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Department of Savings and Mortgage Lending

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CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rule in 7 Texas Administrative Code (TAC) Chapter 81, Subchapter C: §81.206. The commission further proposes a new rule concerning the same or similar subject matter in 7 TAC Chapter 81, Subchapter C: §81.206. The commission further proposes amendments to existing rules in 7 TAC Chapter 81 as follows: Subchapter A, §81.2; Subchapter C, §81.203 and §81.204; and Subchapter D, §81.300. This proposal and the rules as repealed, amended, or added as a new

rule by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 81 implement Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157.

Changes Concerning Office Requirements and Remote Work

The proposed rules recognize the growing demand for the employees and sponsored originators of a mortgage banker to work remotely by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a mortgage banker to do so. The proposed rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage banker such that the office must be registered with the department. The proposed rules are further designed to fully implement the requirement, pursuant to Finance Code §157.003(b)(6), for a mortgage banker to provide the commissioner with "a list of any offices that are separate and distinct from the primary office identified on the mortgage banker registration and that conduct residential mortgage loan business." The rules, if adopted, would: (i) create definitions for the terms "administrative office," "branch office," "main office," and "registered office," for purposes of administering the proposed rules, including to clarify which offices of a mortgage banker must be registered with the department; (ii) clarify that the main office or a branch office must be established by the mortgage banker or mortgage company and not an originator; (iii) describe conditions under and parameters by which the employees and sponsored originators of a mortgage banker are authorized to work from a remote location; (iv) create a new requirement for a mortgage banker to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy; (v) create a new requirement for a mortgage banker to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (vi) create a new requirement for a mortgage banker to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules; and (vii) create a new requirement for a mortgage banker to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage banker to work remotely.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to the state as a result of enforcing or administering the proposed rules.

Public Benefits

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of adopting the proposed rules will be to have rules that formalize and clarify in rule the parameters by which the employees and sponsored originators of a mortgage banker may work remotely, including requiring training concerning such remote work, and written procedures governing such remote work, thereby ensuring the privacy of those members of the public utilizing the services of a mortgage banker, and confidentiality of their personal financial information.

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

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules. The proposed rules related to Changes Concerning Office Requirements and Remote Work require a mortgage banker to provide its employees and sponsored originators with training on how to work remotely in an environment conducive and appropriate to consumer privacy, and to maintain written procedures governing such remote work. However, most, if not all, mortgage bankers already operate under existing authority for their employees and sponsored originators to work remotely, including existing parameters, presently not formalized in rule, that the mortgage banker employ sufficient security protocols to protect consumer information, and to exercise appropriate oversight and supervision over an employee or sponsored originator working remotely. The proposed rules related to Changes Concerning Office Requirements and Remote Work further require the mortgage banker to adequately train its employees and sponsored originators on conducting such remote work, and to document its procedures governing such remote work. As a result, the proposed rules do not directly impose a cost on regulated persons in order to comply with the proposed rules. A mortgage banker may conceivably choose to engage, at some indeterminate cost, a third party to conduct such training or to develop such written procedures concerning remote work by its employees and sponsored originators, however, this potential cost would be at the election of the mortgage banker, and is not directly required by the proposed rules. Furthermore, existing applicable law at the federal level already imposes similar requirements to ensure mortgage bankers registered with the department employ appropriate safeguards to protect a consumer's financial information, including activities conducted remotely by its employees and sponsored residential mortgage loan originators. Specifically, applicable regulations of the Federal Trade Commission (FTC) (16 C.F.R. §§314.1-314.5 require mortgage bankers to employ appropriate safeguards to (i) "[i]nsure the security and confidentiality of customer information"; (ii) "[p]rotect against any anticipated threats or hazards to the security or integrity of such information"; and (iii) "[p]rotect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer" (16 C.F.R. §314.3, concerning Standards for Safeguarding Customer Information). Taking the foregoing into consideration, the proposed rules do not impose economic costs on persons required to comply with the proposed rules.

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning Office Requirements and Remote Work create a new rule requirement for a mortgage banker to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage banker to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new requirement for a mortgage banker to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage banker to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage banker to work remotely. The proposed rules do not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules not positively or adversely affect this state's economy.

Local Employment Impact Statement

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

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

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

Takings Impact Assessment

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

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601

North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §81.2

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

§81.2. Definitions.

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

(1) "Application," as used in Tex. Fin. Code §§157.002(6) and 180.002(19), and paragraph (16) [(49)] of this section means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) ~~[(9)]~~ "Mortgage banker" has the meaning assigned by Tex. Fin. Code §157.002.

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

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

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

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

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

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

(12) ~~[(13)]~~ "Originator" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002 in defining "residential mortgage loan originator." Paragraphs (11) ~~[(12)]~~ and (16) ~~[(19)]~~ of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Tex. Fin. Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Tex. Fin. Code §180.051.

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

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

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

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

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

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

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

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Iain A. Berry

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§81.203, 81.204, 81.206

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residen-

tial Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

§81.203. Advertising.

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

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

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

(3) signs located on or adjacent to the mortgage banker's registered office as provided by §81.206 of this title (relating to Office Locations; Remote Work) [or originator's physical office].

(d) (No change.)

§81.204. Books and Records.

(a) (No change.)

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

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

(3) General Business Records. General business records include:

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

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

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

(D) - (G) (No change.)

(4) Records Concerning Administrative Offices. A mortgage banker must create and maintain a list reflecting any office constituting an "administrative office" of the mortgage banker for purposes of §81.206 of this title (relating to Office Locations; Remote Work).

(5) Records Concerning Remote Work. A mortgage banker must maintain records reflecting compliance with the requirements for remote work as provided by §81.206 of this title.

(c) - (h) (No change.)

§81.206. Office Locations; Remote Work.

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

(1) "Administrative office" means any office of a mortgage banker that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage banker conducts residential mortgage loan business in Texas. The term does

not include a "remote location" as defined by this section. The term includes:

(A) an office or location at which the employees or sponsored originators of the mortgage banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage banker perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

(C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees or sponsored originators act solely in the capacity of a "residential mortgage loan servicer," as that term is defined by Tex. Fin. Code §158.002; or

(D) an office or location which performs any combination of activities described by subparagraphs (A) - (C) of this paragraph.

(2) "Branch office" means any office a mortgage banker maintains that is separate and distinct from its main office, whether located in Texas or not, at which it conducts residential mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas. The term does not include:

(A) an office or location at which the employees or sponsored originators of the mortgage banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage banker perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

(C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees or sponsored originators act solely in the capacity of a "residential mortgage loan servicer," as that term is defined by Tex. Fin. Code §158.002;

(D) an office or location which performs any combination of activities described by subparagraphs (A) - (C) of this paragraph; or

(E) a "remote location" as defined by this section.

(3) "Main office" means the address the mortgage banker has listed in its NMLS registration (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore registered with the Department.

(4) "Registered office" means a physical office of the mortgage banker that is registered with the Department as its main office or a branch office.

(5) "Remote location" means a location other than a registered office or an administrative office of the mortgage banker from which the employees or sponsored originators of the mortgage banker conduct residential mortgage loan business as provided by subsection (c) of this section.

(b) Office Requirements. A mortgage banker must register any office constituting the main office or a branch office of the mortgage banker. A mortgage banker must also register any office or location it

advertises or promotes to the general public as an office or location at which the mortgage banker's sponsored originators meet in-person with mortgage applicants or prospective mortgage loan applicants. A registered office of the mortgage banker must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage banker or mortgage company. An originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (c) of this section.

(c) Authorization for Remote Work. The employees of a mortgage banker and its sponsored originators may conduct business and work from a location other than a registered office or an administrative office of the mortgage banker (remote location) if the mortgage banker:

(1) maintains appropriate safeguards for the mortgage banker and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;

(4) ensures that consumer information and records of the mortgage banker, including written procedures and training for work from remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and

(6) adopts, maintains, and follows written procedures to ensure that:

(A) the mortgage banker and its employees and sponsored originators comply with this section; and

(B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a registered office or administrative office of the mortgage banker.

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

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Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1535



7 TAC §81.206

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

§81.206. *Physical Office.*

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

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Iain A. Berry

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SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §81.300

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

§81.300. *Examinations.*

(a) The Commissioner, or the Commissioner's designee(s), will conduct periodic examinations of an an [a mortgage company or sponsored] originator as the Commissioner deems necessary.

(b) Notice of Examination. Except when the Department determines that giving advance notice would impair the examination, the Department will give the primary contact person of the mortgage banker or mortgage company sponsoring the originator listed in NMLS or a person designated by the primary contact person [qualifying individual of the mortgage company] advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's [qualifying individual's] mailing address or email address of record with NMLS and will specify the date on which the Department's examiners are scheduled to begin the examination. Failure to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made [the mortgage company or sponsored originator must make] available to facilitate the examination.

(c) Examinations will be conducted to determine compliance with Finance Code, Chapters 157 and 180, [~~Chapter 156~~] and this chapter, and will specifically address whether:

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

(2) all office locations [~~at which such activities are conducted~~] are properly licensed or [~~and~~] registered, as provided by §80.206 (relating to Physical Office) and §81.206 of this title (relating to Office Locations; Remote Work) [~~with NMLS~~];

(3) (No change.)

(4) legal and regulatory requirements applicable to the originator and the mortgage banker or mortgage company sponsoring the originator [~~mortgage company and its originators~~] are being properly followed; and

(5) other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapters 157 and 180 [~~Chapter 156~~].

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

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

(f) (No change.)

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

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

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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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.3010

The Finance Commission of Texas (commission) proposes amendments to §83.3010 (relating to Fees) in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

The rules in 7 TAC Chapter 83, Subchapter B govern credit access businesses (CABs). In general, the purpose of the proposed rule changes to 7 TAC Chapter 83, Subchapter B is to reduce the annual assessment paid by licensed CABs for the Texas Financial Education Endowment (TFEE).

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

Proposed amendments to §83.3010 relate to the amount of the annual assessment that CABs pay toward TFEE. Currently, §83.3010(g)(4) requires each licensed entity to pay a fee up to \$200 for each annual renewal, to contribute to TFEE. This provision also explains that the commission may reduce the amount of the fee if it determines that the endowment is of a sufficient size to accomplish its purpose. The proposed amendment to §83.3010(g)(4) would reduce the annual fee paid to TFEE from \$200 to \$100.

The commission and the OCCC believe that the endowment is close to a sustaining level, and that now is an appropriate time to reduce the \$200 assessment. As of February 28, 2021, the TFEE fund balance was approximately \$9.1 million. The fund balance has increased each year CABs have been licensed. For example, the fund balance was \$7.9 million in FY 2019 and \$8.3 million in FY 2020. In the 2020 - 2021 grant cycle, ten organizations were awarded a cumulative amount of \$300,000. In June 2021, the commission approved the TFEE Grant Advisory Committee's recommendation to disburse \$350,000 during the 2022-2023 TFEE grant cycle. The commission and the OCCC anticipate that a \$100 fee will enable TFEE to continue growing while also making substantial grants to support financial education in Texas.

Mirand Diamond, Director of Licensing and Finance, has determined that for the first five-year period the proposed rule changes are in effect, there will be fiscal implications for state government as a result of administering the rules. The proposed amendment to §83.3010 would decrease the annual CAB TFEE assessment from \$200 to \$100. Fees that CABs pay toward TFEE will decrease by approximately \$200,000 in each of the first five years the proposed rule change is in effect. In the last seven fiscal years, on average, the OCCC has collected approximately \$400,000 per year in fees from CABs for TFEE. Therefore, the OCCC anticipates that decreasing the fee by 50% will cause this amount to decrease by approximately \$200,000

per year. The rule change will not affect costs to the state. Ms. Diamond has determined that for the first five-year period the proposed rule changes are in effect there will be no fiscal implications for local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefit anticipated as a result of the changes will be that the annual assessment for credit access business licensees will be reduced by \$100.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes require a decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would limit current §83.3010 by reducing a fee. The proposal would not expand or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs). In addition, Texas Finance Code, §393.628 authorizes the commission to set the annual assessment that CABs pay toward TFEE (up to \$200), and authorizes the commission to adopt rules regarding TFEE.

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

§83.3010. Fees.

(a) - (f) (No change.)

(g) Annual renewal and assessment fees.

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

(4) In addition to the annual assessment fee, a fee not to exceed \$100 [\$200] is required for each annual renewal of a licensed entity, in order to contribute to the Texas Financial Education Endowment. The finance commission may reduce the amount of the fee if it determines that the endowment is of a sufficient size to accomplish its purpose.

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

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Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7660



CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) proposes amendments to §89.310 (relating to Fees) and §89.405 (relating to Denial, Suspension, or Revocation Based on Criminal History), and proposes the repeal of §89.409 (relating to License Reissuance), in 7 TAC, Chapter 89, concerning Property Tax Lenders.

The rules in 7 TAC Chapter 89 govern property tax lenders. In general, the purpose of the proposed rule changes to 7 TAC Chapter 89 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 89 was published in the *Texas Register* on May 28, 2021 (46 TexReg 3425). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the rule text draft, addressing the issue of below-market-rate loans under Texas Tax Code, §32.06(a-8). The precomment did not address the proposed rule changes in §§89.310, 89.405, and 89.409. The OCCC appreciates the thoughtful input provided by stakeholders.

A proposed amendment to §89.310 would adjust the volume-based portion of the annual fee paid by property tax lender licensees. Under Texas Finance Code, §351.154, property tax lender licensees are required to pay a license fee to the OCCC. Under Texas Finance Code, §14.107, the commission is authorized to set the amount of the license fee in an amount necessary to recover the costs of administering Texas Finance Code, Chapter 351. Under Texas Finance Code, §16.002 and §16.003, the OCCC is a self-directed, semi-independent agency. This means that the OCCC is responsible for the costs of its operations, and it may set fees in amounts necessary for the purpose of carrying out its functions.

Under current §89.310(g)(1), the annual license fee paid by active property tax lender licensees consists of two components: (1) a fixed fee up to \$600, and (2) a volume fee up to \$0.03 for each \$1,000 advanced in property tax loans, in accordance with the property tax lender's most recent annual report. Under current §89.310(g)(3), the total annual license fee shall not average more than \$1,200 per active licensed location.

The proposed amendment to §89.310(g)(1)(B) would adjust the volume-based portion of the annual license fee from \$0.03 to \$0.05 per \$1,000 advanced. The commission and the OCCC believe that this change is necessary to ensure that licensing

fees are sufficient to recover the costs of administering Texas Finance Code, Chapter 351. Currently, property tax lenders contribute approximately 0.8% of the total revenue that the OCCC receives from license fees. However, property tax lender examinations make up approximately 1.5% of the OCCC's workload of examination hours. This suggests that the current revenue from property tax lender license fees is not sufficient in comparison to other industries.

In the OCCC's experience, the property tax lending industry has required significant staff resources due to the complexity of the property tax loan transaction. A property tax lender examination often requires a team of examiners with specialized training and experience. On average, a property tax lender examination requires approximately 20 examination hours (compared to 16 hours for motor vehicle sales finance licensees and 10 hours for regulated lenders). The OCCC has also received a number of complaints about property tax lenders. Compared to other industries, property tax lenders have consistently tended to have a higher ratio of complaints to the number of active licensees. Many of these complaints are complex and require significant staff time to process. In the OCCC's experience, costs for property tax lenders tend to scale with loan volumes, with the OCCC generally expending more resources on property tax lenders that have larger loan volumes.

Currently, the volume-based fee for property tax lenders is lower than the corresponding fee for regulated lenders. Whereas property tax lenders currently pay \$0.03 per \$1,000 advanced under §89.310(g)(1)(B), regulated lenders currently pay \$0.05 per \$1,000 of loans made under Texas Finance Code, Chapter 342, Subchapter E, as provided by the current rule at 7 TAC §83.310(g)(1)(B)(iii) (relating to Fees). Adjusting the volume-based fee for property tax lenders from \$0.03 to \$0.05 would bring property tax lenders more in line with other licensees. This would help ensure that property tax lenders pay their fair share of costs for regulating the industry, and that other industries are not subsidizing the cost of regulating property tax lenders.

Proposed amendments to §89.405 relate to the OCCC's review of the criminal history of a property tax lender applicant or licensee. The OCCC is authorized to review criminal history of applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109; and Texas Government Code, §411.095. The proposed amendments to §89.405 would ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Proposed amendments throughout subsections (c) and (f) of §89.405 would implement these statutory changes from HB 1342. Other proposed amendments to §89.405 include technical corrections, clarifying changes, and updates to citations.

The proposal would repeal §89.409. Currently, §89.409 requires a licensee to return its license certificate in the event of reissuance of a license. When this section was adopted, it was

based on the assumption that the OCCC would issue a paper license certificate. Because the OCCC now issues licenses through an online system (ALECS), this section is no longer necessary.

Mirand Diamond, Director of Licensing and Finance, has determined that for the first five-year period the proposed rule changes are in effect, there will be fiscal implications for state government as a result of administering the rules. The proposed amendment to §89.310 would increase the volume-based portion of the annual property tax lender license fee from \$0.03 to \$0.05 per \$1,000 advanced. In the last five years, the OCCC received an average of \$4,910.63 per year for the volume-based fee from property tax lenders. Increasing the volume-based fee from \$0.03 to \$0.05 per \$1,000 would increase the revenue from the fee by approximately 67%. This suggests that if the proposed rule changes are adopted, the OCCC would receive additional revenue of approximately \$3,273.75 per year for the first five fiscal years the rule changes are in effect. The rule changes will not affect costs to the state. Ms. Diamond has determined that for the first five-year period the proposed rule changes are in effect there will be no fiscal implications for local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefit anticipated as a result of the changes will be that the commissions' rules will be more easily understood by stakeholders, and will ensure that property tax lender licensees pay an appropriate share of license fees.

The OCCC anticipates some costs for property tax lenders required to comply with the rule changes as proposed, due to the adjustment to the annual license fee in §89.310. Of the 70 licensed property tax lenders that filed annual reports for calendar year 2020, 39 reported no property tax loans made, and would not be affected by the proposal. For the other 31 companies, the OCCC anticipates that the average fee increase would be approximately \$90. Of these companies, the median dollar amount of loans made in 2020 was approximately \$1.5 million, corresponding to a \$30 fee increase under the proposal. Any fee increase would be limited by current §89.310(g)(3), which effectively limits the volume-based fee to \$600 per active licensed location.

The OCCC anticipates that the proposed rule changes will have some economic impact on small businesses and micro-businesses. The OCCC estimates that all or nearly all of the currently licensed property tax lenders are small or micro-businesses. Therefore, the OCCC estimates that approximately 31 small businesses or micro-businesses will experience an economic impact from the proposed change. As discussed earlier, the OCCC anticipates that the 31 affected businesses would experience an average annual fee increase of approximately \$90. The OCCC considered potential alternatives, including a smaller increase to the volume-based fee, eliminating the \$1,200 maximum for the annual fee, and an adjustment to the \$600 fixed fee. However, the OCCC determined that these alternatives would not satisfy the statutory objective of ensuring that license fees cover the cost of administering Texas Finance Code, Chapter 351. The OCCC believes that adjusting the volume-based fee is an appropriate way to minimize the impact on small businesses and micro-businesses, because the impact will be smaller for businesses making lower dollar amounts of loans. The OCCC does not anticipate an adverse economic

effect on rural communities apart from other effects described in this paragraph.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed amendment to §89.310 requires an increase in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would not expand an existing regulation. The proposal would limit current §89.405 by amending grounds on which the OCCC may deny, suspend, or revoke a license on grounds of criminal history. The proposal would repeal current §89.409, relating to license reissuance. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §89.310

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §14.107 authorizes the commission to set licensing fees under Chapter 351 at amounts necessary to recover the costs of administering that chapter. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

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

§89.310. Fees.

(a) - (f) (No change.)

(g) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each active license consisting of:

(A) a fixed fee not to exceed \$600; and

(B) a volume fee based upon the lending activity conducted and the volume of business that consists of an amount not to exceed \$0.05 [~~\$0.03~~] per each \$1,000 advanced for license holders whose regulated operations occur within Texas Finance Code, Chapter 351 in accordance with the most recent annual report filing required by Texas Finance Code, §351.164.

(2) An annual assessment fee not to exceed \$250 is required for each inactive license.

(3) The maximum annual assessment fee for each licensed entity shall not average more than \$1,200 per active licensed location.

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

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Matthew Nance

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SUBCHAPTER D. LICENSE

7 TAC §89.405

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §14.107 authorizes the commission to set licensing fees under Chapter 351 at amounts necessary to recover the costs of administering that chapter. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

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

§89.405. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §89.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

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

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

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

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

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

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 351, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 351 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, collecting due amounts in a legal manner, foreclosing on real property in compliance with state and federal law, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

- (A) theft;
- (B) assault;

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

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

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

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

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

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

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

(A) the nature and seriousness of the crime;

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

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

(D) the relationship of the crime to the ability ~~or~~ ^[-] capacity ^[, or fitness] required to perform the duties and discharge the responsibilities of a licensee; ~~and~~ ^[-]

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

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

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

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

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

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

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

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

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

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

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

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

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) and (3) of this section in its review of character and fitness.

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

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

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

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

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

(3) [(4)] a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §351.156(3); and

(4) [(5)] any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1) and §351.156.

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

Filed with the Office of the Secretary of State on August 20, 2021.

TRD-202103273

Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 936-7660



7 TAC §89.409

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §14.107 authorizes the commission to set licensing fees under Chapter 351 at amounts necessary to recover the costs of administering that chapter. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

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

§89.409. *License Reissuance.*

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

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Matthew Nance

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Office of Consumer Credit Commissioner

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES SUBCHAPTER M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS

16 TAC §22.246

The Public Utility Commission of Texas (commission) proposes amendments to existing 16 Texas Administrative Code (TAC) §22.246, relating to Administrative Penalties. The proposed rule will implement an amendment to the Public Utility Regulatory Act (PURA) §15.023(b-1) enacted by the 87th Texas Legislature that establishes an administrative penalty not to exceed \$1,000,000 for violations of PURA §35.0021 or §38.075, relating to Weather Emergency Preparedness.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

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

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

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

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

David Smeltzer, Director of Rules and Projects, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Smeltzer has also determined that, for each year of the first five years the proposed rule and amendments are in effect, the anticipated public benefits expected as a result of the adoption of the proposed amendments will be alignment of commission rules with the requirements of PURA §35.0021 and §38.075. Mr. Smeltzer does not believe there will be any major economic

costs to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking on September 22, 2021, at 9:30 a.m. in the Commissioners' Hearing Room, 7th floor, William B. Travis Building if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by September 16, 2021. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by September 16, 2021. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. Commission staff strongly encourages commenters to include a bulleted executive summary to assist Commission Staff in reviewing the filed comments in a timely fashion. All comments should refer to Project Number 52312.

Statutory Authority

The amended rule is proposed under the following provision of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §15.023, which establishes that the penalty for a violation of a provision of PURA §35.0021 or PURA §38.075 may be in an amount not to exceed \$1,000,000 for a violation and that each day a violation continues is a separate violation for purposes of imposing a penalty.

Cross reference to statutes: PURA §§14.001, 14.002, and 15.023, 35.0021, and 38.075.

§22.246. *Administrative Penalties.*

(a) (No change.)

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

(1) - (4) (No change.)

(5) Violation -- Any activity or conduct prohibited by the Public Utility Regulatory Act (PURA) [PURA], the Texas Water Code (TWC) [TWC], commission rule, or commission order.

(6) (No change.)

(c) Amount of administrative penalty for violations of PURA or a rule or order adopted under PURA.

(1) (No change.)

(2) The administrative penalty for each separate violation of PURA §35.0021, PURA §38.075, or a commission rule or commission order adopted under PURA §35.0021 or PURA §38.075 will be in an amount not to exceed \$1,000,000 per violation per day. For all other violations, the administrative penalty for each separate violation will be in an amount not to exceed \$25,000 per violation per day. An administrative penalty in an amount that exceeds \$5,000 may be assessed only if the violation is included in the highest class of violations in the classification system. [The administrative penalty for each separate violation may be in an amount not to exceed \$25,000 per day, provided that an administrative penalty in an amount that exceeds \$5,000 may be assessed only if the violation is included in the highest class of violations in the classification system].

(3) (No change.)

(d) - (k) (No change.)

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

Filed with the Office of the Secretary of State on August 19, 2021.

TRD-202103260

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7244



CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §25.8

The Public Utility Commission of Texas (commission) proposes amendments to existing 16 Texas Administrative Code (TAC) §25.8, relating to a Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers. The proposed rule will implement an amendment to the Public Utility Regulatory Act (PURA) §15.023(b-1) enacted by the 87th Texas Legislature that establishes an administrative penalty not to exceed \$1,000,000 for violations of PURA §35.0021 or §38.075, each relating to Weather Emergency Preparedness.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

David Smeltzer, Director of Rules and Projects, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Smeltzer has also determined that, for each year of the first five years the proposed rules and amendments are in effect, the anticipated public benefits expected as a result of the adoption of the proposed amendments will be alignment of commission rules with the requirements of PURA §35.0021 and §38.075. Mr. Smeltzer does not believe there will be any major economic costs to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking on September 22, 2021, at 9:30 a.m. in the Commissioners' Hearing Room, 7th floor, William B. Travis Building if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by September 16, 2021. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by September 16, 2021. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. Commission staff strongly encourages commenters to include a bulleted executive summary to assist Commission Staff in reviewing the filed comments in a timely fashion. All comments should refer to Project Number 52312.

Statutory Authority

The amended rule is proposed under the following provision of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §15.023, which establishes that the penalty for a violation of a provision of PURA §35.0021 or PURA §38.075 may be in an amount not to exceed \$1,000,000 for a violation and that each day a violation continues is a separate violation for purposes of imposing a penalty.

Cross reference to statutes: PURA §§14.001, 14.002, and 15.023, 35.0021, and 38.075.

§25.8. Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers.

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

- (1) (No change.)
- (2) Class B violations.

(A) (No change.)

(B) All violations not specifically enumerated as a Class C or Class A violation are ~~[shall be considered]~~ Class B violations.

- (3) Class A violations.

(A) Each separate violation of PURA §35.0021, PURA §38.075, or a commission rule or commission order adopted under PURA §35.0021, PURA §38.075 is a Class A violation and the administrative penalty will not exceed \$1,000,000 per violation per day. Penalties for all other Class A violations will ~~[may]~~ not exceed \$25,000 per violation per day.

(B) (No change.)

- (c) (No change.)

(d) Assessment of administrative penalties. In addition to the requirements of §22.246 of this title (relating to Administrative Penalties), a notice of violation recommending administrative penalties will [shall] indicate the class of violation.

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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Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7244



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1006

The Texas Education Agency (TEA) proposes an amendment to §61.1006, concerning foundation school program funding for reimbursement of disaster remediation costs. The proposed amendment would reflect changes made by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, by establishing provisions related to Winter Storm Uri.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 1525, 87th Texas Legislature, Regular Session, 2021, added Texas Education Code (TEC), §48.2611, One-Time Reimbursement for Winter Storm Uri. The new statute establishes provisions to include reimbursement for costs incurred by school districts as a result of the 2021 North American winter storm (Winter Storm Uri), including any electricity price increases.

The proposed amendment would implement HB 1525 by adding new subsection (n) to address the reimbursement.

The amendment would allow the commissioner to provide funding from amounts appropriated for Winter Storm Uri to the disaster contingency fund and/or Foundation School Program funds available for disaster remediation costs if it is determined that costs exceed the amount to which school districts are entitled. To be eligible for reimbursement, a school district or an open-enrollment charter school will be required to submit an application and a costs sheet detailing un-reimbursed storm-related costs not covered by the Federal Emergency Management Agency (FEMA), insurance proceeds, or other sources such as philanthropic funds.

The new subsection would expire on September 1, 2023, to align with expiration of statutory authority under TEC, §48.2611.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, 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 beyond

what the authorizing statute requires. The 87th Texas Legislature, 2021, allocated \$35 million for distribution across the state.

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 addressing reimbursement related to Winter Storm Uri as required by TEC, §48.2611. The proposed new provision would apply to all school districts and open-enrollment charter schools that submit applications and costs sheets detailing un-reimbursed storm-related costs not covered by FEMA, insurance proceeds, or other sources such as philanthropic funds.

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 increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lopez 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 implementing HB 1525, 87th Texas Legislature, Regular Session, 2021, and establishing in rule the availability of reimbursement for costs related to Winter Storm Uri. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have a data and reporting impact. To apply for reimbursement for costs related to Winter Storm Uri, a school district or an open-enrollment charter school will be required to submit an application and a costs sheet detailing un-reimbursed storm-related costs not covered by FEMA, insurance proceeds, or other sources such as philanthropic funds. The application shall contain, at a minimum, the total dollar amount of paid disaster remediation costs.

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 September 3, 2021, and ends October 4,

2021. 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 September 3, 2021. 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/](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), §48.2611, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, which requires Texas Education Agency to provide reimbursement to school districts in accordance with TEC, §48.261, for costs incurred as a result of the 2021 North American winter storm (Winter Storm Uri), including any resulting electricity price increases.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.2611, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021.

§61.1006. Foundation School Program Funding for Reimbursement of Disaster Remediation Costs.

(a) General provisions. Subsections (a)-(m) of this section ~~implement~~ [This section implements] Texas Education Code (TEC), §48.261 (Reimbursement for Disaster Remediation Costs). The commissioner of education may provide disaster remediation cost reimbursement under subsections (a)-(m) of this section only if funds are available for that purpose from:

(1) amounts appropriated for that purpose, including amounts appropriated for school districts or open-enrollment charter schools for that purpose to the disaster contingency fund established under Texas Government Code, §418.073; or

(2) Foundation School Program (FSP) funds available for that purpose based on a determination by the commissioner that the amount appropriated for the FSP, including the facilities component as provided by TEC, Chapter 46, exceeds the amount to which school districts and open-enrollment charter schools are entitled under this subchapter and TEC, Chapter 46.

(b) Eligibility. A school district or an open-enrollment charter school that meets the following criteria is eligible to apply:

(1) all or part of the school district or open-enrollment charter school must be located in an area declared a disaster area by the governor under Texas Government Code, Chapter 418;

(2) the school district or open-enrollment charter school must have incurred and paid disaster remediation costs during the two-year period following the date of the governor's initial proclamation or executive order declaring a state of disaster that the school district or open-enrollment charter school does not anticipate recovering through insurance proceeds, federal disaster relief payments, or another similar source for reimbursement; and

(3) in accordance with TEC, §48.261, the school district or open-enrollment charter school must apply for reimbursement during the two-year period following the date of the governor's initial proclamation or executive order declaring a state of disaster. The school district or open-enrollment charter school must submit a completed application by the application deadline. A school district or an open-enrollment charter school that submits an incomplete application or submits an application after the application deadline may be deemed ineligible for funds.

(c) Definitions. The following terms have the following meanings when used in this section.

(1) Disaster remediation costs--Costs incurred by a school district or an open-enrollment charter school for replacing school facilities; equipment, including, but not limited to, the cost to repair or replace vehicles or computers damaged in the disaster; and supplies needed to provide instruction at a location where students eligible for FSP funding regularly attend classes.

(2) Paid disaster remediation costs--Disaster remediation costs that are paid or remitted resulting in an outflow of cash in exchange for goods or services evidenced by an invoice, receipt, voucher, or other such document, and in accordance with standards found in the Financial Accountability System Resource Guide adopted by reference in §109.41 of this title (relating to Financial Accountability System Resource Guide) and TEC, §48.261, that the school district or open-enrollment charter school does not anticipate recovering through insurance proceeds, federal disaster relief payment, or another similar source of reimbursement in accordance with TEC, §48.261, and that were paid during the two-year period following the governor's initial proclamation or executive order declaring a state of disaster.

(d) Application process. A school district or an open-enrollment charter school seeking disaster reimbursement must submit a new application each time Texas Education Agency (TEA) opens a disaster reimbursement application process on a form prescribed by TEA. The application shall contain, at a minimum, the following:

(1) identification of the governor's initial proclamation or executive order declaring a state of disaster and evidence that all or part of the school district or open-enrollment charter school is in the area subject to the disaster declaration;

(2) the total dollar amount of paid disaster remediation costs during the two-year period following the governor's proclamation or executive order declaring a state of disaster;

(3) the total dollar amount of paid disaster remediation costs paid during the two-year period following the governor's proclamation or executive order declaring a state of disaster that the school district or open-enrollment charter school anticipates to be reimbursed from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement;

(4) the total difference between the amounts of paid disaster remediation costs specified in paragraphs (2) and (3) of this subsection and, of the total difference, the specific paid disaster remediation costs for which the school district or open-enrollment charter school is seeking reimbursement under TEC, §48.261;

(5) an explanation as to why the school district or open-enrollment charter school does not anticipate being reimbursed from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement for each paid disaster remediation cost identified in paragraph (4) of this subsection;

(6) a certification from the school district or open-enrollment charter school board and superintendent or chief executive officer that all paid disaster remediation costs for which the school district or open-enrollment charter school is seeking reimbursement under paragraph (4) of this subsection qualify as paid disaster remediation costs and that the school district or open-enrollment charter school board and superintendent or chief executive officer do not anticipate recovering these payments through insurance proceeds, federal disaster relief payments, or another similar source of reimbursement; and

(7) a certification from the school district or open-enrollment charter school board and superintendent or chief executive officer

that the school district or open-enrollment charter school, for any paid disaster remediation costs for which the school district or open-enrollment charter school is seeking reimbursement under paragraph (4) of this subsection, has made and will continue to make efforts to seek reimbursement from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement as allowable or appropriate.

(e) Updates for new payments. If a school district or open-enrollment charter school makes more paid disaster remediation cost payments after submission of its initial application to the TEA and prior to the deadline announced for disaster reimbursement application submission, the TEA will prescribe a form allowing the school district or open-enrollment charter school to submit additional paid disaster remediation cost payments and information consistent with the application process in subsection (d) of this section and will increase the amount of reimbursement as available and appropriate.

(f) Reporting requirement. Annually after the date of the award under this disaster reimbursement program, the awarded school district or open-enrollment charter school board and superintendent or chief executive officer shall provide a certified report on a form prescribed by TEA until all insurance proceeds, federal disaster relief, or other similar sources of reimbursements related to the disaster are finalized. On the report, the school district or open-enrollment charter school shall identify any insurance proceeds, federal disaster relief payments, or other similar sources of reimbursement that the school district or open-enrollment charter school received for which the school district or open-enrollment charter school previously received reimbursement payment from TEA. TEA will adjust funding for any overpayments made to the school district or open-enrollment charter school based on the final report made under this subsection of the school district or open-enrollment charter school out of the school district's or open-enrollment charter school's future FSP payments or will require a refund from the school district or open-enrollment charter school.

(g) Finality of award. Awards of assistance under this section will be made based only on paid disaster remediation costs. Prior to making an award, TEA may request additional documentation, including, but not limited to, evidence described in subsection (c)(2) of this section and evidence supporting the certifications required by subsection (d)(6) and (7) of this section. A school district or an open-enrollment charter school is not entitled to any requested reimbursement, and a decision by the commissioner is final and may not be appealed.

(h) Deadlines. The commissioner will announce a deadline for disaster reimbursement applications in conjunction with making a determination of the amount of funds available for the disaster reimbursement program cycle. All applications received by the announced deadline will be reviewed. Applications will be funded if sufficient funds are available to fully fund each application. If sufficient funds are not available to fully fund each application, funding will be prorated proportionately so that every funded application receives the same percentage of requested funding.

(i) Distribution of funds. Funds will be allocated through the FSP and will appear on the school district or open-enrollment charter school payment ledger and be delivered as soon as is practicable after award amounts have been determined.

(j) Finalization of award. When the school district or open-enrollment charter school determines that all insurance proceeds, federal disaster relief payments, or other similar sources of reimbursement that the school district or open-enrollment charter school anticipates receiving are finalized and there are no pending claims, the school district or open-enrollment charter school board and superintendent or chief ex-

ecutive officer shall certify to TEA in writing that the annual report required by subsection (f) of this section is no longer necessary and disaster reporting is finalized.

(k) Record retention and audit. The school district or open-enrollment charter school shall maintain all documents necessary to substantiate payment and certifications made in subsections (c)(2), (d), (g), and (h) of this section, and the school district or open-enrollment charter school is subject to audit by TEA until two years after the school district or open-enrollment charter school certifies to TEA in writing that the disaster is finalized and closed in accordance with subsection (j) of this section.

(l) Replacement of school facilities damaged in the disaster. In accordance with TEC, §48.261, a school district or an open-enrollment charter school is permitted to elect to replace a facility damaged in a disaster instead of repairing that facility, provided that the state funds provided under this section do not exceed the lesser of the amount that would be provided to the district or charter school if the facility were repaired or the amount necessary to replace the facility.

(1) Construction plans and budgeted costs to rebuild the facility must be reasonable and appropriate, as follows.

(A) Construction plans should follow current TEA facility guidelines and physical plant requirements as prescribed in applicable provisions of Chapter 61, Subchapter CC, of this title (relating to Commissioner's Rules Concerning School Facilities) without significant add-ons or upgrades, noting that:

(i) pre-disaster square footage in temporary buildings may be replaced with square footage in permanent buildings;

(ii) pre-disaster square footage amounts may be adjusted to account for additional square footage specifically required by TEA guidelines, if applicable; and

(iii) except where specifically identified, the provisions of Chapter 61, Subchapter CC, of this title do not apply to open-enrollment charter schools.

(B) Budgeted cost per square foot may not be significantly higher than recent comparable construction costs within the region where the facility will be constructed.

(C) Enrollment capacity of the facility may not vary significantly from current common practice for new facilities of a like purpose.

(D) The facility's square footage per unit of enrollment capacity may not significantly exceed current best practice guidelines for new facilities of like purpose.

(E) The requesting school district or open-enrollment charter school is responsible for demonstrating that construction plans and budgeted costs conform to the requirements in this paragraph.

(2) The cost to replace a facility shall be based on the average of the following two methodologies:

(A) replacement cost based on square footage, which is an amount equal to the product of the reasonable and appropriate budgeted costs and the quotient of the square footage of the pre-disaster facility and the square footage of the planned facility, where the replacement cost may not exceed the budgeted cost; and

(B) replacement cost based on enrollment capacity, which is an amount equal to the product of the reasonable and appropriate budgeted costs and the quotient of the pre-disaster facility enrollment capacity and the planned facility enrollment capacity, where the replacement cost may not exceed the budgeted cost.

(3) The commissioner may grant a waiver of one or more of the requirements in paragraph (1) of this subsection if the school district or open-enrollment charter school provides sufficient justification why the requirement should not apply in a particular instance.

(4) The school district or open-enrollment charter school may request an initial reimbursement based on anticipated insurance proceeds, federal disaster relief payments, or other similar sources of reimbursements. When this occurs, TEA will determine at a later date the appropriate reimbursement when actual insurance proceeds, federal disaster relief payments, or other similar sources of reimbursements are known.

(m) Applicability. Notwithstanding subsection (n) of this section, this [This] section applies to disasters that occur on or after September 1, 2019. Reimbursement requests for disaster remediation costs for disasters that occurred prior to September 1, 2019, are governed by §61.1013 of this title (relating to Foundation School Program Funding for Reimbursement of Disaster Remediation Costs) and §61.1014 of this title (relating to Credit Against Recapture for Reimbursement of Disaster Remediation Costs).

(n) Provisions related to Winter Storm Uri. This subsection implements TEC, §48.2611 (One-Time Reimbursement for Winter Storm Uri). TEA shall provide reimbursement to school districts for costs incurred as a result of the 2021 North American winter storm (Winter Storm Uri), including any resulting electricity price increases, using the process outlined in subsections (a)-(l) of this section. This subsection expires September 1, 2023.

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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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1010

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §100.1010(c) is not included in the print version of the Texas Register. The figure is available in the on-line version of the September 3, 2021, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §100.1010, concerning open-enrollment charter schools. The proposed amendment would adopt in rule the *2020 Charter School Performance Framework (CSPF) Manual*, which would be updated to comply with statutory provisions and clarify the

operation of the CSPF to rate the performance of open-enrollment charter schools in Texas.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 100.1010 was adopted to be effective on September 18, 2014, and was last amended to be effective June 11, 2020. The rule is issued under Texas Education Code, §12.1181, which requires the commissioner to develop and adopt frameworks by which the performance of open-enrollment charter schools is measured. The performance frameworks (charter schools measured under standard accountability and charter schools measured under alternative education accountability) consist of several indices within academic, financial, and operational categories with data drawn from various sources, as reflected in the CSPF Manual adopted as a figure in the rule and updated every year.

The proposed amendment would replace the *2019 CSPF Manual* with the *2020 CSPF Manual*. The 2020 version of the manual would present no significant changes from 2019 except the following.

TEA received approval from the U.S. Department of Education on March 30, 2020, to waive statewide assessment and accountability requirements under the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, for the 2019-2020 school year. Consequently, for 2020 state academic accountability all Texas districts and campuses will receive a label of Not Rated: Declared State of Disaster.

Throughout the manual, language would be revised with technical edits, including clarification of the way to which CSPF standards are referred.

FISCAL IMPACT: Kelvey Oeser, deputy commissioner for educator support, 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 open-enrollment charter schools, required to comply with the proposal.

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 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 expand, limit, or repeal an existing regulation; would

not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Oeser 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 ensuring that statutorily required charter school performance frameworks data is gathered and used as accurately as possible. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

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 September 3, 2021, and ends October 4, 2021. 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 September 3, 2021. 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/](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), §12.1181, which directs the commissioner of education to develop and adopt open-enrollment charter school performance frameworks; and TEC, §29.259, which directs the commissioner of education to establish an adult high school diploma and industry certification charter school program, including adoption of frameworks to measure the performance of such a school.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12.1181 and §29.259.

§100.1010. Performance Frameworks.

(a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Framework [Frameworks] (CSPF) Manual established under Texas Education Code (TEC), §12.1181. The CSPF Manual will include measures for charters registered under the standard accountability system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).

(b) The performance of an adult high school diploma and industry certification charter school will be measured annually in the CSPF against a set of criteria established under TEC, §29.259.

(c) The assignment of performance levels for charter schools on the 2020 [2019] CSPF report is based on specific criteria, which are described in the 2020 [excerpted sections of the 2019] Charter School Performance Framework [Frameworks] Manual provided in this subsection.

Figure: 19 TAC §100.1010(c)
[Figure: 19 TAC §100.1010(e)]

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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Cristina De La Fuente-Valadez

Director, Rulemaking

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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY

19 TAC §109.1001

The Texas Education Agency (TEA) proposes an amendment to §109.1001, concerning financial accountability ratings. The proposed amendment would update financial accountability rating information and rating worksheets for school districts and open-enrollment charter schools, including adjustments required under Texas Education Code (TEC), §39.087, as added by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 109.1001 includes the financial accountability rating system and rating worksheets that explain the indicators that TEA will analyze to assign financial accountability ratings for school districts and open-enrollment charter schools. The rule also specifies the minimum financial accountability rating information that a school district or an open-enrollment charter school is to report to parents and taxpayers in the district.

The proposed amendment would clarify the financial accountability rating indicators terminology used to determine each school district's and charter school's rating for the 2020-2021 rating year and subsequent years by revising the ratings worksheet calculations in §109.1001(e)(5) and (f)(5). The proposed amendment would also include terminology clarifications to the rating worksheets in §109.1001(e)(5) and (f)(5). The proposed worksheets, dated October 2021, would differ from the current worksheets, dated April 2020, as follows.

Figure: 19 TAC §109.1001(e)(5)

A statement would be added that indicator 5 will not be utilized for the 2020-2021 rating year.

Indicator 15 would be revised to clarify terminology that aligns with the calculation used to score the indicator when the average daily attendance of the school district is greater than the allotted range. The "Determination of Points" chart in the worksheet would be revised to add the arithmetic symbol for "less than or equal to" to each of the ratios disclosed in the allotted range table of indicator 15.

The "Determination of rating based on meeting ceiling criteria" description section would be revised to remove the word "on" from the description of ceiling indicator 5 to provide greater clarity of the indicator's description.

Figure: 19 TAC §109.1001(f)(5)

Indicator 13 would be revised to remove the use of unrestricted net assets in the calculation and insert the use of total net assets in the calculation.

A statement would be added that indicator 21 will not be utilized for the 2020-2021 rating year.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, 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.

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 clarifying terminology used to define FIRST indicators.

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 increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lopez 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 ensuring that the provisions of the financial accountability rating system align to make the indicators uniform for all school districts and charter schools and providing a fair and equitable rating for all school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

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 September 3, 2021, and ends October 4, 2021. A request for a public hearing on the proposal submit-

ted 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 September 3, 2021. 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/](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), §12.104, as amended by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021, subjects open-enrollment charter schools to the prohibitions, restrictions, or requirements relating to public school accountability and special investigations under TEC, Chapter 39, Subchapters A, B, C, D, F, G, and J, and TEC, Chapter 39A; TEC, §39.082, which requires the commissioner to develop and implement a financial accountability rating system for public schools and establishes certain minimum requirements for the system, including an appeals process; TEC, §39.083, which requires the commissioner to include in the financial accountability system procedures for public schools to report and receive public comment on an annual financial management report; TEC, §39.085, which requires the commissioner to adopt rules to implement TEC, Chapter 39, Subchapter D, which addresses financial accountability for public schools; TEC, §39.087, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adjust the financial accountability rating system under TEC, §39.082, to account for the impact of financial practices necessary as a response to the coronavirus disease (COVID-19) pandemic, including adjustments required to account for federal funding and funding adjustments under TEC, Chapter 48, Subchapter F; and TEC, §39.151, as amended by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to provide a process by which a district or charter school can challenge an agency decision related to academic or financial accountability under TEC, Chapter 39, including a determination of consecutive school years of unacceptable performance ratings. This process must include a committee to make recommendations to the commissioner. These provisions collectively authorize and require the commissioner to adopt the financial accountability system rules, which implement each requirement of statute applicable to districts and open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§12.104, as amended by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021; 39.082; 39.083; 39.085; 39.087, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021; and 39.151, as amended by SB 1365, 87th Texas Legislature, Regular Session, 2021.

§109.1001. Financial Accountability Ratings.

(a) - (d) (No change.)

(e) The TEA will base the financial accountability rating of a school district on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) - (4) (No change.)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are

provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated October 2021 [~~April 2020~~]" for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(e)(5)

[Figure: 19 TAC §109.1001(e)(5)]

(6) (No change.)

(f) The TEA will base the financial accountability rating of an open-enrollment charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) - (4) (No change.)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated October 2021 [~~April 2020~~]" for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(5)

[Figure: 19 TAC §109.1001(f)(5)]

(6) (No change.)

(g) - (q) (No change.)

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

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Director, Rulemaking

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.24

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.24, Complaint Processing.

The proposed amendments outline a process that allows complaint cases resulting in a contingent dismissal to be closed at the time an agreement is reached between the parties as opposed to the current process in which the case is closed after completion

of the required remedial training. Such a change would result in more accurate reporting of complaint resolution timeframes.

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

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

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

--create or eliminate a government program;

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

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

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

--create a new regulation;

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

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.24. Complaint Processing.

(a) - (n) (No change.)

(o) In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and subject to the maximum penalties authorized under Texas Occupations Code §1103.552, staff, the administrative law judge in a contested case hearing, and the Board shall consider the following sanctions guide-

lines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) A person will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline was issued by the Board more than seven years before the current alleged violation occurred;

(B) Prior discipline is defined as any sanction (including administrative penalty) received under a Board final or agreed order;

(C) A violation refers to a violation of any provision of the Act, Board rules or USPAP;

(D) "Minor deficiencies" is defined as violations of the Act, Board rules or USPAP which do not impact the credibility of the appraisal assignment results, the assignment results themselves and do not impact the license holder's honesty, integrity, or trustworthiness to the Board, the license holder's clients, or intended users of the appraisal service provided;

(E) "Serious deficiencies" is defined as violations of the Act, Board rules or USPAP that:

(i) impact the credibility of the appraisal assignment results, the assignment results themselves or do impact the license holder's honesty, trustworthiness or integrity to the Board, the license holder's clients, or intended users of the appraisal service provided; or

(ii) are deficiencies done with knowledge, deliberate or willful disregard, or gross negligence that would otherwise be classified as "minor deficiencies";

(F) "Remedial measures" include, but are not limited to, training, mentorship, education, reexamination, or any combination thereof; and

(G) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. Staff may dismiss the complaint with a non-disciplinary warning upon written agreement that the Respondent will complete all remedial measures within the agreed-upon timeframe. If the Respondent fails to meet the deadlines in the agreement, the Respondent's license or certification will be automatically set to inactive status until the Respondent completes the remedial measures set forth in the agreement. [If the Respondent completes all remedial measures required in the agreement within the prescribed period of time, the complaint will be dismissed with a non-disciplinary warning letter.]

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal and, if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the prior discipline, including:

(i) Whether prior discipline concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions previously imposed; and

(iii) The length of time since the prior discipline;

(D) The difficulty or complexity of the appraisal assignment(s) at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal/instance of conduct or multiple appraisals/instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac; or

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the extent or amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The level of experience Respondent had in the appraisal profession at the time of the violations, including:

(i) The level of appraisal credential Respondent held;

(ii) The length of time Respondent had been an appraiser;

(iii) The nature and extent of any education Respondent had received related to the areas in which violations were found; and

(iv) Any other real estate or appraisal related background or experience Respondent had;

(K) Whether Respondent can improve appraisal skills and reports through the use of remedial measures;

(3) The following sanctions guidelines shall be employed in conjunction with the factors listed in paragraph (2) of this subsection to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter; or

(iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:

- (i) Contingent dismissal with remedial measures; or
- (ii) A final order which imposes one or more of the

following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to \$250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, not to exceed \$3,000 in the aggregate.

(C) 1st Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(D) 2nd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures;

or

(iv) A final order which imposes one or more of the

following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to \$250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(E) 2nd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(F) 2nd Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules,

or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(G) 3rd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;
- (v) A probationary period with provisions for monitoring the Respondent's practice;
- (vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;
- (vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or
- (viii) \$1,000 to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(H) 3rd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;
- (v) A probationary period with provisions for monitoring the Respondent's practice;
- (vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;
- (vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or
- (viii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(I) 3rd Time Discipline Level 3--violations of the Act, Board Rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

- (i) A revocation; or
- (ii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(J) 4th Time Discipline--violations of the Act, Board rules, or USPAP will result in a final order which imposes the following:

- (i) A revocation; and
- (ii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board rules, or the Act, up to the maximum \$5,000 statutory limit per complaint matter.

(K) Unlicensed appraisal activity will result in a final order which imposes a \$1,500 in administrative penalties per unlicensed appraisal activity, up to the maximum \$5,000 statutory limit per complaint matter.

(4) In addition, staff may recommend any or all of the following:

- (A) reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection;
- (B) probating all or a portion of any sanction or administrative penalty for a period not to exceed five years;
- (C) requiring additional reporting requirements; and
- (D) such other recommendations, with documented support, as will achieve the purposes of the Act, Board rules, or USPAP.

(p) - (q) (No change.)

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

Filed with the Office of the Secretary of State on August 23, 2021.

TRD-202103295

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 936-3652



CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §159.204

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §159.204, Complaint Processing.

The proposed amendments outline a process that allows complaint cases resulting in a contingent dismissal to be closed at the time an agreement is reached as opposed to the current process in which the case is closed after completion of the required remedial training. Such a change would result in more accurate reporting of complaint resolution timeframes.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect,

there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

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

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; and
- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.204. Complaint Processing.

(a) - (l) (No change.)

(m) In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and subject to the maximum penalties authorized under Chapter 1104, Texas Occupations Code, staff, the administrative law judge in a contested case hearing and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) An AMC will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline occurred more than ten years ago;

(B) A prior warning letter, contingent dismissal or discipline given less than ten years ago will not be considered unless the Board took final action against the AMC before the date of the incident that led to the subsequent disciplinary action;

(C) Prior discipline is defined as any sanction, including an administrative penalty, received under a Board final or agreed order;

(D) A violation refers to a violation of any provision of the AMC Act, Board rules, or USPAP;

(E) "Minor deficiencies" is defined as violations of the AMC Act, Board rules, or USPAP which do not call into question the qualification of the AMC for licensure in Texas;

(F) "Serious deficiencies" is defined as violations of the Act, Board rules or USPAP which do call into question the qualification of the AMC for licensure in Texas;

(G) "Remedial measures" include training, auditing, or any combination thereof; and

(H) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. Staff may dismiss the complaint with a non-disciplinary warning upon written agreement that the Respondent will complete all remedial measures within the agreed-upon timeframe. If the Respondent fails to meet the deadlines in the agreement, the Respondent's license or certification will be automatically set to inactive status until the Respondent completes the remedial measures set forth in the agreement. [If Respondent completes all remedial measures required in the agreement within a certain prescribed period of time, the complaint will be dismissed with a non-disciplinary warning letter.]

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal, and if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the discipline, including:

(i) Whether it concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions imposed;

(iii) The length of time since the previous discipline;

(D) The difficulty or complexity of the incident at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal or instance of conduct or multiple appraisals or instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac;

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The business operating history of the AMC, including:

(i) The size of the AMC's appraiser panel;

(ii) The length of time Respondent has been licensed as an AMC in Texas;

(iii) The length of time the AMC has been conducting business operations, in any jurisdiction;

(iv) The nature and extent of any remedial measures and sanctions the Respondent had received related to the areas in which violations were found; and

(v) Respondent's affiliation with other business entities;

(K) Whether Respondent can improve the AMC's practice through the use of remedial measures; and

(L) Whether Respondent has voluntarily completed remedial measures prior to the resolution of the complaint.

(3) The sanctions guidelines contained herein shall be employed in conjunction with the factors listed in paragraph (2) of this subsection to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:

(i) Contingent dismissal with remedial measures;

(ii) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required adoption and implementation of written, preventative policies or procedures;

(III) A probationary period with provisions for monitoring the AMC;

(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(C) 1st Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(D) 2nd Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures;

(iv) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required adoption and implementation of written, preventative policies or procedures;

(III) A probationary period with provisions for monitoring the AMC;

(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(E) 2nd Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(F) 2nd Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(G) 3rd Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(H) 3rd Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(I) 3rd Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A revocation; and

(ii) Minimum of \$7,000 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules, or the Act; each day of a continuing violation is a separate violation.

(J) 4th Time Discipline--violations of the AMC Act, Board rules or USPAP will result in a final order which imposes the following:

(i) A revocation; and

(ii) \$10,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(K) Unlicensed AMC activity will result in a final order which imposes a \$10,000 in administrative penalties per unlicensed AMC activity; each day of a continuing violation is a separate violation.

(4) In addition, staff may recommend any or all of the following:

(A) Reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors

that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection;

(B) Probating all or a portion of any remedial measure, sanction, or administrative penalty for a period not to exceed three years;

(C) Requiring additional reporting requirements;

(D) Payment of costs expended by the Board associated with the investigation, and if applicable, a contested case, including legal fees and administrative costs; and

(E) Such other recommendations, with documented support, as will achieve the purposes of the AMC Act, Board rules, or USPAP.

(n) - (o) (No change.)

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

Filed with the Office of the Secretary of State on August 23, 2021.

TRD-202103296

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 936-3652



PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.4

The Texas Optometry Board proposes amendments of 22 TAC §273.4, Fees (Non-Refundable). The initial fees are increased by five dollars and the biennial fees are increased by five dollars for each year for a total of ten dollars each biennium. The fees are being increased because the agency will incur additional costs and expenses due to SB993 of the 87th Regular Legislative Session.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for the state and local governments as a result of repealing the rule.

Kelly Parker, Executive Director, has determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated is agency efficiency in its ability to carry out its programs. There will be a slight increase to cost to persons required to comply with the amendment. Specifically, a five-dollar increase to initial fees and ten-dollar increase to biennial fees.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL 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 amendment. Since the agency has determined that the proposed amendment 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.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed amendment will be in effect, it is anticipated that the proposed amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed amendment will not require the creation of new employee position or the elimination of an existing employee position. There will be a slight increase to cost to persons required to comply with the amendment. Specifically, a five-dollar increase to initial fees and ten-dollar increase to biennial fees paid to the agency. Should the agency receive additional funding in the future, costs may be reduced. The fees are being increased because the agency will incur additional costs and expenses due to SB993 of the 87th Regular Legislative Session. The agency plans to collect the fees and seek additional appropriations based on the collected fees.

PUBLIC COMMENTS

Comments on the proposed amendment may be submitted electronically to: kelly.parker@tob.texas.gov, Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The proposed amendment of §273.4 is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.165.

No other sections are affected by this repeal.

§273.4. Fees (Non-Refundable).

(a) Examination Application Fee \$150.00.

(b) License Without Examination Application Fee \$305.00 [~~\$300.00~~].

(c) Therapeutic Certification Application Fee \$85.00 [~~\$80.00~~].

(d) Optometric Glaucoma Specialist License Application Fee \$55.00 [~~\$50.00~~].

(e) Initial Therapeutic License Fee: \$55.00 [~~\$50.00~~] plus \$5.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$60.00 [~~\$55.00~~]. Beginning January 1, 2021, a fee of \$265.36 [~~\$260.36~~] plus \$6.00 fee required by House Bill 2985, 78th Legislature. Total fee for biennial renewal: \$271.36 [~~\$266.36~~].

(f) License Renewal.

(1) Fee for licenses renewed on or before the January 1 expiration date:

(A) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$220.36 [~~\$210.36~~] plus \$1.00 fee

required by House Bill 2985, 78th Legislature. Total fee: \$221.36 [~~\$211.36~~].

(B) Active Optometric Glaucoma Specialist: \$230.00 [~~\$220.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$231.00 [~~\$221.00~~].

(C) Beginning January 1, 2021, the renewal fee for biennial renewal is:

(i) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$430.72 [~~\$420.72~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$432.72 [~~\$422.72~~].

(ii) Active Optometric Glaucoma Specialist: \$450.00 [~~\$440.00~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$452.00 [~~\$442.00~~].

(iii) Licenses renewed for the one year for 2021: the fee will be prorated for the one-year period.

(2) License fee for late renewal, one to 90 days late.

(A) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$325.54 [~~\$315.54~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total late license fee: \$326.54 [~~\$316.54~~].

(B) Active Optometric Glaucoma Specialist: \$340.00 [~~\$330.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$341.00 [~~\$331.00~~].

(C) Beginning January 1, 2021, the renewal fee for biennial renewal, one to 90 days late is:

(i) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$641.08 [~~\$631.08~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$643.08 [~~\$633.08~~].

(ii) Active Optometric Glaucoma Specialist: \$670.00 [~~\$660.00~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$672.00 [~~\$662.00~~].

(iii) Licenses renewed for the one year for 2021: the one to 90 days late fee will be prorated for the one-year period.

(3) License fee for late renewal, 91 days to one year late.

(A) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$430.72 [~~\$420.72~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total late license fee: \$431.72 [~~\$421.72~~].

(B) Optometric Glaucoma Specialist: \$450.00 [~~\$440.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$451.00 [~~\$441.00~~].

(C) Beginning January 1, 2021, the renewal fee for biennial renewal 91 days to one year late is:

(i) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$851.44 [~~\$841.44~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$853.44 [~~\$843.44~~].

(ii) Active Optometric Glaucoma Specialist: \$890.00 [~~\$880.00~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$892.00 [~~\$882.00~~].

(iii) Licenses renewed for the one year for 2021: the 91 days to one-year late fee will be prorated for the one-year period.

(4) Late fees (for all renewals with delayed continuing education) \$420.72.

(g) Provisional License \$75.00.

(h) Initial Limited Faculty License \$50.00.

(i) Duplicate License, Renewal Certificate, Therapeutic Certificate or Optometric Glaucoma Specialist Certificate (lost, destroyed, or name change) \$25.00.

(j) Retired License.

(1) Optometrist and Therapeutic Optometrist: \$210.36 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$211.36.

(2) Optometric Glaucoma Specialist: \$220.00 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$221.00.

(3) Beginning January 1, 2021, the renewal fee for biennial renewal is:

(A) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$220.36 [~~\$210.36~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$222.36 [~~\$212.36~~].

(B) Active Optometric Glaucoma Specialist: \$230.00 [~~\$220.00~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$232.00 [~~\$222.00~~].

(k) Retired License to Active License Application Fee. For individuals holding Retired License making application for active license. \$30.00 [~~\$25.00~~].

(l) Request for Criminal History Evaluation Letters \$125.00.

(m) Fee for official license verification: \$40.00.

(n) Fee for list of optometrists: \$65.00.

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

Filed with the Office of the Secretary of State on August 18, 2021.

TRD-202103238

Kelly Parker

Executive Director

Texas Optometry Board

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 305-8502



CHAPTER 275. CONTINUING EDUCATION

22 TAC §275.1

The Texas Optometry Board (the "Board") proposes amendments of 22 TAC §275.1 General Requirements. This amendment simply modernizes the way the agency approves continuing education course providers and courses. The Board reserves the right to review and approve providers that are not automatically granted approval through this amendment as stated in Paragraph C. The Board also reserves the right to reject any course. Finally, this amendment will increase agency efficiencies and improve customer service.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed amendment is in effect, there will

be no fiscal implications for the state and local governments as a result of repealing the rule.

Kelly Parker, Executive Director, has determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated is agency efficiency and increased customer service. There will be no economic cost to persons required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL 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 amendment. Since the agency has determined that the proposed amendment 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.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed amendment will be in effect, it is anticipated that the proposed amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed amendment will not require the creation of new employee position or the elimination of an existing employee position; and implementation of the proposed amendment will not require an increase or decrease in fees paid to the agency. The proposed amendment purely modernizes the way the Board approves continuing education providers and courses. There will be no effect on the state's economy.

PUBLIC COMMENTS

Comments on the proposed amendment may be submitted electronically to: kelly.parker@tob.texas.gov, Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The proposed amendment of §275.1 General Requirements is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.165.

No other sections are affected by this repeal.

§275.1 General Requirements

(a) Number of hours required to renew.

(1) The Texas Optometry Act requires each optometrist licensed in this state to take 16 hours of continuing education per calendar year with at least six hours in the diagnosis or treatment of ocular disease. Beginning with the 2021 license renewal, at least 12 hours of the required 16 hours shall be in the diagnosis or treatment of ocular

disease. The subject of at least one hour of the required 16 hours shall be professional responsibility. The calendar year is considered to begin January 1 and run through December 31.

(2) Hours required beginning with the 2023 license renewal.

(A) 32 hours of continuing education taken during the two-year period preceding license renewal.

(B) 24 hours of the required 32 hours shall be in the diagnosis or treatment of ocular disease.

(C) Two hours of the required 32 hours shall be in professional responsibility as defined in subsection (b)(1)(H) [(b)(9)] of this section.

(b) Providers.

(1) The Board has determined that the following providers who provide courses in subjects directly related to optometry may satisfy the criteria for acceptable continuing education hours and may be given automatic approval:

(A) Courses sponsored by an optometry college or school accredited by the American Optometric Council on Education (ACOE);

(B) Courses sponsored by the American Optometric Association (AOA) or an affiliate of the AOA;

(C) Courses sponsored by the American Academy of Optometry (AAO) or an affiliate of AAO;

(D) Courses accredited by the Council on Optometric Provider Education (COPE);

(E) Courses sponsored and or approved by the Texas Health and Human Services Commission;

(F) Courses sponsored by the American Board of Optometry;

(G) Courses approved by the Accreditation Council for Continuing Medical Education (AACME); and

(H) Courses in professional responsibility given by a board accredited in-state college or school of optometry may be given approval if the course:

(i) is made available as a live course in this state and on the internet; and

(ii) includes the study of professional ethics, the Texas Optometry Act and Board Rules, judicious prescribing of dangerous drugs, pain management, or drug abuse by professionals.

(2) Notwithstanding the automatic approvals contemplated in paragraph (1) of this subsection, the Board shall be entitled to reject individual courses.

[(b) The board accepts for continuing education credit all courses sponsored by any board-accredited college or schools of optometry and such other programs or courses of other organizations as are approved by the board upon recommendation from the Continuing Education Committee, appointed by the Board Chair. The Continuing Education Committee will consider, among other things in its discretion, the following criteria in approving courses and classifying the hours as general, diagnosis or treatment of ocular disease, and professional responsibility:]

[(1) all subjects of education must be directly related to optometry;]

[(2) courses sponsored by or given by accredited optometry schools will be granted automatic approval as limited by paragraph (9) of this subsection;]

[(3) courses meeting evaluation standards and receiving approval of the Association of Regulatory Boards of Optometry will be granted automatic approval as limited by paragraph (9) of this subsection;]

[(4) courses sponsored by optometric organizations may be given approval;]

[(5) courses sponsored by universities or accredited nonoptometric schools may be given approval if the subject matter is directly related to optometry;]

[(6) correspondence courses sponsored and graded by accredited optometry schools may be given approval. The maximum number of hours allowed for these courses is set out in §275.2(f) of this title (relating to Required Education);]

[(7) courses sponsored by individual providers may be approved but providers must supply the committee with a synopsis of the lecture material to be presented, itinerary including time in the class, and resumes of the lecturers;]

[(8) on-line computer courses with post-course testing sponsored by the Association of Regulatory Boards of Optometry or by accredited optometry schools. The maximum number of hours allowed for these courses is set out in §275.2(f) of this title;]

[(9) courses in professional responsibility given by a board accredited instate college or school of optometry may be given approval if the course;]

[(A) is made available as a live course in this state and on the internet; and]

[(B) includes the study of professional ethics, the Texas Optometry Act and Board Rules, judicious prescribing of dangerous drugs, pain management, or drug abuse by professionals;]

(c) Provider Approval. Continuing education providers who are not preapproved under subsection (b) of this section shall make application to the Board on the prescribed form, submit the appropriate fee, and submit all required materials for consideration of approval. Failure to utilize the Board's application form or submit any of the requirements shall be grounds to reject the application request. Provider applications will be approved by the Board upon recommendation from the Continuing Education Committee.

(d) [(e)] Renewal requirements. Licensees who have not complied with the education requirements may not be issued a renewal license unless such person is entitled to an exemption under Section 351.309 of the Act. The following persons are exempt:

(1) a licensee who holds a Texas license, but does not practice optometry in Texas; provided, however, that if at any time during the calendar year for which such exemption has been obtained such person desires to practice optometry, such person shall not be entitled to practice optometry in Texas until the hours of continuing education credits set out in subsection (a) of this section are obtained and the board has been notified of the completion of such continuing education requirements;

(2) a licensee who served in the regular armed forces of the United States during part of the period immediately preceding the license renewal date;

(3) a licensee who submits proof satisfactory to the board that the licensee suffered a serious or disabling illness or physical dis-

ability which prevented the licensee from complying with the requirements of this section during the period immediately preceding the annual license renewal date; provided, however, that in lieu of claiming the exemption, a licensee who has submitted the requisite proof of illness or disability may elect to obtain the education requirement by correspondence or multi-media courses sponsored, monitored, or graded by colleges of optometry; or

(4) a licensee who was first licensed within the period immediately preceding the first renewal date is exempt from Board mandated continuing education for this first calendar year. A new licensee is not exempt from continuing education required by Texas laws.

(e) [(d)] Availability. Approved courses must be available to all Texas licensed optometrists at a fee considered reasonable and nondiscriminatory.

[(e) Summaries of the courses and resumes of those teaching must be submitted to the board's Continuing Education Committee for approval or disapproval. This information should be received 60 days prior to the date the course is to take place.]

(f) Proof of Attendance. Written proof of attendance and completion of approved courses must be supplied by the licensed optometrist to the board in conjunction with the renewal application for an optometry license. If the licensed optometrist is practicing in Texas, the licensee should submit the original proof of attendance or the approved sponsors of continuing education may submit to the board written proof of attendance and completion of approved courses on behalf of the licensed optometrist. Information such as the following will be required: sponsoring organizations; location and dates; course names; instructors; names of attendee; number of education hours completed; and any other information deemed necessary by the board. Proof of attendance supplied by the sponsor should contain at least one signature of the sponsor's designee.

(g) Retired License Continuing Education.

(1) An applicant with a current license applying for the Retired License shall obtain eight hours of Board approved continuing education during the calendar year preceding the date of application. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.

(2) An applicant whose license has expired for one year or more shall obtain 16 hours of Board approved continuing education during the calendar year preceding the date of application. All of the hours may be obtained on the Internet or by correspondence. At least eight of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.

(3) The holder of a retired license shall obtain eight hours of Board approved continuing education during the calendar year prior to renewing the license. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.

(4) Beginning with the 2023 license renewal, the holder of a retired license shall obtain 16 hours of Board approved continuing education prior to renewing the license. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.

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



TITLE 28. INSURANCE

PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

CHAPTER 276. GENERAL ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §§276.3 - 276.5

INTRODUCTION. The Office of Injured Employee Counsel (OIEC) proposes amendments to existing rules at 28 Texas Administrative Code (TAC), Chapter 276, Subchapter A, §§276.3 - 276.5. The proposed amendments update rules to ensure efficient agency operations; maintain consistency with statute; and simplify publication requirements.

REASONED JUSTIFICATION. OIEC identified a number of rules that required updates during the agency's rule review under Texas Government Code §2001.039, which requires a state agency to review each of its rules every four years. The agency identified rules that are outdated, inconsistent with statutory language, or fail to clarify the language and purpose of statutes.

The proposed amendment to §273.3, Rulemaking Petition, clarifies rules may be petitioned by an "interested person." This language is consistent with the language in Government Code §2001.021, Subchapter B.

The proposed amendment to §276.4, Sick Leave Pool, removes references to the "Deputy Public Counsel" and adds language reflecting the Public Counsel's discretion to designate a sick leave pool administrator under Government Code §661.002. This change is part of a general effort to remove functional job titles from agency rules.

The proposed amendment to §276.5, Employer's Notice of Ombudsman Program and First Responder Liaison to Employees, updates publication requirements under Labor Code §404.153 to eliminate language designating publication locations and font sizes. This change is part of a general effort to remove complexity from agency rules.

FISCAL NOTE. Mrs. Andria Franco, Deputy Public Counsel, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal impact to state or local governments that provide workers' compensation coverage as a result of enforcing or administering the amendments. There will be no measurable effect on local employment or the local economy because of the proposed amendments.

PUBLIC BENEFIT. Mrs. Franco has also determined that, for each of the first five years amended §§276.3 - 276.5 are in effect, there are several public benefits anticipated, as well as potential, minimal costs for persons to comply with the proposal.

The amendment to §276.3 will remove potential confusion by conforming the rule to the language in Government Code §2001.021, Subchapter B.

The amendment to §276.4 will move away from listing functional job titles in agency rules. Currently if the Deputy Public Counsel position is vacant or the agency changes functional job titles, the agency will have to undergo rulemaking to make a change in sick leave pool administration. The amendment will allow the agency head to designate a sick leave pool administrator based on current business needs.

The amendments to §276.5 will benefit the public by removing inadvertent violations due to disputes about font size and publication location. The amendments recognize that the goal of Labor Code §404.153 is to ensure that injured employees receive notice of the existence of OIEC services and the first responder liaison.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL. Mrs. Franco anticipates there will be no costs to comply with these rules. The proposed changes impact internal agency operations, accuracy or provide additional flexibility with notice publication guidelines which should decrease the regulatory burden on system participants. No additional notices need to be printed to comply with the amendments to §276.5. Because OIEC has determined that the proposed amendments will have no costs to system participants, Government Code §2001.0045 does not apply.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES, AND RURAL COMMUNITIES. In accordance with Government Code §2006.002(c), OIEC has determined that adoption of the proposed amendments will not have a direct, adverse economic impact on small or micro-businesses or rural communities who may be self-insured insurance carriers.

GOVERNMENT GROWTH IMPACT STATEMENT. Government Code §2001.0221 requires that a state agency prepare a government growth impact statement describing the effects that a proposed rule may have during the first five years that the rule would be in effect. The proposed rules will not create or eliminate a government program and will not require an increase or decrease in fees. Implementation of the proposal will not create or eliminate employee positions and will not require an increase or decrease in future legislative appropriations to the agency.

The proposal deletes §276.4(1), regarding the reference to the Deputy Public Counsel as sick leave pool administrator and amends §276.5, regarding font size and posting locations for the employer's notice of OIEC services. The proposed rule does not change the number of individuals subject to the rule's applicability. The proposed rule will not significantly affect the state's economy.

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

Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost

imposed on the persons by the proposed rule. The proposal will not impose any additional costs on regulated persons.

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

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be received no later than 5:00 p.m. on October 3, 2021, to Kathleen Contreras, Mail Code 50, and 7551 Metro Center Drive, Austin, Texas 78744, or via email to kathleen.contreras@oiec.texas.gov. Any requests for a public hearing should be submitted separately to the Public Counsel.

STATUTORY AUTHORITY. Labor Code §404.006 authorizes the Public Counsel to adopt rules as necessary to implement Chapter 404 of the Labor Code.

CROSS REFERENCE TO STATUTE. The following sections are affected by this proposal: 28 TAC §§276.3 - 276.5; TEX. Government Code §2001.021, Subchapter B; TEX. Government Code §661.002; Tex. Lab. Code §§404.1525, 404.153(a-1) and 404.006.

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

§276.3. *Agency's Ethics Statement and Employee Requirements.*

(a) Changes or amendments to the Office of Injured Employee Counsel's (OIEC) rules may be petitioned by an interested [any] person. Rulemaking petitions shall be in the form of a letter to the Public Counsel that contains the following:

(1) - (7) (No change.)

(b) - (d) (No change.)

§276.4. *Sick Leave Pool.*

A sick leave pool is established to alleviate hardship caused to an employee and employee's immediate family if a catastrophic illness or injury forces the employee to exhaust all sick leave earned by the employee and to lose compensation from the state.

[(1)] The Deputy Public Counsel is designated as the pool administrator.]

(1) [(2)] The agency head [pool administrator] shall develop and administer a procedure for the administration of this section.

(2) [(3)] Operation of the pool shall be consistent with Chapter 661 of the Texas Government Code.

§276.5. *Employer's Notice of Ombudsman Program and First Responder Liaison to Employees.*

(a) All employers participating in the workers' compensation system shall post notice of the Office of Injured Employee Counsel's (OIEC) Ombudsman Program. This notice shall be posted [in the personnel office, if the employer has a personnel office, and] in the workplace where each employee is likely to see the notice on a regular basis.

(b) (No change.)

(c) [The notice shall be printed with a title in at least 15 point bold type and text in at least 14 point normal type.] The text of the notice shall be as follows without any additional words or changes:

Figure: 28 TAC §276.5(c) (No change.)

(d) An employer that employs first responders or that supervises volunteer first responders shall:

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

(3) The following notice shall be printed [with a title in at least 15 point bold type and text in at least 14 point normal type,] in English and Spanish or in English and any other language common to the employer's affected employee population. The text of the notice shall be as follows without any additional words or changes:

Figure: 28 TAC §276.5(d) (No change.)

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

Filed with the Office of the Secretary of State on August 17, 2021.

TRD-202103226

Gina McCauley

General Counsel

Office of Injured Employee Counsel

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 804-4194



SUBCHAPTER B. OMBUDSMAN PROGRAM

28 TAC §276.10

INTRODUCTION. The Office of Injured Employee Counsel (OIEC) proposes amendments to existing rules at 28 Texas Administrative Code (TAC), Chapter 276, Subchapter B, §276.10. The proposed amendments update rules to ensure efficient agency operations; maintain consistency with statute; and eliminate a license requirement.

REASONED JUSTIFICATION. OIEC identified a number of rules that required updates during the agency's rule review under Texas Government Code §2001.039, which requires a state agency to review each of its rules every four years. The agency identified rules that are outdated, inconsistent with statutory language, or fail to clarify the language and purpose of statutes.

The proposed amendments to §276.10, Ombudsmen Training and Continuing Education Program, remove §276.10(c)(2)(A) and §276.10(a)(1) regarding obtaining and maintaining a valid workers' compensation adjuster license and the associated continuing education requirement. The change follows statewide efforts to reduce burdensome licensing requirements. These deletions will also require amending §276.10(a)(2), to remove references to continuing education for obtaining and retaining the adjusters' license. The proposed amendment to §276.10(c)(1)(B) will remove functional job titles.

FISCAL NOTE. Mrs. Andria Franco, Deputy Public Counsel, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal impact to state or local governments that provide workers' compensation coverage as a result of enforcing or administering the amendments. There will be no measurable effect on local employment or the local economy because of the proposed amendments.

PUBLIC BENEFIT. Mrs. Franco has also determined that, for each of the first five years amended §276.10 is in effect, there are

several public benefits anticipated, as well as potential, minimal costs for persons to comply with the proposal.

The amendments to §276.10 will benefit the public by removing a licensing requirement that prevents otherwise eligible individuals from applying to become ombudsmen with OIEC. In addition, the Labor Code provides extensive training requirements to ensure OIEC ombudsmen are competent in workers' compensation law. The change will also reduce taxpayer expenses related to test preparation and examination fees. The rule's robust training requirements will remain, but all references to the license are being removed. The amendments to §276.10(a)(1) and §276.10(c)(2)(A) remove references to the workers' compensation adjuster license. The amendment to §276.10(a)(2) deletes references to the workers' compensation adjuster license. The amendment to §276.10(c)(1)(B) deletes functional job titles that no longer exist at the agency.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL. Mrs. Franco anticipates there will be no costs to comply with these rules. The proposed changes impact internal agency operations. Because OIEC has determined that the proposed amendments will have no costs to system participants, Government Code §2001.0045 does not apply.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES, AND RURAL COMMUNITIES. In accordance with Government Code §2006.002(c), OIEC has determined that adoption of the proposed amendments will not have a direct, adverse economic impact on small or micro-businesses or rural communities who may be self-insured insurance carriers.

GOVERNMENT GROWTH IMPACT STATEMENT. Government Code §2001.0221 requires that a state agency prepare a government growth impact statement describing the effects that a proposed rule may have during the first five years that the rule would be in effect. The proposed rules will not create or eliminate a government program and will not require an increase or decrease in fees. Implementation of the proposal will not create or eliminate employee positions and will not require an increase or decrease in future legislative appropriations to the agency.

The proposal deletes §276.10(c)(2)(A) and §276.10(a)(2) removing references to continuing education for obtaining and retaining the adjuster license. The proposal also amends §276.10(c)(1)(B) to remove obsolete job titles and §276.10(a)(1) to amend a definition related to the license requirement. The proposed rule does not change the number of individuals subject to the rule's applicability. The proposed rule will not significantly affect the state's economy.

ONE-FOR-ONE RULE REQUIREMENT FOR RULES WITH A FISCAL IMPACT. Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. The proposal will not impose any additional costs on regulated persons.

TAKINGS IMPACT ASSESSMENT. OIEC has determined that no private real property interests are affected by this proposal, and this amendment does not restrict or limit an owner's right

to property that would otherwise exist in the absence of government action. Therefore, this proposal does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be received no later than 5:00 p.m. on October 3, 2021, to Kathleen Contreras, Mail Code 50, and 7551 Metro Center Drive, Austin, Texas 78744, or via email to kathleen.contreras@oiec.texas.gov. Any requests for a public hearing should be submitted separately to the Public Counsel.

STATUTORY AUTHORITY. Labor Code §404.006 authorizes the Public Counsel to adopt rules as necessary to implement Chapter 404 of the Labor Code.

CROSS REFERENCE TO STATUTE. The following sections are affected by this proposal: 28 Texas Administrative Code §276.10, Texas Labor Code §404.152. No other statutes, articles, or codes are affected by the proposed new rules.

§276.10. Ombudsman Training and Continuing Education Program.

(a) Definitions. The following words and phrases shall have the following meaning in this section unless the context clearly indicates otherwise:

~~[(1) Adjuster's license: A workers' compensation license issued by the Texas Department of Insurance.]~~

~~(1)~~ ~~[(2)]~~ Continuing education: A formal training program required for all ombudsmen in this state ~~[that includes continuing education for obtaining and retaining an adjuster's license].~~

~~(2)~~ ~~[(3)]~~ Ombudsmen education and training program: The training required by the Office of Injured Employee Counsel (OIEC) to serve as an ombudsman, which results in certification upon completion.

(b) (No change.)

(c) OIEC staff's responsibilities regarding education and training. OIEC staff shall maintain the knowledge and skills needed to properly assist unrepresented injured employees in the workers' compensation system.

(1) The Ombudsman Program is the division within OIEC that is responsible for the overall management of the ombudsmen education and training program. The Ombudsman Program's responsibilities include, but are not limited to:

(A) educating ombudsmen about the workers' compensation laws, rules, advisories, appeals panel decisions, dispute resolution, OIEC policies and procedures, and application of such information to specific cases or factual situations;

(B) selecting supervisory staff ~~[an Ombudsman Supervisor and an Associate Director of the Ombudsman Program]~~ to observe, supervise, train, and provide feedback to ombudsmen on a daily basis;

(C) - (I) (No change.)

(2) An ombudsman's responsibilities shall include, but is not limited to:

~~[(A) obtaining and maintaining a valid workers' compensation adjusters' license issued by the Texas Department of Insurance and submitting a copy of the license to OIEC's central office;]~~

~~(A)~~ ~~[(B)]~~ completing the ombudsmen education and training program;

~~(B)~~ ~~[(C)]~~ participating in OIEC conferences;

(C) [(D)] completing all continuing education requirements;

(D) [(E)] maintaining the technical and professional skills to perform all the duties of an Ombudsman; and

(E) [(F)] assisting injured employees throughout the workers' compensation system.

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

Filed with the Office of the Secretary of State on August 17, 2021.

TRD-202103225

Gina McCauley

General Counsel

Office of Injured Employee Counsel

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 804-4194



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4031

The Comptroller of Public Accounts proposes the repeal of existing §9.4031, concerning a manual for discounting oil and gas income, related to the concept of discounting, the discounted cash flow (DCF) equation, DCF appraisal, and three acceptable techniques for estimating a "discount rate" in the DCF method. The comptroller repeals existing §9.4031 in order to propose the adoption of a new §9.4031 with revisions to remove concepts and explanations included in the referenced manual. The repeal of §9.4031 will be effective as of the date the new §9.4031 takes effect.

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

Mr. Currah also has determined that the proposed rule repeal would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed rule repeal would benefit the public by improving the administration of local property valuation and taxation. There would be no anticipated significant economic cost to the public. The proposed rule repeal would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Korry Castillo, Director, Property Tax Assistance Division, P.O. Box 13528

Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.175 (Oil or Gas Interest), which provide the comptroller with the authority to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying methods to apply and the procedures to use in appraising oil or gas interests for ad valorem tax purposes.

This repeal implements Tax Code, §23.175 (Oil or Gas Interest).

§9.4031. *Manual for Discounting Oil and Gas Income.*

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

Filed with the Office of the Secretary of State on August 23, 2021.

TRD-202103299

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 475-2220



34 TAC §9.4031

The Comptroller of Public Accounts proposes new §9.4031, concerning a manual for discounting oil and gas income.

The new §9.4031 updates and revises the Manual for Discounting Oil and Gas Income that was adopted in April 2015. The new manual explains the concept of discounting, the discounted cash flow (DCF) equation, DCF appraisal, and three acceptable techniques for estimating a discount rate in the DCF method. The updates and revisions to the manual generally reflect statutory changes, changes in the federal statutory income tax rate, updates to names and sources of information and updates to appendices to reflect current values. The proposed updated version is available for review at <https://comptroller.texas.gov/taxes/property-tax/docs/96-1703-proposed.pdf>.

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

Mr. Currah also has determined that the proposed new rule would have no significant fiscal impact on the state government, units of local government, or individuals.

The proposed new rule would benefit the public by improving the administration of local property valuation and taxation. There would be no anticipated significant economic cost to the public. The proposed new rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Korry Castillo, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecom-

ments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new section is proposed under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.175 (Oil or Gas Interests), which provide the comptroller with the authority to develop and distribute to each appraisal office appraisal manuals that specify the methods and procedures to discount future income from the sale of oil or gas from the interest to present value.

The new section implements Tax Code, §23.175 (Oil or Gas Interests).

§9.4031. *Manual for Discounting Oil and Gas Income.*

Adoption of the "Manual for Discounting Oil and Gas Income." This manual specifies the methods and procedures to calculate the present value of oil and gas properties using discounted future income under Tax Code, Chapter 23.175, and directs each appraisal district to use the specified methods and procedures. The Comptroller of Public Accounts adopts by reference the Manual for Discounting Oil and Gas

Income dated June 2021. The manual is accessible on the Property Tax Assistance Division website. Copies of the manual can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies also may be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.

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

Filed with the Office of the Secretary of State on August 23, 2021.

TRD-202103300

Victoria North

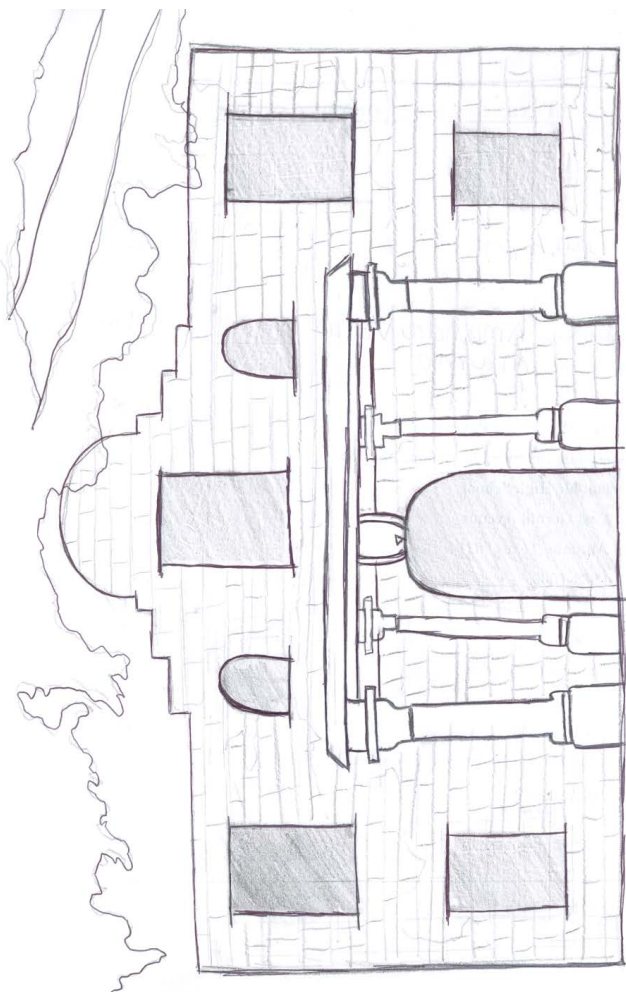
General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 475-2220

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 13. CULTURAL RESOURCES

PART 9. TEXAS HOLOCAUST AND GENOCIDE COMMISSION

CHAPTER 191. COMMISSION PROCEDURES

13 TAC §191.8

Proposed amended §191.8, published in the September 18, 2020, issue of the *Texas Register* (45 TexReg 6566), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on August 23, 2021.

TRD-202103305



TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

SUBCHAPTER B. DUTIES OF A FUNERAL ESTABLISHMENT/LICENSEE

22 TAC §203.32

Proposed amended §203.32, published in the September 18, 2020, issue of the *Texas Register* (45 TexReg 6575), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on August 23, 2021.

TRD-202103309



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER P. MENTAL HEALTH AND SUBSTANCE USE DISORDER PARITY

DIVISION 1. GENERAL PROVISIONS AND PARITY REQUIREMENTS

28 TAC §21.2410, §21.2412

The Texas Department of Insurance withdraws the proposed new §21.2410 and §21.2412 which appeared in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1191).

Filed with the Office of the Secretary of State on August 18, 2021.

TRD-202103253

James Person

General Counsel

Texas Department of Insurance

Effective date: August 18, 2021

For further information, please call: (512) 676-6584



DIVISION 4. AUTISM SPECTRUM DISORDER

28 TAC §21.2453

The Texas Department of Insurance withdraws the proposed new §21.2453 which appeared in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1191).

Filed with the Office of the Secretary of State on August 18, 2021.

TRD-202103254

James Person

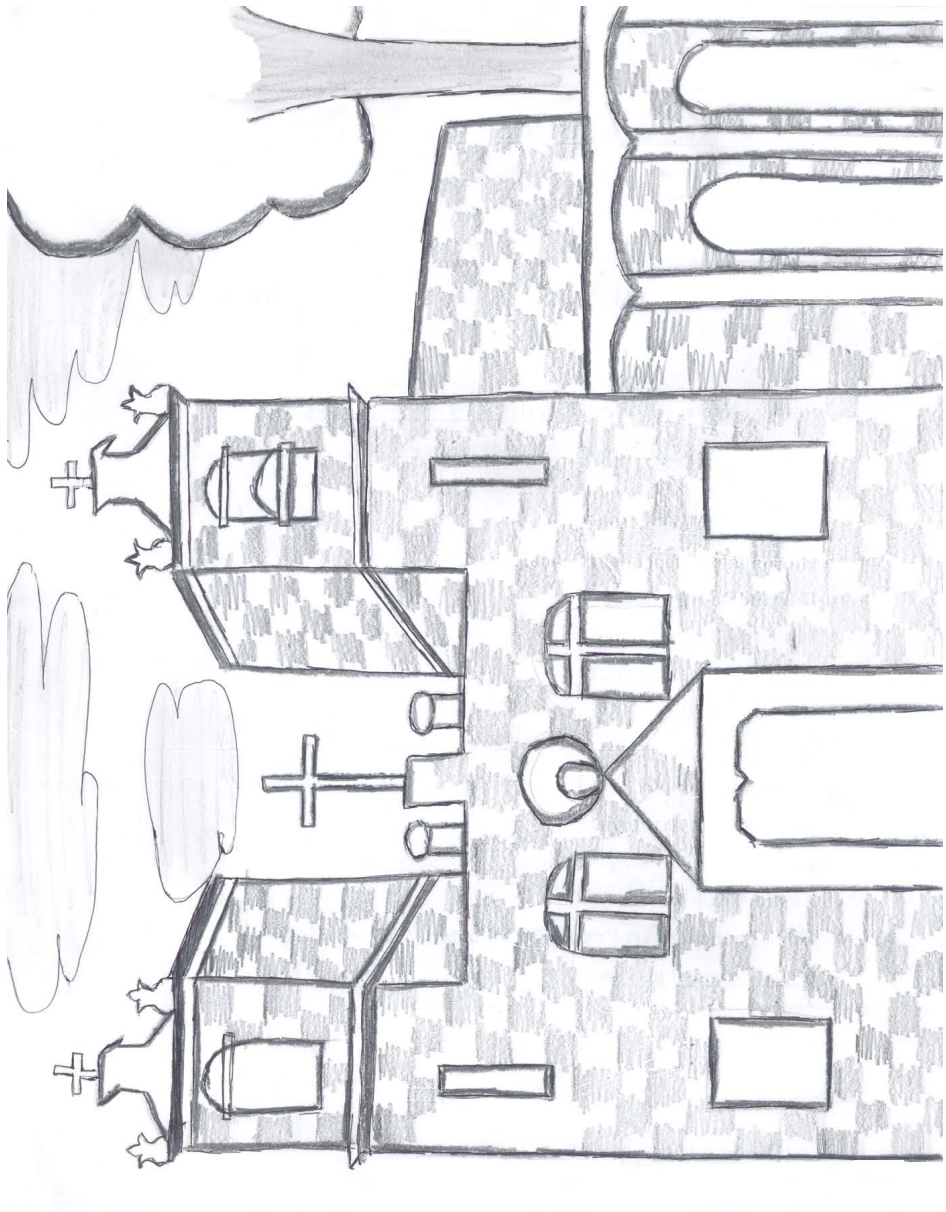
General Counsel

Texas Department of Insurance

Effective date: August 18, 2021

For further information, please call: (512) 676-6584





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES SUBCHAPTER G. INTERAGENCY AGREEMENTS

4 TAC §1.330

The Texas Department of Agriculture (Department) adopts the repeal of 4 Texas Administrative Code, Chapter 1, §1.330. The repeal is adopted without changes to the proposed text as published in the July 16, 2021, issue of the *Texas Register* (46 TexReg 4254). The repeal will not be republished.

The repeal is in response to Senate Bill (SB) 703, 87th Legislature, Regular Session (2021), which among other things, eliminates the Department's Aquaculture program. SB 703, Sections 35 and 57 deletes the Department's authority to enter into a memorandum of understanding relating to aquaculture facilities with the Texas Commission on Environmental Quality and the Texas Department of Parks and Wildlife, and requires the repeal of all rules relating to a license issued under Texas Agriculture Code, §§134.011 and 134.012, respectively.

The Department received no comments on the proposed repeal.

The repeal is adopted under Section 12.016 of the Texas Agriculture Code (Code), which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Code; Section 134.005 of the Code, which provides that the Department shall adopt rules to carry out its duties under Chapter 134 of the Code; and Section 2001.006 of the Texas Government Code, which provides a state agency with the authority to take administrative action in preparation for the implementation of legislation that has become law, but has not taken effect.

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

Filed with the Office of the Secretary of State on August 19, 2021.

TRD-202103266

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Effective date: September 8, 2021

Proposal publication date: July 16, 2021

For further information, please call: (512) 936-9360

CHAPTER 7. PESTICIDES

SUBCHAPTER C. LICENSING

4 TAC §7.21

The Texas Department of Agriculture (the Department) adopts an amendment to Texas Administrative Code, Title 4, Part 1, Chapter 7, Subchapter C, Licensing, §7.21. The amendment is adopted without changes to the proposed text as published in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3343). The rule will not be republished. The amendment is adopted under Texas Agriculture Code, Chapter 76, as amended by Senate Bill (SB) 1312, 86th Legislature, Regular Session, 2019. SB 1312 mandated the issuance of a noncommercial applicator license that authorizes a person to purchase and use restricted-use and state-limited-use pesticides for the limited purpose of mosquito control in a county located along the international border with Mexico.

The adopted amendment to §7.21 establishes category definitions and defined use-sites for noncommercial political license use category for which the department is responsible. The adopted amendment defines and establishes a new category to certify an applicator in border mosquito control, category 13.

The Department received no comments on the proposed amendment.

Statutory Authority

The amendment is adopted under Section 76.1095 of the Texas Agriculture Code, which provides the Department by rule shall provide for the issuance of a noncommercial applicator license that authorizes a person to purchase and use restricted-use and state-limited-use pesticides for the limited purpose of mosquito control in a county located along the international border with Mexico.

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

Filed with the Office of the Secretary of State on August 18, 2021.

TRD-202103229

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Effective date: September 7, 2021

Proposal publication date: May 28, 2021

For further information, please call: (512) 936-9360

CHAPTER 16. AQUACULTURE

4 TAC §§16.1 - 16.3

The Texas Department of Agriculture (Department) adopts the repeal of rules at 4 Texas Administrative Code, Chapter 16, §§16.1 - 16.3, regarding Aquaculture. The repeals are adopted without changes to the proposed text as published in the July 16, 2021, issue of the *Texas Register* (46 TexReg 4255). These repeals will not be republished.

The repeals are in response to Senate Bill (SB) 703, 87th Legislature, Regular Session (2021), which among other things, eliminates the Department's Aquaculture program. SB 703, Section 57 requires the repeal of all rules relating to a license issued under Texas Agriculture Code, §§134.011 and 134.012.

The Department received no comments on the proposed repeals.

The repeals are adopted under Section 12.016 of the Texas Agriculture Code (Code), which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Code; Section 134.005 of the Code, which provides that the Department shall adopt rules to carry out its duties under Chapter 134 of the Code; and Section 2001.006 of the Texas Government Code, which provides a state agency with the authority to take administrative action in preparation for the implementation of legislation that has become law, but has not taken effect.

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

Filed with the Office of the Secretary of State on August 19, 2021.

TRD-202103267

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Effective date: September 8, 2021

Proposal publication date: July 16, 2021

For further information, please call: (512) 936-9360



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 30. ADMINISTRATION

SUBCHAPTER AA. COMMISSIONER OF EDUCATION: GENERAL PROVISIONS

19 TAC §30.1001

The Texas Education Agency (TEA) adopts an amendment to §30.1001, concerning petitioning for the adoption of rule changes. The amendment is adopted without changes to the proposed text as published in the July 2, 2021 issue of the *Texas Register* (46 TexReg 4019) and will not be republished. The adopted amendment updates the commissioner of education's petition procedures to allow for electronic submission of a petition authorized under Texas Government Code (TGC), §2001.021.

REASONED JUSTIFICATION: TGC, §2001.021, requires that procedures to petition for the adoption of rule changes be adopted by rule. To comply with statute, the commissioner adopted §30.1001 effective September 23, 2004. Effective May 12, 2009, an amendment adopted in rule the petition form to be used to submit a petition. Effective April 26, 2017, an amendment updated the petition form adopted in rule to require the petitioner to indicate that the petitioner meets one of the four definitions of an interested person specified in statute and added language to specify the reasons the commissioner may deny a petition for rulemaking.

The adopted amendment to §30.1001 updates the commissioner's petition procedures, including the petition form included as Figure: 19 TAC §30.1001(a), to improve efficiency by ensuring that an interested person can submit the petition for rulemaking electronically. In addition, the adopted amendment to Figure: 19 TAC §30.1001(a) specifies one Texas Education Agency (TEA) division as the collection point for all petitions submitted to the commissioner. This will ensure timely acknowledgement and reviewing of a petition by TEA staff for consideration by the commissioner.

The adopted amendment to §30.1001(a) also adds the term "Texas Education Agency" to make it clear that this petition procedure applies to rules that TEA adopts.

The adopted amendment to §30.1001(b) and (c) replaces "commissioner" with "TEA staff" to reflect that the initial review of the merits of the petition is conducted by TEA staff for recommendation to the commissioner.

The adopted amendment to §30.1001(c) adds "calendar" to the phrase "60 days" to clarify the timeline for responding to a petition.

In addition, the adopted amendment to §30.1001(d)(4)(A) clarifies that the commissioner may deny a petition if the petition is filed within one year of the commissioner denying a petition on a similar rule or the same subject matter. This change addresses similar or duplicate petitions submitted within one year. The time period of one year was already established in rule and was not proposed to be changed.

The adopted amendment also includes technical edits throughout §30.1001 to improve readability.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began July 2, 2021, and ended August 2, 2021. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Government Code, §2001.021, which authorizes a state agency to prescribe by rule the form for a petition and the procedure for the submission, consideration, and disposition.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Government Code, §2001.021.

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

Filed with the Office of the Secretary of State on August 23, 2021.

TRD-202103291



CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1005

The Texas Education Agency (TEA) adopts an amendment to §97.1005, concerning results driven accountability (RDA). The amendment is adopted without changes to the proposed text as published in the June 25, 2021 issue of the *Texas Register* (46 TexReg 3807) and will not be republished. The amendment adopts in rule the 2021 RDA Manual.

REASONED JUSTIFICATION: House Bill 3459, 78th Texas Legislature, 2003, added Texas Education Code (TEC), §7.027, limiting and redirecting monitoring done by TEA to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant requirements; and data integrity for purposes of the Texas Student Data System (TSDS) PEIMS and accountability under TEC, Chapter 39. Legislation passed in 2005 renumbered TEC, §7.027, to TEC, §7.028. To meet this monitoring requirement, TEA developed the Performance Based Monitoring Analysis System (PBMAS), later renamed as RD in 2019, which is used in conjunction with other evaluation systems to monitor performance of certain populations of students and the program effectiveness of special programs in school districts and charter schools.

TEA adopted its PBMAS Manual in rule from 2005 through 2018 and the RDA Manual in rule since 2019. The RDA Manual outlines a dynamic system that evolves over time, so the specific criteria and calculations for monitoring student performance and program effectiveness may differ from year to year. The intent is to update §97.1005 annually to refer to the most recently published RDA Manual.

The adopted amendment to §97.1005 updates the current rule by adopting the 2021 RDA Manual, which describes the specific criteria and calculations that will be used to assign 2021 RDA performance levels, as Figure: 19 TAC §97.1005(b).

The 2021 RDA Manual includes the following key changes from the 2020 system.

Referenced dates relevant to the 2021 RDA indicator data and calculations are updated throughout. Additional explanatory text is added to the RDA Manual overview as well as exemplar data for calculation methodologies demonstration.

Bilingual Education, English as a Second Language, and English Learner (BE/ESL/EL)

New report only indicators are included for BE/ESL/EL Indicator #1(i-v): BE STAAR2 3-8 Passing Rate; and BE/ESL/EL Indicator #2(i-v): ESL STAAR 3-8 Passing Rate due to lack of comparable year data with included data sets for setting cut-point param-

eters. A new indicator named BE/ESL/EL Indicator #5(i-v): EL Years-After-Reclassification (YsAR) STAAR 3-8 Passing Rate is included to parallel with programmatic terminology usage only with no impacts to data inclusion or exclusion. Duplicative information and renumeration of data notes are eliminated.

Other Special Populations (OSP)

Changes to this section include only minor language clean-up with no changes to reporting.

Special Education (SPED)

Indicator analysis and reporting is expanded for SPED Indicator #5: SPED STAAR Alternate 2 Participation Rate (by race/ethnicity, data source).

Of Note for all RDA Program Areas

On March 16, 2020, Governor Greg Abbott waived the State of Texas Assessment of Academic Readiness (STAAR®) testing requirements for the 2019-2020 school year due to extensive school closures relating to the COVID-19 nationwide pandemic event. As a result, indicators specific to STAAR® testing proficiency, participation, or other reliance on non-existing 2019-2020 STAAR® data were assigned an "ND" for no data availability for RDA in 2020. Because application of the Special Analysis (SA) process uses data over the prior two years, impacted STAAR® assessment indicators will not include SA processing for RDA in 2021.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 25, 2021, and ended July 26, 2021. Following is a summary of the public comment received and corresponding response.

Comment: An individual expressed concerns regarding declines in participation rates and STAAR® results relating to school closures and quarantines and recommended that all STAAR® indicators be report only without performance level assignment until LEAs are able to make up compensatory services and allow student achievement to recover.

Response: The agency disagrees with the recommended change to the 2021 RDA Manual and reports. TEA is responsible for implementing *Guiding Principles of the RDA*, including *Principle 2: Drives Improved Results and High Expectations* for identified special student populations and for complying with monitoring requirements described in 34 Code of Federal Regulations, §300.600, specifically for students with disabilities. TEA recognizes the commentor's concern for COVID-19 impacts on student attendance and proficiency results that are measured on the RDA LEA reports. However, RDA results are used by the agency as one part of its RDA Framework in TEA's annual evaluation of student performance and program effectiveness resulting in overall determinations of LEA need. Measuring STAAR® available data allows for differentiated support to LEAs in their efforts to recover student achievement slippage.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.021(b)(1), which authorizes the Texas Education Agency (TEA) to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; TEC, §7.028, which authorizes TEA to monitor as necessary to ensure school district and charter school compliance with federal law and regulations, financial integrity and data integrity. Section 7.028(a) also authorizes TEA to monitor special education programs for compliance with state and federal laws.

Section 7.028 also authorizes the agency to monitor school district and charter schools through its investigative process; TEC, §12.056, which requires that a campus or program for which a charter is granted under TEC, Chapter 12, Subchapter C, is subject to any prohibition relating to the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter C, as determined by the commissioner; high school graduation under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; and public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, and J, and Chapter 39A; TEC, §12.104, which states that a charter granted under TEC, Chapter 12, Subchapter D, is subject to a prohibition, restriction, or requirement, as applicable, imposed by TEC, Title 2, or a rule adopted under TEC, Title 2, relating to PEIMS to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter D, as determined by the commissioner; high school graduation requirements under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; discipline management practices or behavior management techniques under TEC, §37.0021; public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and Chapter 39A; and intensive programs of instruction under TEC, §28.0213; TEC, §29.001, which authorizes TEA to effectively monitor all local educational agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.0011(b), which authorizes TEA to meet the requirements under (1) 20 United States Code, §1418(d), and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the: (A) Identification of children as children with disabilities, including the identification of children as children with particular impairments; (B) Placement of children with disabilities in particular educational settings; and (C) Incidence, duration, and type of disciplinary actions taken against children with disabilities including suspensions or expulsions; or (2) 20 United States Code, §1416(a)(3)(C), and its implementing regulations to address in the statewide plan the percentage of schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification; TEC, §29.010(a), which authorizes TEA to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes TEA to evaluate and monitor the effectiveness of LEA programs and apply sanctions concerning students with limited English proficiency; TEC, §29.066, which authorizes PEIMS reporting requirements for school districts that are required to offer bilingual education or special language programs to include the following information in the district's PEIMS report: (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs; (2) the number and percentage of students enrolled in each instructional model of a bilingual education or special language program offered by the district; and (3) the number and percentage of students identified as students of limited English proficiency

who do not receive specialized instruction; TEC, §29.182, which authorizes the State Plan for Career and Technology Education to ensure the state complies with requirements for supplemental federal career and technology funding; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which authorizes the commissioner to adopt a set of indicators of the quality of learning and achievement and requires the commissioner to periodically review the indicators for consideration of appropriate revisions; TEC, §39.054(b-1), which authorizes TEA to consider the effectiveness of district programs for special populations when determining accreditation statuses; TEC, §39.0541, which authorizes the commissioner to adopt indicators and standards under TEC, Chapter 39, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §§39.056, 39.057, and 39.058, which authorize the commissioner to adopt procedures relating to monitoring reviews and special accreditation investigations; TEC, §39A.001, which authorizes the commissioner to take any of the actions authorized by TEC, Chapter 39, Subchapter A, to the extent the commissioner determines necessary if a school does not satisfy the academic performance standards under TEC, §39.053 or §39.054, or based upon a special accreditation investigation; TEC, §39A.002, which authorizes the commissioner to take certain actions if a school district becomes subject to commissioner action under TEC, §39A.001; TEC, §39A.004, which authorizes the commissioner to appoint a board of managers to exercise the powers and duties of a school district's board of trustees if the district is subject to commissioner action under TEC, §39A.001, and has a current accreditation status of accredited-warned or accredited-probation; or fails to satisfy any standard under TEC, §39.054(e); or fails to satisfy any financial accountability standard; TEC, §39A.005, which authorizes the commissioner to revoke school accreditation if the district is subject to TEC, §39A.001, and for two consecutive school years has received an accreditation status of accredited-warned or accredited-probation, failed to satisfy any standard under TEC, §39.054(e), or has failed to satisfy a financial performance standard; TEC, §39A.007, which authorizes the commissioner to impose a sanction designed to improve high school completion rates if the district has failed to satisfy any standard under TEC, §39.054(e), due to high school completion rates; TEC, §39A.051, which authorizes the commissioner to take action based on campus performance that is below any standard under TEC, §39.054(e); and TEC, §39A.063, which authorizes the commissioner to accept substantially similar intervention measures as required by federal accountability measures in compliance with TEC, Chapter 39A.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.021(b)(1), 7.028, 12.056, 12.104, 29.001, 29.0011(b), 29.010(a), 29.062, 29.066, 29.182, 39.051, 39.052, 39.053, 39.054(b-1), 39.0541, 39.056, 39.057, 39.058, 39A.001, 39A.002, 39A.004, 39A.005, 39A.007, 39A.051, and 39A.063.

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

Filed with the Office of the Secretary of State on August 20, 2021.

TRD-202103287



CHAPTER 151. COMMISSIONER'S RULES CONCERNING PASSING STANDARDS FOR EDUCATOR CERTIFICATION EXAMINATIONS

19 TAC §151.1001

The Texas Education Agency (TEA) adopts an amendment to §151.1001, concerning passing standards for educator certification examinations. The amendment is adopted without changes to the proposed text as published in the May 14, 2021 issue of the *Texas Register* (46 TexReg 3115) and will not be republished. The adopted amendment specifies the satisfactory scores for the following educator certification examinations: Science of Teaching Reading, Early Childhood: PK-3, English Language Arts and Reading 4-8, Educational Diagnostician, and Principal as Instructional Leader.

REASONED JUSTIFICATION: Texas Education Code, §21.048(a), requires the commissioner of education to establish the satisfactory levels of performance required on educator certification examinations and require a satisfactory level of performance on each core subject covered by an examination.

The amendment adopts passing standards for the Science of Teaching Reading, Early Childhood: PK-3, English Language Arts and Reading 4-8, Educational Diagnostician, and Principal as Instructional Leader examinations.

A standard setting committee of educators developed recommended passing standards for the Science of Teaching Reading, Early Childhood: PK-3, Principal as Instructional Leader, and Educational Diagnostician examinations. The adopted amendment to §151.1001(b)(1) implements passing standards one standard error measurement (SEM) below the committee-recommended passing standard for both the selected-response and constructed-response sections of the Science of Teaching Reading and Early Childhood: PK-3 examinations. The adopted amendment to §151.1001(c) implements passing standards one SEM below the committee-recommended passing standard for both the selected-response and constructed-response sections of the Educational Diagnostician examination. The adopted amendment to §151.1001(d) implements a passing standard for the selected-response section of the Principal as Instructional Leader examination one-half SEM below the committee-recommended passing standard and a passing standard for the constructed-response section of the Principal as Instructional Leader examination one SEM below the committee-recommended passing standard. The intent of implementing passing standards one-half or one SEM below the committee-recommended passing standards is to support the transition to implementation of new educator certification examinations.

The adopted amendment to §151.1001(b)(2) implements initial passing standards for the English Language Arts and Reading 4-8 examination. The initial passing standards include the passing standard for selected-response and constructed-response

examination sections. During the introductory period, the initial passing standard for the constructed-response section of each examination will be "complete." The adopted amendment defines "complete" as a full and complete scorable response that must address the specific requirements of the item, be of sufficient length to respond to the requirements of the item, be original work and written in the candidate's own words (however, candidates may use citations when appropriate), and conform to the standards of written English. The use of "complete" as the passing standard will allow candidates and programs the opportunity to become familiar with the new examination before facing a rigorous passing standard and thereby support the transition to implementation of the new English Language Arts and Reading 4-8 examination.

The initial passing standards for the English Language Arts and Reading 4-8 examination adopted under §151.1001(b)(2) will be implemented during an eight-month introductory period. This introductory period will provide candidates and educator preparation programs with a transition period to adjust to a more rigorous examination and allow for the collection of examination performance data to inform the development of passing standards for both the selected-response and constructed-response sections after the introductory period. Standard setting committees for this examination will develop recommendations to be used to develop passing standards after the introductory period. The initial passing standards for English Language Arts and Reading 4-8 will be implemented prior to September 5, 2022.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 14, 2021, and ended June 14, 2021. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §21.048(a), which requires the commissioner to determine the level of performance considered to be satisfactory on educator certification examinations and further authorizes the commissioner to require a satisfactory level of performance on each core subject covered by an examination.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.048(a).

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

Filed with the Office of the Secretary of State on August 17, 2021.

TRD-202103216

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: September 6, 2021

Proposal publication date: May 14, 2021

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.8

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.8, Scope of Practice, without changes to the proposed text as published in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3357). The rule will not be republished.

The amendments implement changes adopted by the Appraiser Qualifications Board (AQB) which became effective on January 1, 2021. The change was based on federal law which increased the threshold for residential real estate transactions requiring an appraisal from \$250,000 to \$400,000. The amendments increase the transaction threshold for licensed residential appraisers from \$250,000 to \$400,000 to align TALCB rules with AQB requirements and federal law.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB.

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

Filed with the Office of the Secretary of State on August 23, 2021.

TRD-202103293

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: September 12, 2021

Proposal publication date: May 28, 2021

For further information, please call: (512) 936-3652



22 TAC §153.21

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.21, Appraiser Trainees and Supervisory Appraisers, without changes to the proposed text, as published in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3358). The rule will not be republished.

The amendments clarify rules related to qualification requirements for supervisory appraisers as adopted by the Appraiser Qualifications Board (AQB). To be eligible to supervise an appraiser trainee, a certified appraiser must not have had practice-interrupting discipline in the prior three years. The amendments clarify that this only applies to disciplinary actions. Administrative actions do not prohibit an appraiser from acting as a supervisor.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB.

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

Filed with the Office of the Secretary of State on August 23, 2021.

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Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.4

The Texas State Board of Pharmacy adopts amendments to §283.4, concerning Internship Requirements. These amendments are adopted without changes to the proposed text as published in the June 25, 2021, issue of the *Texas Register* (46 TexReg 3810). The rule will not be republished.

The amendments update the internship hours requirement to reflect that the board requires the number of intern hours required by the Accreditation Council for Pharmacy Education (ACPE).

No comments were received.

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

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

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

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Executive Director

Texas State Board of Pharmacy

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Proposal publication date: June 25, 2021

For further information, please call: (512) 305-8010



CHAPTER 291. PHARMACIES SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.6

The Texas State Board of Pharmacy adopts amendments to §291.6, concerning Pharmacy License Fees. These amendments are adopted with changes to the proposed text as published in the June 25, 2021, issue of the *Texas Register* (46 TexReg 3813). The Board adjusted the amount of the fees based on updated information. The rule will be republished.

The amendments increase pharmacy license fees based on expected expenses.

No comments were received.

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

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

§291.6. Pharmacy License Fees.

(a) Initial License Fee. The fee for an initial license shall be \$516 for the initial registration period.

(b) Biennial License Renewal. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacy licenses provided under the Act §561.002.

(c) Renewal Fee. The fee for biennial renewal of a pharmacy license shall be \$513 for the renewal period.

(d) Duplicate or Amended Certificates. The fee for issuance of a duplicate pharmacy license renewal certificate shall be \$20. The fee for issuance of an amended pharmacy license renewal certificate shall be \$100.

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

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Texas State Board of Pharmacy

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.76

The Texas State Board of Pharmacy adopts amendments to §291.76, concerning Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center. These amendments are adopted with changes to the proposed text as published in the June 25, 2021, issue of the *Texas Register* (46 TexReg 3814). The rule will be republished.

The amendments allow a licensed nurse who is authorized by the pharmacist to perform the loading of an automated medication supply system; update the time interval in which a pharmacist must verify a drug withdrawal; update the requirements for using a floor stock method of drug distribution; update records requirements; and correct grammatical errors.

The Board received a comment from Lisa Walker, R.Ph., in support of the amendment to remove the language allowing a medication order in a patient's chart to substitute for the record of withdrawal of a drug or device in the absence of a pharmacist to restock a floor stock area, expressing concern about the amendment to require an ASC pharmacy with a part-time or consultant pharmacist to make a record of withdrawal of a drug or device from the pharmacy in the absence of a pharmacist for administration to a patient, and suggested limiting the rule to only require a record of withdrawal for controlled substances removed from the pharmacy pursuant to a medication order. The Board declines to make this change.

The Board received a comment jointly submitted by Christopher M. Dembny, Joseph Staller, Jeff Neale, Beto Quezada, Libby Gibbs, Lisa Walker, Julie Sifford, and Jerry Jackson, R.Ph.s., in support of the amendment to allow a licensed nurse authorized by a pharmacist to perform the loading of an automated medication supply system and expressing concern about the amendment to require an ASC pharmacy with a part-time or consultant pharmacist to make a record of withdrawal of a drug or device from the pharmacy in the absence of a pharmacist for administration to a patient.

The Board received a comment from the Texas Ambulatory Surgery Center Society in support of the amendment to allow a licensed nurse authorized by a pharmacist to perform the loading of an automated medication supply system and expressing concern about the amendment to remove the language allowing a medication order in a patient's chart to substitute for the record of withdrawal of a drug or device in the absence of a pharmacist to restock a floor stock area. The Board agreed and did not remove the language allowing a medication order in a patient's chart to substitute for the record of withdrawal of a drug or device in the absence of a pharmacist to restock a floor stock area.

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

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

§291.76. Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center.

(a) Purpose. The purpose of this section is to provide standards in the conduct, practice activities, and operation of a pharmacy located in a freestanding ambulatory surgical center that is licensed by the Texas Department of State Health Services. Class C pharmacies located in a freestanding ambulatory surgical center shall comply with this section, in lieu of §§291.71 - 291.75 of this title (relating to Purpose; Definitions; Personnel; Operational Standards; and Records).

(b) Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Pharmacy Act, Occupations Code, Subtitle J, as amended.

(2) Administer--The direct application of a prescription drug by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner, an authorized agent under his supervision, or other person authorized by law; or

(B) the patient at the direction of a practitioner.

(3) Ambulatory surgical center (ASC)--A freestanding facility that is licensed by the Texas Department of State Health Services that primarily provides surgical services to patients who do not require overnight hospitalization or extensive recovery, convalescent time or observation. The planned total length of stay for an ASC patient shall not exceed 23 hours. Patient stays of greater than 23 hours shall be the result of an unanticipated medical condition and shall occur infrequently. The 23-hour period begins with the induction of anesthesia.

(4) Automated medication supply system--A mechanical system that performs operations or activities relative to the storage and distribution of medications for administration and which collects, controls, and maintains all transaction information.

(5) Board--The Texas State Board of Pharmacy.

(6) Consultant pharmacist--A pharmacist retained by a facility on a routine basis to consult with the ASC in areas that pertain to the practice of pharmacy.

(7) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended, or a drug immediate precursor, or other substance included in Schedules I - V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(8) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(9) Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(10) Downtime--Period of time during which a data processing system is not operable.

(11) Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(12) Floor stock--Prescription drugs or devices not labeled for a specific patient and maintained at a nursing station or other ASC department (excluding the pharmacy) for the purpose of administration to a patient of the ASC.

(13) Formulary--List of drugs approved for use in the ASC by an appropriate committee of the ambulatory surgical center.

(14) Hard copy--A physical document that is readable without the use of a special device (i.e., data processing system, computer, etc.).

(15) Investigational new drug--New drug intended for investigational use by experts qualified to evaluate the safety and effectiveness of the drug as authorized by the federal Food and Drug Administration.

(16) Medication order--An order from a practitioner or his authorized agent for administration of a drug or device.

(17) Pharmacist-in-charge--Pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(18) Pharmacy--Area or areas in a facility, separate from patient care areas, where drugs are stored, bulk compounded, delivered, compounded, dispensed, and/or distributed to other areas or departments of the ASC, or dispensed to an ultimate user or his or her agent.

(19) Prescription drug--

(A) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) Caution: federal law prohibits dispensing without prescription or "Rx only" or another legend that complies with federal law; or

(ii) Caution: federal law restricts this drug to use by or on order of a licensed veterinarian; or

(C) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(20) Prescription drug order--

(A) An order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) An order pursuant to Subtitle B, Chapter 157, Occupations Code.

(21) Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(22) Part-time pharmacist--A pharmacist who works less than full-time.

(23) Pharmacy technician--An individual who is registered with the board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(24) Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(25) Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. Each ambulatory surgical center shall have one pharmacist-in-charge who is employed or under contract, at least on a consulting or part-time basis, but may be employed on a full-time basis.

(B) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(i) establishing specifications for procurement and storage of all materials, including drugs, chemicals, and biologicals;

(ii) participating in the development of a formulary for the ASC, subject to approval of the appropriate committee of the ASC;

(iii) distributing drugs to be administered to patients pursuant to the practitioner's medication order;

(iv) filling and labeling all containers from which drugs are to be distributed or dispensed;

(v) maintaining and making available a sufficient inventory of antidotes and other emergency drugs, both in the pharmacy and patient care areas, as well as current antidote information, telephone numbers of regional poison control center and other emergency assistance organizations, and such other materials and information as may be deemed necessary by the appropriate committee of the ASC;

(vi) maintaining records of all transactions of the ASC pharmacy as may be required by applicable state and federal law, and as may be necessary to maintain accurate control over and accountability for all pharmaceutical materials;

(vii) participating in those aspects of the ASC's patient care evaluation program which relate to pharmaceutical material utilization and effectiveness;

(viii) participating in teaching and/or research programs in the ASC;

(ix) implementing the policies and decisions of the appropriate committee(s) relating to pharmaceutical services of the ASC;

(x) providing effective and efficient messenger and delivery service to connect the ASC pharmacy with appropriate areas of the ASC on a regular basis throughout the normal workday of the ASC;

(xi) labeling, storing, and distributing investigational new drugs, including maintaining information in the pharmacy and nursing station where such drugs are being administered, concerning the dosage form, route of administration, strength, actions, uses, side effects, adverse effects, interactions, and symptoms of toxicity of investigational new drugs;

(xii) meeting all inspection and other requirements of the Texas Pharmacy Act and this subsection;

(xiii) maintaining records in a data processing system such that the data processing system is in compliance with the requirements for a Class C (institutional) pharmacy located in a free-standing ASC; and

(xiv) ensuring that a pharmacist visits the ASC at least once each calendar week that the facility is open.

(2) Consultant pharmacist.

(A) The consultant pharmacist may be the pharmacist-in-charge.

(B) A written contract shall exist between the ASC and any consultant pharmacist, and a copy of the written contract shall be made available to the board upon request.

(3) Pharmacists.

(A) General.

(i) The pharmacist-in-charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the ASC pharmacy competently, safely, and adequately to meet the needs of the patients of the facility.

(ii) All pharmacists shall assist the pharmacist-in-charge in meeting the responsibilities as outlined in paragraph (1)(B) of this subsection and in ordering, administering, and accounting for pharmaceutical materials.

(iii) All pharmacists shall be responsible for any delegated act performed by pharmacy technicians or pharmacy technician trainees under his or her supervision.

(iv) All pharmacists while on duty shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(B) Duties. Duties of the pharmacist-in-charge and all other pharmacists shall include, but need not be limited to, the following:

(i) receiving and interpreting prescription drug orders and oral medication orders and reducing these orders to writing either manually or electronically;

(ii) selecting prescription drugs and/or devices and/or suppliers; and

(iii) interpreting patient profiles.

(C) Special requirements for compounding non-sterile preparations. All pharmacists engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(4) Pharmacy technicians and pharmacy technician trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Duties. Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in paragraph (3)(B) of this subsection. Duties may include, but need not be limited to, the following functions, under the direct supervision of a pharmacist:

(i) prepacking and labeling unit and multiple dose packages, provided a pharmacist supervises and conducts a final check and affixes his or her name, initials, or electronic signature to the appropriate quality control records prior to distribution;

(ii) preparing, packaging, compounding, or labeling prescription drugs pursuant to medication orders, provided a pharmacist supervises and checks the preparation;

(iii) compounding non-sterile preparations pursuant to medication orders provided the pharmacy technicians or pharmacy technician trainees have completed the training specified in §291.131 of this title;

(iv) bulk compounding, provided a pharmacist supervises and conducts in-process and final checks and affixes his or her name, initials, or electronic signature to the appropriate quality control records prior to distribution;

(v) distributing routine orders for stock supplies to patient care areas;

(vi) entering medication order and drug distribution information into a data processing system, provided judgmental decisions are not required and a pharmacist checks the accuracy of the information entered into the system prior to releasing the order or in compliance with the absence of pharmacist requirements contained in subsection (d)(6)(D) and (E) of this section;

(vii) maintaining inventories of drug supplies;

(viii) maintaining pharmacy records; and

(ix) loading drugs into an automated medication supply system. For the purpose of this clause, direct supervision may be accomplished by physically present supervision or electronic monitoring by a pharmacist.

(C) Procedures.

(i) Pharmacy technicians and pharmacy technician trainees shall handle medication orders in accordance with standard written procedures and guidelines.

(ii) Pharmacy technicians and pharmacy technician trainees shall handle prescription drug orders in the same manner as pharmacy technicians or pharmacy technician trainees working in a Class A pharmacy.

(D) Special requirements for compounding non-sterile preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title.

(5) Owner. The owner of an ASC pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(A) establishing policies for procurement of prescription drugs and devices and other products dispensed from the ASC pharmacy;

(B) establishing and maintaining effective controls against the theft or diversion of prescription drugs;

(C) if the pharmacy uses an automated medication supply system, reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(D) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(E) establishing policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(6) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows:

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician.

(B) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(C) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(D) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

(d) Operational standards.

(1) Licensing requirements.

(A) An ASC pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(B) An ASC pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(C) An ASC pharmacy which changes location and/or name shall notify the board of the change within 10 days and file for an amended license as specified in §291.3 of this title.

(D) An ASC pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change, following the procedures in §291.3 of this title.

(E) An ASC pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(F) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance and renewal of a license and the issuance of an amended license.

(G) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(H) An ASC pharmacy, licensed under the Act, §560.051(a)(3), concerning institutional pharmacy (Class C), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1), concerning community pharmacy (Class A), or the Act, §560.051(a)(2), concerning nuclear pharmacy (Class B), is not required to secure a license for the other type of pharmacy; provided, however, such license is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Requirements), or §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(I) An ASC pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title.

(J) ASC pharmacy personnel shall not compound sterile preparations unless the pharmacy has applied for and obtained a Class C-S pharmacy license.

(K) An ASC pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(L) An ASC pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Central Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(2) Environment.

(A) General requirements.

(i) Each ambulatory surgical center shall have a designated work area separate from patient areas, and which shall have space adequate for the size and scope of pharmaceutical services and shall have adequate space and security for the storage of drugs.

(ii) The ASC pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(B) Special requirements.

(i) The ASC pharmacy shall have locked storage for Schedule II controlled substances and other controlled drugs requiring additional security.

(ii) The ASC pharmacy shall have a designated area for the storage of poisons and externals separate from drug storage areas.

(C) Security.

(i) The pharmacy and storage areas for prescription drugs and/or devices shall be enclosed and capable of being locked by key, combination, or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized by the pharmacist-in-charge may enter the pharmacy or have access to storage areas for prescription drugs and/or devices.

(ii) The pharmacist-in-charge shall consult with ASC personnel with respect to security of the drug storage areas, including provisions for adequate safeguards against theft or diversion of dangerous drugs and controlled substances, and to security of records for such drugs.

(iii) The pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(3) Equipment and supplies. Ambulatory surgical centers supplying drugs for postoperative use shall have the following equipment and supplies:

(A) data processing system including a printer or comparable equipment;

(B) adequate supply of child-resistant, moisture-proof, and light-proof containers; and

(C) adequate supply of prescription labels and other applicable identification labels.

(4) Library. A reference library shall be maintained that includes the following in hard copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(A) current copies of the following:

(i) Texas Pharmacy Act and rules;

(ii) Texas Dangerous Drug Act and rules;

(iii) Texas Controlled Substances Act and rules;

(iv) Federal Controlled Substances Act and rules or official publication describing the requirements of the Federal Controlled Substances Act and rules;

(B) at least one current or updated general drug information reference which is required to contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken; and

(C) basic antidote information and the telephone number of the nearest regional poison control center.

(5) Drugs.

(A) Procurement, preparation, and storage.

(i) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(ii) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(iii) ASC pharmacies may not sell, purchase, trade, or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(iv) All drugs shall be stored at the proper temperatures, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(v) Any drug bearing an expiration date may not be dispensed or distributed beyond the expiration date of the drug.

(vi) Outdated drugs shall be removed from dispensing stock and shall be quarantined together until such drugs are disposed of.

(B) Formulary.

(i) A formulary may be developed by an appropriate committee of the ASC.

(ii) The pharmacist-in-charge or consultant pharmacist shall be a full voting member of any committee which involves pharmaceutical services.

(iii) A practitioner may grant approval for pharmacists at the ASC to interchange, in accordance with the facility's formulary, for the drugs on the practitioner's medication orders provided:

(I) a formulary has been developed;

(II) the formulary has been approved by the medical staff of the ASC;

(III) there is a reasonable method for the practitioner to override any interchange; and

(IV) the practitioner authorizes a pharmacist in the ASC to interchange on his/her medication orders in accordance with

the facility's formulary through his/her written agreement to abide by the policies and procedures of the medical staff and facility.

(C) Prepackaging and loading drugs into automated medication supply system.

(i) Prepackaging of drugs.

(I) Drugs may be prepackaged in quantities suitable for distribution to other Class C pharmacies under common ownership or for internal distribution only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(II) The label of a prepackaged unit shall indicate:

(-a-) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(-b-) facility's lot number;

(-c-) expiration date;

(-d-) quantity of the drug, if quantity is greater than one; and

(-e-) if the drug is distributed to another Class C pharmacy, name of the facility responsible for prepackaging the drug.

(III) Records of prepackaging shall be maintained to show:

(-a-) the name of the drug, strength, and dosage form;

(-b-) facility's lot number;

(-c-) manufacturer or distributor;

(-d-) manufacturer's lot number;

(-e-) expiration date;

(-f-) quantity per prepackaged unit;

(-g-) number of prepackaged units;

(-h-) date packaged;

(-i-) name, initials, or electronic signature of the preparer;

(-j-) signature or electronic signature of the responsible pharmacist; and

(-k-) if the drug is distributed to another Class C pharmacy, name of the facility receiving the prepackaged drug.

(IV) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(ii) Loading bulk unit of use drugs into automated medication supply systems. Automated medication supply systems may be loaded with bulk unit of use drugs only by a pharmacist, by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist, or by a licensed nurse who is authorized by the pharmacist to perform the loading of the automated medication supply system. For the purpose of this clause, direct supervision may be accomplished by physically present supervision or electronic monitoring by a pharmacist. In order for the pharmacist to electronically monitor, the medication supply system must allow for bar code scanning to verify the loading of drugs, and a record of the loading must be maintained by the system and accessible for electronic review by the pharmacist.

(6) Medication orders.

(A) Drugs may be administered to patients in ASCs only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (5)(B) of this subsection.

(B) Drugs may be distributed only pursuant to the practitioner's medication order.

(C) ASC pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(D) In ASCs with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable:

(i) prescription drugs and devices only in sufficient quantities for immediate therapeutic needs of a patient may be removed from the ASC pharmacy;

(ii) only a designated licensed nurse or practitioner may remove such drugs and devices;

(iii) a record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

(I) name of the patient;

(II) name of device or drug, strength, and dosage form;

(III) dose prescribed;

(IV) quantity withdrawn;

(V) time and date; and

(VI) signature or electronic signature of the person making the withdrawal;

(iv) the medication order in the patient's chart may substitute for such record, provided the medication order meets all the requirements of clause (iii) of this subparagraph;

(v) the pharmacist shall verify the withdrawal of a controlled substance as soon as practical, but in no event more than 72 hours from the time of such withdrawal; and

(vi) the pharmacist shall verify the withdrawal of a dangerous drug at a reasonable interval, but such verification must occur at least once in every calendar week.

(E) In ASCs with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the ASC when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable:

(i) prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the ASC pharmacy;

(ii) only a designated licensed nurse or practitioner may remove such drugs and devices;

(iii) a record shall be made at the time of withdrawal by the authorized person removing the drug or device as described in subparagraph (D)(iii) and (iv) of this subsection; and

(iv) the pharmacist shall verify withdrawals at a reasonable interval, but such verification must occur at least once in every calendar week that the pharmacy is open.

(7) Floor stock. In facilities using a floor stock method of drug distribution, the pharmacy shall establish designated floor stock areas outside of the central pharmacy where drugs may be stored, in accordance with the pharmacy's policies and procedures. The following

is applicable for removing drugs or devices in the absence of a pharmacist:

(A) prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container;

(B) only a designated licensed nurse or practitioner may remove such drugs and devices;

(C) a record shall be made at the time of withdrawal by the authorized person removing the drug or device and the record shall contain the following information:

(i) name of the drug, strength, and dosage form;

(ii) quantity removed;

(iii) location of floor stock;

(iv) date and time; and

(v) signature or electronic signature of person making the withdrawal;

(D) the medication order in the patient's chart may substitute for the record required in subparagraph (C) of this paragraph, provided the medication order meets all the requirements of subparagraph (C) of this paragraph; and

(E) if a stored drug or device is returned to the pharmacy from floor stock areas, a record shall be made by the authorized person returning the drug or device. The record shall contain the following information:

(i) drug name, strength, and dosage form, or device name;

(ii) quantity returned;

(iii) previous floor stock location for the drug or device;

(iv) date and time; and

(v) signature or electronic signature of person returning the drug or device.

(8) Policies and procedures. Written policies and procedures for a drug distribution system, appropriate for the ambulatory surgical center, shall be developed and implemented by the pharmacist-in-charge with the advice of the appropriate committee. The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(A) controlled substances;

(B) investigational drugs;

(C) prepackaging and manufacturing;

(D) medication errors;

(E) orders of physician or other practitioner;

(F) floor stocks;

(G) adverse drug reactions;

(H) drugs brought into the facility by the patient;

(I) self-administration;

(J) emergency drug tray;

(K) formulary, if applicable;

(L) drug storage areas;

(M) drug samples;

(N) drug product defect reports;

(O) drug recalls;

(P) outdated drugs;

(Q) preparation and distribution of IV admixtures;

(R) procedures for supplying drugs for postoperative use, if applicable;

(S) use of automated medication supply systems;

(T) use of data processing systems; and

(U) drug regimen review.

(9) Drugs supplied for postoperative use. Drugs supplied to patients for postoperative use shall be supplied according to the following procedures.

(A) Drugs may only be supplied to patients who have been admitted to the ASC.

(B) Drugs may only be supplied in accordance with the system of control and accountability established for drugs supplied from the ambulatory surgical center; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only drugs listed on the approved postoperative drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the medical staff and shall consist of drugs of the nature and type to meet the immediate postoperative needs of the ambulatory surgical center patient.

(D) Drugs may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately prelabeled (including name, address, and phone number of the facility, and necessary auxiliary labels) by the pharmacy provided, however, that topicals and ophthalmics in original manufacturer's containers may be supplied in a quantity exceeding a 72-hour supply.

(E) At the time of delivery of the drug, the practitioner shall complete the label, such that the prescription container bears a label with at least the following information:

(i) date supplied;

(ii) name of practitioner;

(iii) name of patient;

(iv) directions for use;

(v) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and

(vi) unique identification number.

(F) After the drug has been labeled, the practitioner or a licensed nurse under the supervision of the practitioner shall give the appropriately labeled, prepackaged medication to the patient.

(G) A perpetual record of drugs which are supplied from the ASC shall be maintained which includes:

(i) name, address, and phone number of the facility;

(ii) date supplied;

(iii) name of practitioner;

(iv) name of patient;

(v) directions for use;

(vi) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and

(vii) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall review the records at least once in every calendar week that the pharmacy is open.

(10) Drug regimen review.

(A) A pharmacist shall evaluate medication orders and patient medication records for:

(i) known allergies;

(ii) rational therapy--contraindications;

(iii) reasonable dose and route of administration;

(iv) reasonable directions for use;

(v) duplication of therapy;

(vi) drug-drug interactions;

(vii) drug-food interactions;

(viii) drug-disease interactions;

(ix) adverse drug reactions;

(x) proper utilization, including overutilization or underutilization; and

(xi) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(B) A retrospective, random drug regimen review as specified in the pharmacy's policies and procedures shall be conducted on a periodic basis to verify proper usage of drugs not to exceed 31 days between such reviews.

(C) Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made and maintained.

(e) Records.

(1) Maintenance of records.

(A) Every inventory or other record required to be kept under the provisions of this section (relating to Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center) shall be:

(i) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative, and other authorized local, state, or federal law enforcement agencies; and

(ii) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the board. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this subsection, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(B) Records of controlled substances listed in Schedule II shall be maintained separately and readily retrievable from all other records of the pharmacy.

(C) Records of controlled substances listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subparagraph, "readily retrievable" means that the controlled substances shall be asterisked, redlined, or in some other manner readily identifiable apart from all other items appearing on the record.

(D) Records, except when specifically required to be maintained in original or hard copy form, may be maintained in an alternative data retention system, such as a data processing or direct imaging system provided:

(i) the records in the alternative data retention system contain all of the information required on the manual record; and

(ii) the alternative data retention system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(E) Controlled substance records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

(F) An ASC pharmacy shall maintain a perpetual inventory of controlled substances listed in Schedules II - V which shall be verified for completeness and reconciled at least once in every calendar week that the pharmacy is open.

(G) Distribution records for controlled substances, listed in Schedules II - V, shall include the following information:

(i) patient's name;

(ii) practitioner's name who ordered the drug;

(iii) name of drug, dosage form, and strength;

(iv) time and date of administration to patient and quantity administered;

(v) signature or electronic signature of individual administering the controlled substance;

(vi) returns to the pharmacy; and

(vii) waste (waste is required to be witnessed and cosigned, manually or electronically, by another individual).

(H) The record required by subparagraph (G) of this paragraph shall be maintained separately from patient records.

(I) A pharmacist shall conduct an audit by randomly comparing the distribution records required by subparagraph (G) with the medication orders in the patient record on a periodic basis to verify proper administration of drugs not to exceed 30 days between such reviews.

(2) Patient records.

(A) Each medication order or set of orders issued together shall bear the following information:

(i) patient name;

(ii) drug name, strength, and dosage form;

(iii) directions for use;

(iv) date; and

(v) signature or electronic signature of the practitioner or that of his or her authorized agent, defined as an employee or consultant/full or part-time pharmacist of the ASC.

(B) Medication orders shall be maintained with the medication administration record in the medical records of the patient.

(3) General requirements for records maintained in a data processing system.

(A) If an ASC pharmacy's data processing system is not in compliance with the board's requirements, the pharmacy must maintain a manual recordkeeping system.

(B) The facility shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis to assure that data is not lost due to system failure.

(C) A pharmacy that changes or discontinues use of a data processing system must:

(i) transfer the records to the new data processing system; or

(ii) purge the records to a printout which contains:

(I) all of the information required on the original document; or

(II) for records of distribution and return for all controlled substances, the same information as required on the audit trail printout as specified in subparagraph (F) of this paragraph. The information on the printout shall be sorted and printed by drug name and list all distributions and returns chronologically.

(D) Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(F) The data processing system shall have the capacity to produce a hard copy printout of an audit trail of drug distribution and return for any strength and dosage form of a drug (by either brand or generic name or both) during a specified time period. This printout shall contain the following information:

(i) patient's name and room number or patient's facility identification number;

(ii) prescribing or attending practitioner's name;

(iii) name, strength, and dosage form of the drug product actually distributed;

(iv) total quantity distributed from and returned to the pharmacy;

(v) if not immediately retrievable via electronic image, the following shall also be included on the printout:

(I) prescribing or attending practitioner's address; and

(II) practitioner's DEA registration number, if the medication order is for a controlled substance.

(G) An audit trail printout for each strength and dosage form of the drugs distributed during the preceding month shall be produced at least monthly and shall be maintained in a separate file at the

facility. The information on this printout shall be sorted by drug name and list all distributions/returns for that drug chronologically.

(H) The pharmacy may elect not to produce the monthly audit trail printout if the data processing system has a workable (electronic) data retention system which can produce an audit trail of drug distribution and returns for the preceding two years. The audit trail required in this clause shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy, or other authorized local, state, or federal law enforcement or regulatory agencies.

(I) In the event that an ASC pharmacy which uses a data processing system experiences system downtime, the pharmacy must have an auxiliary procedure which will ensure that all data is retained for online data entry as soon as the system is available for use again.

(4) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(A) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to possess that controlled substance.

(B) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(C) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

(i) the actual date of distribution;

(ii) the name, strength, and quantity of controlled substances distributed;

(iii) the name, address, and DEA registration number of the distributing pharmacy; and

(iv) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(D) A pharmacy shall comply with 21 CFR 1305 regarding the DEA order form (DEA 222) requirements when distributing a Schedule II controlled substance.

(5) Other records. Other records to be maintained by the pharmacy include:

(A) a log of the initials or identification codes which identifies each pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes cannot be used. Such log shall be maintained at the pharmacy for at least seven years from the date of the transaction;

(B) suppliers' invoices of dangerous drugs and controlled substances dated and initialed or signed by the person receiving the drugs;

(i) a pharmacist shall verify that the controlled substances listed on the invoices were added to the pharmacy's perpetual inventory by clearly recording his/her initials and the date of review of the perpetual inventory; and

(ii) for controlled substances, the documents retained must contain the name, strength, and quantity of controlled substances distributed, and the name, address, and DEA number of both the supplier and the receiving pharmacy;

(C) supplier's credit memos for controlled substances and dangerous drugs;

(D) a copy of inventories required by §291.17 of this title (relating to Inventory Requirements) except that a perpetual inventory of controlled substances listed in Schedule II may be kept in a data processing system if the data processing system is capable of producing a copy of the perpetual inventory on-site;

(E) reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency or reverse distributor;

(F) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(G) a copy of any notification required by the Texas Pharmacy Act or these rules, including, but not limited to, the following:

(i) reports of theft or significant loss of controlled substances to DEA and the board;

(ii) notification of a change in pharmacist-in-charge of a pharmacy; and

(iii) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(6) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(A) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met:

(i) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of DEA as required by the Code of Federal Regulations, Title 21, §1304(a), and submits a copy of this written notification to the board. Unless the registrant is informed by the divisional director of DEA that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director;

(ii) The pharmacy maintains a copy of the notification required in this subparagraph; and

(iii) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(B) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(C) Access to records. If the records are kept in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(D) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within

two business days of written request of a board agent or any other authorized official.

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

Filed with the Office of the Secretary of State on August 20, 2021.

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Effective date: September 9, 2021

Proposal publication date: June 25, 2021

For further information, please call: (512) 305-8010



SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.121

The Texas State Board of Pharmacy adopts amendments to §291.121, concerning Remote Pharmacy Services. These amendments are adopted without changes to the proposed text as published in the June 25, 2021, issue of the *Texas Register* (46 TexReg 3823). The amended rule will not be republished.

The amendments authorize a Class A or Class C pharmacy to provide remote pharmacy services using an automated dispensing and delivery system and correct grammatical errors.

No comments were received.

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

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

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

Filed with the Office of the Secretary of State on August 20, 2021.

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SUBCHAPTER H. OTHER CLASSES OF PHARMACY

22 TAC §291.151

The Texas State Board of Pharmacy adopts amendments to §291.151, concerning Pharmacies Located in a Freestanding Emergency Medical Care Facility (Class F). These amendments are adopted with changes to the proposed text as published in the June 25, 2021, issue of the *Texas Register* at (46 TexReg 3835). The rule will be republished.

The amendments allow a licensed nurse who is authorized by the pharmacist to perform the loading of an automated medication supply system; update the time interval in which a pharmacist must verify a drug withdrawal; update the requirements for using a floor stock method of drug distribution; update records requirements; update references to DEA 222 form requirements to be consistent with federal regulations; and correct grammatical errors.

The Board received a comment from Lisa Walker, R.Ph., in support of the amendment to remove the language allowing a medication order in a patient's chart to substitute for the record of withdrawal of a drug or device in the absence of a pharmacist to restock a floor stock area, expressing concern about the amendment to require an FEMCF pharmacy with a part-time or consultant pharmacy to make a record of withdrawal of a drug or device from the pharmacy in the absence of a pharmacist for administration to a patient, and suggested limiting the rule to only require a record of withdrawal for controlled substances removed from the pharmacy pursuant to a medication order. The Board declines to make this change.

The Board received a comment jointly submitted by Christopher M. Dembny, Joseph Staller, Jeff Neale, Beto Quezada, Libby Gibbs, Lisa Walker, Julie Sifford, and Jerry Jackson, R.Phs., in support of the amendment to allow a licensed nurse authorized by a pharmacist to perform the loading of an automated medication supply system and expressing concern about the amendment to require an FEMCF pharmacy with a part-time or consultant pharmacy to make a record of withdrawal of a drug or device from the pharmacy in the absence of a pharmacist for administration to a patient.

The Board received a comment from the Texas Ambulatory Surgery Center Society in support of the amendment to allow a licensed nurse authorized by a pharmacist to perform the loading of an automated medication supply system and expressing concern about the amendment to remove the language allowing a medication order in a patient's chart to substitute for the record of withdrawal of a drug or device in the absence of a pharmacist to restock a floor stock area. The Board agreed and did not remove the language allowing a medication order in a patient's chart to substitute for the record of withdrawal of a drug or device in the absence of a pharmacist to restock a floor stock area.

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

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

§291.151. *Pharmacies Located in a Freestanding Emergency Medical Care Facility (Class F).*

(a) Purpose. The purpose of this section is to provide standards in the conduct, practice activities, and operation of a pharmacy located

in a freestanding emergency medical care facility that is licensed by the Texas Department of State Health Services or in a freestanding emergency medical care facility operated by a hospital that is exempt from registration as provided by §254.052, Health and Safety Code. Class F pharmacies located in a freestanding emergency medical care facility shall comply with this section.

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

(1) Act--The Texas Pharmacy Act, Occupations Code, Subtitle J, as amended.

(2) Administer--The direct application of a prescription drug by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner, an authorized agent under his supervision, or other person authorized by law; or

(B) the patient at the direction of a practitioner.

(3) Automated medication supply system--A mechanical system that performs operations or activities relative to the storage and distribution of medications for administration and which collects, controls, and maintains all transaction information.

(4) Board--The Texas State Board of Pharmacy.

(5) Consultant pharmacist--A pharmacist retained by a facility on a routine basis to consult with the FEMCF in areas that pertain to the practice of pharmacy.

(6) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended, or a drug immediate precursor, or other substance included in Schedules I - V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(7) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(8) Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(9) Downtime--Period of time during which a data processing system is not operable.

(10) Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(11) Floor stock--Prescription drugs or devices not labeled for a specific patient and maintained at a nursing station or other FEMCF department (excluding the pharmacy) for the purpose of administration to a patient of the FEMCF.

(12) Formulary--List of drugs approved for use in the FEMCF by an appropriate committee of the FEMCF.

(13) Freestanding emergency medical care facility (FEMCF)--A freestanding facility that is licensed by the Texas Department of State Health Services pursuant to Chapter 254, Health and Safety Code, to provide emergency care to patients.

(14) Hard copy--A physical document that is readable without the use of a special device (i.e., data processing system, computer, etc.).

(15) Investigational new drug--New drug intended for investigational use by experts qualified to evaluate the safety and effectiveness of the drug as authorized by the federal Food and Drug Administration.

(16) Medication order--An order from a practitioner or his authorized agent for administration of a drug or device.

(17) Pharmacist-in-charge--Pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(18) Pharmacy--Area or areas in a facility, separate from patient care areas, where drugs are stored, bulk compounded, delivered, compounded, dispensed, and/or distributed to other areas or departments of the FEMCF, or dispensed to an ultimate user or his or her agent.

(19) Prescription drug--

(A) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) Caution: federal law prohibits dispensing without prescription or "Rx only" or another legend that complies with federal law; or

(ii) Caution: federal law restricts this drug to use by or on order of a licensed veterinarian; or

(C) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(20) Prescription drug order--

(A) An order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) An order pursuant to Subtitle B, Chapter 157, Occupations Code.

(21) Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(22) Part-time pharmacist--A pharmacist who works less than full-time.

(23) Pharmacy technician--An individual who is registered with the board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(24) Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(25) Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. Each FEMCF shall have one pharmacist-in-charge who is employed or under contract, at least on a consulting or part-time basis, but may be employed on a full-time basis.

(B) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(i) establishing specifications for procurement and storage of all materials, including drugs, chemicals, and biologicals;

(ii) participating in the development of a formulary for the FEMCF, subject to approval of the appropriate committee of the FEMCF;

(iii) distributing drugs to be administered to patients pursuant to the practitioner's medication order;

(iv) filling and labeling all containers from which drugs are to be distributed or dispensed;

(v) maintaining and making available a sufficient inventory of antidotes and other emergency drugs, both in the pharmacy and patient care areas, as well as current antidote information, telephone numbers of regional poison control center and other emergency assistance organizations, and such other materials and information as may be deemed necessary by the appropriate committee of the FEMCF;

(vi) maintaining records of all transactions of the FEMCF pharmacy as may be required by applicable state and federal law, and as may be necessary to maintain accurate control over and accountability for all pharmaceutical materials;

(vii) participating in those aspects of the FEMCF's patient care evaluation program which relate to pharmaceutical material utilization and effectiveness;

(viii) participating in teaching and/or research programs in the FEMCF;

(ix) implementing the policies and decisions of the appropriate committee(s) relating to pharmaceutical services of the FEMCF;

(x) providing effective and efficient messenger and delivery service to connect the FEMCF pharmacy with appropriate areas of the FEMCF on a regular basis throughout the normal workday of the FEMCF;

(xi) labeling, storing, and distributing investigational new drugs, including maintaining information in the pharmacy and nursing station where such drugs are being administered, concerning the dosage form, route of administration, strength, actions, uses, side effects, adverse effects, interactions, and symptoms of toxicity of investigational new drugs;

(xii) meeting all inspection and other requirements of the Texas Pharmacy Act and this section; and

(xiii) maintaining records in a data processing system such that the data processing system is in compliance with the requirements for an FEMCF; and

(xiv) ensuring that a pharmacist visits the FEMCF at least once each calendar week that the facility is open.

(2) Consultant pharmacist.

(A) The consultant pharmacist may be the pharmacist-in-charge.

(B) A written contract shall exist between the FEMCF and any consultant pharmacist, and a copy of the written contract shall be made available to the board upon request.

(3) Pharmacists.

(A) General.

(i) The pharmacist-in-charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the FEMCF pharmacy competently, safely, and adequately to meet the needs of the patients of the facility.

(ii) All pharmacists shall assist the pharmacist-in-charge in meeting the responsibilities as outlined in paragraph (1)(B) of this subsection and in ordering, administering, and accounting for pharmaceutical materials.

(iii) All pharmacists shall be responsible for any delegated act performed by pharmacy technicians or pharmacy technician trainees under his or her supervision.

(iv) All pharmacists while on duty shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(B) Duties. Duties of the pharmacist-in-charge and all other pharmacists shall include, but need not be limited to, the following:

(i) receiving and interpreting prescription drug orders and oral medication orders and reducing these orders to writing either manually or electronically;

(ii) selecting prescription drugs and/or devices and/or suppliers; and

(iii) interpreting patient profiles.

(C) Special requirements for compounding non-sterile preparations. All pharmacists engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(4) Pharmacy technicians and pharmacy technician trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Duties. Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in paragraph (3)(B) of this subsection. Duties may include, but need not be limited to, the following functions, under the direct supervision of a pharmacist:

(i) prepacking and labeling unit and multiple dose packages, provided a pharmacist supervises and conducts a final check and affixes his or her name, initials, or electronic signature to the appropriate quality control records prior to distribution;

(ii) preparing, packaging, compounding, or labeling prescription drugs pursuant to medication orders, provided a pharmacist supervises and checks the preparation;

(iii) compounding non-sterile preparations pursuant to medication orders provided the pharmacy technicians or pharmacy

technician trainees have completed the training specified in §291.131 of this title;

(iv) bulk compounding, provided a pharmacist supervises and conducts in-process and final checks and affixes his or her name, initials, or electronic signature to the appropriate quality control records prior to distribution;

(v) distributing routine orders for stock supplies to patient care areas;

(vi) entering medication order and drug distribution information into a data processing system, provided judgmental decisions are not required and a pharmacist checks the accuracy of the information entered into the system prior to releasing the order or in compliance with the absence of pharmacist requirements contained in subsection (d)(6)(D) and (E) of this section;

(vii) maintaining inventories of drug supplies;

(viii) maintaining pharmacy records; and

(ix) loading drugs into an automated medication supply system. For the purpose of this clause, direct supervision may be accomplished by physically present supervision or electronic monitoring by a pharmacist.

(C) Procedures.

(i) Pharmacy technicians and pharmacy technician trainees shall handle medication orders in accordance with standard written procedures and guidelines.

(ii) Pharmacy technicians and pharmacy technician trainees shall handle prescription drug orders in the same manner as pharmacy technicians or pharmacy technician trainees working in a Class A pharmacy.

(D) Special requirements for compounding non-sterile preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title.

(5) Owner. The owner of an FEMCF pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(A) establishing policies for procurement of prescription drugs and devices and other products dispensed from the FEMCF pharmacy;

(B) establishing and maintaining effective controls against the theft or diversion of prescription drugs;

(C) if the pharmacy uses an automated medication supply system, reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(D) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(E) establishing policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(6) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows:

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician.

(B) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(C) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(D) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

(d) Operational standards.

(1) Licensing requirements.

(A) An FEMCF pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(B) An FEMCF pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(C) An FEMCF pharmacy which changes location and/or name shall notify the board of the change within 10 days and file for an amended license as specified in §291.3 of this title.

(D) A pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change, following the procedures in §291.3 of this title.

(E) An FEMCF pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(F) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance and renewal of a license and the issuance of an amended license.

(G) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(H) An FEMCF pharmacy, which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1), concerning community pharmacy (Class A), is not required to secure a license for the other type of pharmacy; provided, however, such license is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Requirements), to the extent such sections are applicable to the operation of the pharmacy.

(I) An FEMCF pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title.

(2) Environment.

(A) General requirements.

(i) Each FEMCF shall have a designated work area separate from patient areas, and which shall have space adequate for the size and scope of pharmaceutical services and shall have adequate space and security for the storage of drugs.

(ii) The FEMCF pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(B) Special requirements.

(i) The FEMCF pharmacy shall have locked storage for Schedule II controlled substances and other controlled drugs requiring additional security.

(ii) The FEMCF pharmacy shall have a designated area for the storage of poisons and externals separate from drug storage areas.

(C) Security.

(i) The pharmacy and storage areas for prescription drugs and/or devices shall be enclosed and capable of being locked by key, combination, or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized by the pharmacist-in-charge may enter the pharmacy or have access to storage areas for prescription drugs and/or devices.

(ii) The pharmacist-in-charge shall consult with FEMCF personnel with respect to security of the drug storage areas, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs.

(iii) The pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(3) Equipment and supplies. FEMCFs supplying drugs for outpatient use shall have the following equipment and supplies:

(A) data processing system including a printer or comparable equipment;

(B) adequate supply of child-resistant, moisture-proof, and light-proof containers; and

(C) adequate supply of prescription labels and other applicable identification labels.

(4) Library. A reference library shall be maintained that includes the following in hard copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(A) current copies of the following:

(i) Texas Pharmacy Act and rules;

(ii) Texas Dangerous Drug Act and rules;

(iii) Texas Controlled Substances Act and rules; and

(iv) Federal Controlled Substances Act and rules or official publication describing the requirements of the Federal Controlled Substances Act and rules;

(B) at least one current or updated general drug information reference which is required to contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken; and

(C) basic antidote information and the telephone number of the nearest regional poison control center.

(5) Drugs.

(A) Procurement, preparation, and storage.

(i) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(ii) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(iii) FEMCF pharmacies may not sell, purchase, trade, or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(iv) All drugs shall be stored at the proper temperatures, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(v) Any drug bearing an expiration date may not be dispensed or distributed beyond the expiration date of the drug.

(vi) Outdated drugs shall be removed from dispensing stock and shall be quarantined together until such drugs are disposed of.

(B) Formulary.

(i) A formulary may be developed by an appropriate committee of the FEMCF.

(ii) The pharmacist-in-charge, consultant pharmacist, or designee shall be a full voting member of any committee which involves pharmaceutical services.

(iii) A practitioner may grant approval for pharmacists at the FEMCF to interchange, in accordance with the facility's formulary, for the drugs on the practitioner's medication orders provided:

(I) a formulary has been developed;

(II) the formulary has been approved by the medical staff of the FEMCF;

(III) there is a reasonable method for the practitioner to override any interchange; and

(IV) the practitioner authorizes a pharmacist in the FEMCF to interchange on his/her medication orders in accordance with the facility's formulary through his/her written agreement to abide by the policies and procedures of the medical staff and facility.

(C) Prepackaging and loading drugs into automated medication supply system.

(i) Prepackaging of drugs.

(I) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(II) The label of a prepackaged unit shall indicate:

(-a-) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(-b-) facility's lot number;

(-c-) expiration date; and

(-d-) quantity of the drug, if quantity is greater than one.

(III) Records of prepackaging shall be maintained to show:

dosage form;

(-b-) facility's lot number;

(-c-) manufacturer or distributor;

(-d-) manufacturer's lot number;

(-e-) expiration date;

(-f-) quantity per prepackaged unit;

(-g-) number of prepackaged units;

(-h-) date packaged;

the packer; and

(-j-) signature or electronic signature of the responsible pharmacist.

(IV) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(ii) Loading bulk unit of use drugs into automated medication supply systems. Automated medication supply systems may be loaded with bulk unit of use drugs only by a pharmacist, by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist, or by a licensed nurse who is authorized by the pharmacist to perform the loading of the automated medication supply system. For the purpose of this clause, direct supervision may be accomplished by physically present supervision or electronic monitoring by a pharmacist. In order for the pharmacist to electronically monitor, the medication supply system must allow for bar code scanning to verify the loading of drugs, and a record of the loading must be maintained by the system and accessible for electronic review by the pharmacist.

(6) Medication orders.

(A) Drugs may be administered to patients in FEMCFs only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (5)(B) of this subsection.

(B) Drugs may be distributed only pursuant to the copy of the practitioner's medication order.

(C) FEMCF pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(D) In FEMCFs with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable:

(i) prescription drugs and devices only in sufficient quantities for immediate therapeutic needs of a patient may be removed from the FEMCF pharmacy;

(ii) only a designated licensed nurse or practitioner may remove such drugs and devices;

(iii) a record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

(I) name of the patient;

(II) name of device or drug, strength, and dosage form;

(III) dose prescribed;

(IV) quantity withdrawn;
(V) time and date; and
(VI) signature or electronic signature of the person making the withdrawal;

(iv) the medication order in the patient's chart may substitute for such record, provided the medication order meets all the requirements of clause (iii) of this subparagraph;

(v) the pharmacist shall verify the withdrawal of a controlled substance as soon as practical, but in no event more than 72 hours from the time of such withdrawal; and

(vi) the pharmacist shall verify the withdrawal of a dangerous drug at a reasonable interval, but such verification must occur at least once in every calendar week.

(E) In FEMCFs with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the FEMCF when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable:

(i) prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the FEMCF pharmacy;

(ii) only a designated licensed nurse or practitioner may remove such drugs and devices;

(iii) a record shall be made at the time of withdrawal by the authorized person removing the drug or device as described in clauses (6)(D)(iii) and (iv) of this subsection; and

(iv) the pharmacist shall verify withdrawals at a reasonable interval, but such verification must occur at least once in every calendar week that the pharmacy is open.

(7) Floor stock. In facilities using a floor stock method of drug distribution, the pharmacy shall establish designated floor stock areas outside of the central pharmacy where drugs may be stored, in accordance with the pharmacy's policies and procedures. The following is applicable for removing drugs or devices in the absence of a pharmacist:

(A) prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container;

(B) only a designated licensed nurse or practitioner may remove such drugs and devices;

(C) a record shall be made at the time of withdrawal by the authorized person removing the drug or device and the record shall contain the following information:

(i) name of the drug, strength, and dosage form;
(ii) quantity removed;
(iii) location of floor stock;
(iv) date and time; and
(v) signature or electronic signature of person making the withdrawal;

(D) the medication order in the patient's chart may substitute for the record required in subparagraph (C) of this paragraph, provided the medication order meets all the requirements of subparagraph (C) of this paragraph; and

(E) if a stored drug or device is returned to the pharmacy from floor stock areas, a record shall be made by the authorized person

returning the drug or device. The record shall contain the following information:

(i) drug name, strength, and dosage form, or device name;

(ii) quantity returned;

(iii) previous floor stock location for the drug or device;

(iv) date and time; and

(v) signature or electronic signature of person returning the drug or device.

(8) Policies and procedures. Written policies and procedures for a drug distribution system, appropriate for the freestanding emergency medical facility, shall be developed and implemented by the pharmacist-in-charge with the advice of the appropriate committee. The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(A) controlled substances;

(B) investigational drugs;

(C) prepackaging and manufacturing;

(D) medication errors;

(E) orders of physician or other practitioner;

(F) floor stocks;

(G) adverse drug reactions;

(H) drugs brought into the facility by the patient;

(I) self-administration;

(J) emergency drug tray;

(K) formulary, if applicable;

(L) drug storage areas;

(M) drug samples;

(N) drug product defect reports;

(O) drug recalls;

(P) outdated drugs;

(Q) preparation and distribution of IV admixtures;

(R) procedures for supplying drugs for postoperative use, if applicable;

(S) use of automated medication supply systems;

(T) use of data processing systems; and

(U) drug regimen review.

(9) Drugs supplied for outpatient use. Drugs provided to patients for take home use shall be supplied according to the following procedures.

(A) Drugs may only be supplied to patients who have been admitted to the FEMCF.

(B) Drugs may only be supplied in accordance with the system of control and accountability established for drugs supplied from the FEMCF; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only drugs listed on the approved outpatient drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the medical staff and shall consist of drugs of the nature and type to meet the immediate postoperative needs of the FEMCF patient.

(D) Drugs may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately prelabeled (including name, address, and phone number of the facility and necessary auxiliary labels) by the pharmacy, provided, however that topicals and ophthalmics in original manufacturer's containers may be supplied in a quantity exceeding a 72-hour supply.

(E) At the time of delivery of the drug, the practitioner shall complete the label, such that the prescription container bears a label with at least the following information:

- (i) date supplied;
- (ii) name of practitioner;
- (iii) name of patient;
- (iv) directions for use;
- (v) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and
- (vi) unique identification number.

(F) After the drug has been labeled, the practitioner or a licensed nurse under the supervision of the practitioner shall give the appropriately labeled, prepackaged medication to the patient.

(G) A perpetual record of drugs which are supplied from the FEMCF shall be maintained which includes:

- (i) name, address, and phone number of the facility;
- (ii) date supplied;
- (iii) name of practitioner;
- (iv) name of patient;
- (v) directions for use;
- (vi) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and
- (vii) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall review the records at least once in every calendar week that the pharmacy is open.

(10) Drug regimen review.

(A) A pharmacist shall evaluate medication orders and patient medication records for:

- (i) known allergies;
- (ii) rational therapy--contraindications;
- (iii) reasonable dose and route of administration;
- (iv) reasonable directions for use;
- (v) duplication of therapy;
- (vi) drug-drug interactions;
- (vii) drug-food interactions;
- (viii) drug-disease interactions;
- (ix) adverse drug reactions;

(x) proper utilization, including overutilization or underutilization; and

(xi) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(B) A retrospective, random drug regimen review as specified in the pharmacy's policies and procedures shall be conducted on a periodic basis to verify proper usage of drugs not to exceed 31 days between such reviews.

(C) Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made and maintained.

(e) Records.

(1) Maintenance of records.

(A) Every inventory or other record required to be kept under the provisions of this section (relating to Pharmacies Located in a Freestanding Emergency Medical Care Facility (Class F) shall be:

(i) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative, and other authorized local, state, or federal law enforcement agencies; and

(ii) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the board. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this subsection, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(B) Records of controlled substances listed in Schedule II shall be maintained separately and readily retrievable from all other records of the pharmacy.

(C) Records of controlled substances listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subparagraph, "readily retrievable" means that the controlled substances shall be asterisked, redlined, or in some other manner readily identifiable apart from all other items appearing on the record.

(D) Records, except when specifically required to be maintained in original or hard copy form, may be maintained in an alternative data retention system, such as a data processing or direct imaging system, provided:

(i) the records in the alternative data retention system contain all of the information required on the manual record; and

(ii) the alternative data retention system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(E) Controlled substance records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

(F) An FEMCF pharmacy shall maintain a perpetual inventory of controlled substances listed in Schedules II - V which shall be verified for completeness and reconciled at least once in every calendar week that the pharmacy is open.

(G) Distribution records for controlled substances, listed in Schedules II - V, shall include the following information:

- (i) patient's name;
- (ii) practitioner's name who ordered the drug;
- (iii) name of drug, dosage form, and strength;
- (iv) time and date of administration to patient and quantity administered;
- (v) signature or electronic signature of individual administering the controlled substance;
- (vi) returns to the pharmacy; and
- (vii) waste (waste is required to be witnessed and cosigned, manually or electronically, by another individual).

(H) The record required by subparagraph (G) of this paragraph shall be maintained separately from patient records.

(I) A pharmacist shall conduct an audit by randomly comparing the distribution records required by subparagraph (G) of this paragraph with the medication orders in the patient record on a periodic basis to verify proper administration of drugs not to exceed 30 days between such reviews.

(2) Patient records.

(A) Each medication order or set of orders issued together shall bear the following information:

- (i) patient name;
- (ii) drug name, strength, and dosage form;
- (iii) directions for use;
- (iv) date; and
- (v) signature or electronic signature of the practitioner or that of his or her authorized agent, defined as a licensed nurse employee or consultant/full or part-time pharmacist of the FEMCF.

(B) Medication orders shall be maintained with the medication administration record in the medical records of the patient.

(3) General requirements for records maintained in a data processing system.

(A) If an FEMCF pharmacy's data processing system is not in compliance with the board's requirements, the pharmacy must maintain a manual recordkeeping system.

(B) The facility shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis to assure that data is not lost due to system failure.

(C) A pharmacy that changes or discontinues use of a data processing system must:

- (i) transfer the records to the new data processing system; or
- (ii) purge the records to a printout which contains:
 - (I) all of the information required on the original document; or
 - (II) for records of distribution and return for all controlled substances, the same information as required on the audit trail printout as specified in subparagraph (F) of this paragraph. The information on the printout shall be sorted and printed by drug name and list all distributions and returns chronologically.

(D) Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(F) The data processing system shall have the capacity to produce a hard copy printout of an audit trail of drug distribution and return for any strength and dosage form of a drug (by either brand or generic name or both) during a specified time period. This printout shall contain the following information:

- (i) patient's name or patient's facility identification number;
- (ii) prescribing or attending practitioner's name;
- (iii) name, strength, and dosage form of the drug product actually distributed;
- (iv) total quantity distributed from and returned to the pharmacy;
- (v) if not immediately retrievable via electronic image, the following shall also be included on the printout:

(I) prescribing or attending practitioner's address; and

(II) practitioner's DEA registration number, if the medication order is for a controlled substance.

(G) An audit trail printout for each strength and dosage form of the drugs distributed during the preceding month shall be produced at least monthly and shall be maintained in a separate file at the facility. The information on this printout shall be sorted by drug name and list all distributions/returns for that drug chronologically.

(H) The pharmacy may elect not to produce the monthly audit trail printout if the data processing system has a workable (electronic) data retention system which can produce an audit trail of drug distribution and returns for the preceding two years. The audit trail required in this clause shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the board, or other authorized local, state, or federal law enforcement or regulatory agencies.

(I) In the event that an FEMCF pharmacy which uses a data processing system experiences system downtime, the pharmacy must have an auxiliary procedure which will ensure that all data is retained for online data entry as soon as the system is available for use again.

(4) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(A) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to possess that controlled substance.

(B) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(C) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

- (i) the actual date of distribution;
- (ii) the name, strength, and quantity of controlled substances distributed;
- (iii) the name, address, and DEA registration number of the distributing pharmacy; and
- (iv) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(D) A pharmacy shall comply with 21 CFR 1305 regarding the DEA order form (DEA 222) requirements when distributing a Schedule II controlled substance.

(5) Other records. Other records to be maintained by the pharmacy include:

(A) a permanent log of the initials or identification codes which identifies each pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes cannot be used;

(B) suppliers' invoices of dangerous drugs and controlled substances dated and initialed or signed by the person receiving the drugs;

(i) a pharmacist shall verify that the controlled substances listed on the invoices were added to the pharmacy's perpetual inventory by clearly recording his/her initials and the date of review of the perpetual inventory; and

(ii) for controlled substances, the documents retained must contain the name, strength and quantity of controlled substances distributed, and the name, address and DEA number of both registrants; the supplier and the receiving pharmacy;

(C) supplier's credit memos for controlled substances and dangerous drugs;

(D) a copy of inventories required by §291.17 of this title (relating to Inventory Requirements) except that a perpetual inventory of controlled substances listed in Schedule II may be kept in a data processing system if the data processing system is capable of producing a hard copy of the perpetual inventory on site;

(E) reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency or reverse distributor;

(F) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(G) a copy of any notification required by the Texas Pharmacy Act or these rules, including, but not limited to, the following:

- (i) reports of theft or significant loss of controlled substances to DEA and the board;
- (ii) notification of a change in pharmacist-in-charge of a pharmacy; and
- (iii) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(6) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(A) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met:

(i) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of DEA as required by the Code of Federal Regulations, Title 21, §1304(a), and submits a copy of this written notification to the board. Unless the registrant is informed by the divisional director of DEA that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director;

(ii) The pharmacy maintains a copy of the notification required in this subparagraph; and

(iii) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(B) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(C) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(D) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

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

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Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



CHAPTER 295. PHARMACISTS

22 TAC §295.5

The Texas State Board of Pharmacy adopts amendments to §295.5, concerning Pharmacist License or Renewal Fees. These amendments are adopted with changes to the proposed text as published in the June 25, 2021, issue of the *Texas Register* (46 TexReg 3844). The rule will be republished. The Board adjusted the amount of the fees based on updated information.

The amendments increase pharmacist license fees based on expected expenses.

No comments were received.

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

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

§295.5. *Pharmacist License or Renewal Fees.*

(a) Biennial Registration. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacist licenses provided under the Pharmacy Act, §559.002.

(b) Initial License Fee.

(1) The fee for the initial license shall be \$338 for a two-year registration.

(2) New pharmacist licenses shall be assigned an expiration date and initial fee shall be prorated based on the assigned expiration date.

(c) Renewal Fee. The fee for biennial renewal of a pharmacist license shall be \$335 for a two-year registration.

(d) Exemption from fee. The license of a pharmacist who has been licensed by the Texas State Board of Pharmacy for at least 50 years or who is at least 72 years old shall be renewed without payment of a fee provided such pharmacist is not actively practicing pharmacy. The renewal certificate of such pharmacist issued by the board shall reflect an inactive status. A person whose license is renewed pursuant to this subsection may not engage in the active practice of pharmacy without first paying the renewal fee as set out in subsection (c) of this section.

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

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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.4

The Texas State Board of Pharmacy adopts amendments to §297.4, concerning Fees. These amendments are adopted without changes to the proposed text as published in the June 25, 2021, issue of the *Texas Register* (46 TexReg 3845). The rule will not be republished.

The amendments increase pharmacy technician and pharmacy technician trainee registration fees based on expected expenses.

No comments were received.

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

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

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

Filed with the Office of the Secretary of State on August 20, 2021.

TRD-202103283

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Effective date: October 1, 2021

Proposal publication date: June 25, 2021

For further information, please call: (512) 305-8010



TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.26

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendment to 25 Texas Administrative Code (TAC) §703.26 without changes to the proposed text as published in the June 4, 2021, issue of the *Texas Register* (46 TexReg 3498); therefore, the rule will not be republished. The amendment clarifies that CPRIT may reimburse certain expenses incurred by participants in a cancer clinical trial pursuant to the authority provided by Texas Health and Safety Code Annotated, § 102.203(b).

Reasoned Justification

The amendment to §703.26 makes the Institute's administrative rules consistent with a statutory change to Texas Health and Safety Code Chapter 102 made by the Legislature in 2019. The 86th Legislature amended CPRIT's statute to authorize reimbursement for costs of participation incurred by cancer clinical trial participants, including transportation, lodging, and costs reimbursed under a program established pursuant to Texas Health and Safety Code Annotated, Chapter 50 "Cancer Clinical Trial Participation Program."

Summary of Public Comments and Staff Recommendation

CPRIT did not receive any public comments regarding the amendment to § 703.26; CPRIT staff recommends proceeding with adoption.

Statutory Authority

CPRIT adopts the rule change under the authority of the Texas Health and Safety Code Annotated, § 102.108, which provides

the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

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

Filed with the Office of the Secretary of State on August 20, 2021.

TRD-202103279

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Effective date: September 9, 2021

Proposal publication date: June 4, 2021

For further information, please call: (512) 305-8487



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

The Commissioner of Insurance adopts the repeal of 28 TAC Chapter 21, Subchapter P, §§21.2401 - 21.2407, relating to Mental Health Parity, and 28 TAC Chapter 21, Subchapter JJ, §§21.4401 - 21.4404, relating to Autism Spectrum Disorder Coverage. The Commissioner also adopts new 28 TAC Chapter 21, Subchapter P, relating to Mental Health and Substance Use Disorder Parity, §§21.2401 - 21.2409, 21.2411, 21.2413, 21.2414, 21.2421 - 21.2427, 21.2431 - 21.2441, 21.2451, and 21.2452, concerning parity between medical/surgical benefits and mental health and substance use disorder (MH/SUD) benefits. The repeals and adoption implement House Bill 10, 85th Legislature, 2017. The repeals are adopted without changes to the proposal published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1191).

The repealed rules will not be republished. The Commissioner of Insurance adopts §§21.2403, 21.2405, 21.2409, 21.2411, 21.2414, 21.2432, 21.2434, 21.2438 - 21.2440, 21.2451, and 21.2452 without changes to the proposed text published in the February 19, 2021, issue of the *Texas Register*. These rules will not be republished. The Commissioner adopts §§21.2401, 21.2402, 21.2404, 21.2406 - 21.2408, 21.2413, 21.2421 - 21.2427, 21.2431, 21.2433, 21.2435 - 21.2437, and 21.2441 with changes to the proposed text. These rules will be republished.

The Commissioner withdraws the proposal of new §§21.2410, 21.2412, and 21.2453.

REASONED JUSTIFICATION. This rule is required to implement the legislature's directives in HB 10 to health benefit plan issuers (issuers) and the Commissioner. Issuers are to provide benefits and coverage for MH/SUD under the same terms and conditions applicable to the plan's medical/surgical benefits and coverage. An issuer may not impose quantitative or nonquantitative treatment limitations on benefits for a mental health condition or substance use disorder that are generally more restrictive than the limitations imposed on coverage of benefits for medical or surgical expenses. The Commissioner is required to enforce compliance with the legislature's directive to issuers by evaluating the benefits and coverage offered by an issuer's health benefit plan

for quantitative and nonquantitative treatment limitations in several categories:

- (1) in-network and out-of-network inpatient care,
- (2) in-network and out-of-network outpatient care,
- (3) emergency care, and
- (4) prescription drugs.

This rule is designed to provide issuers guidance on compliance with the legislature's directive and to collect information and require issuer analyses of data that will allow the Commissioner to enforce compliance.

Subchapter Name Change. With the adoption of new Subchapter P, the Texas Department of Insurance (TDI) changes the previous name "Mental Health Parity" to "Mental Health and Substance Use Disorder Parity" to reflect that new Subchapter P applies to parity for both mental health and substance use disorders.

Summary of New Subchapter. Insurance Code §1355.255, concerning Compliance, requires the Commissioner to enforce compliance with Insurance Code §1355.254, concerning Coverage for Mental Health Conditions and Substance Use Disorders, by evaluating the benefits and coverage offered by a health benefit plan (plan) for quantitative treatment limitations (QTLs) and nonquantitative treatment limitations (NQTLs). New §§21.2401 - 21.2452 implement Insurance Code Chapter 1355.

Sections 21.2401 - 21.2406 of Division 1 contain general provisions that apply to the entire subchapter. The remaining sections of Division 1, §§21.2407 - 21.2409, 21.2411, 21.2413, and 21.2414, restate (with a few noted exceptions) the federal medical/surgical and MH/SUD parity requirements established in 45 CFR §146.136(b) - (h) (concerning Parity in Mental Health and Substance Use Disorder Benefits) (federal parity rule).

Division 2, consisting of §§21.2421 - 21.2427, addresses requirements for issuers to provide data on plans' claims, utilization reviews, and reimbursement rates.

Division 3, consisting of §§21.2431 - 21.2441, contains requirements for issuers to analyze parity compliance and maintain documentation of their analyses of plans' QTLs and NQTLs. The requirements to perform and document comparative analyses of the design and application of NQTLs are consistent with 42 USC §300gg-26(a)(8) (concerning Parity in Mental Health and Substance Use Disorder Benefits), as added by the Consolidated Appropriations Act, 2021.

Division 4, consisting of §21.2451 and §21.2452, adopts and updates autism spectrum disorder (ASD) rules based on those from repealed Subchapter JJ. Differences between the repealed and new sections reflect that this coverage is subject to Insurance Code Chapter 1355, Subchapter F, concerning Coverage for Mental Health Conditions and Substance Use Disorders.

TDI received written and oral comments on the rule proposal. TDI considered those comments when drafting this adoption.

DIVISION 1. GENERAL PROVISIONS AND PARITY REQUIREMENTS

28 TAC §21.2401 - 21.2409, 21.2411, 21.2413, and 21.2414

Section 21.2401. Section 21.2401 states the purpose and scope of Subchapter P. It explains that the rules are intended to be consistent with Insurance Code provisions on coverage for MH/SUD and with the federal rules implementing the Mental Health Parity

and Addiction Equity Act of 2008 (MHPAEA), found at 45 CFR §146.136 and 45 CFR §146.121. TDI will consider federal guidance and interpretive materials, including bulletins and FAQs on the federal rules, in interpreting and applying this rule. A change to the proposed text is made to clarify a citation to a federal rule.

Section 21.2402. Section 21.2402 states that Subchapter P applies to all plans subject to Insurance Code Chapter 1355, Subchapter F. This includes any plan that provides coverage for treatment expenses incurred as a result of mental health or substance use disorders unless a specific exception applies. TDI makes a change to the citation under subsection (b)(2) as proposed.

Section 21.2403. Section 21.2403 restricts an issuer's limitations on coverage to those limitations that do not violate the parity requirements in Insurance Code Chapter 1355, Subchapter F and 28 TAC Chapter 21, Subchapter P. For example:

(1) Insurance Code §1355.006(b)(2) allows a plan to exclude coverage of a serious mental illness if it results from the illegal use of certain substances. A plan could theoretically exclude all benefits for both medical/surgical and MH/SUD treatments that result from the illegal use of certain substances (if the plan were not otherwise required to cover substance use disorder). But if the plan excludes only benefits for mental illness, the plan would violate parity requirements.

(2) Insurance Code §1355.015(a-1) allows a plan to exclude ASD coverage for people diagnosed at age 10 or older, and §1355.015(c-1) allows a dollar limit for applied behavioral analysis treatment. These limits are unlikely to apply to medical/surgical benefits. A plan may need to remove these limits to comply with parity.

(3) Insurance Code §1355.054 and §§1355.104 - 1355.106 may allow a plan to restrict coverage for mental health treatment in certain types of facilities in a way that it would not restrict comparable coverage for medical/surgical care. If the plan imposes limits for facility treatment for MH/SUD that are more restrictive than those for medical/surgical, it would violate parity requirements.

(4) Insurance Code §1368.005(b) allows a plan to apply less favorable dollar and durational limits if they are "sufficient." Insurance Code §1368.006(b) allows a plan to impose a three-series lifetime limit on treatment for chemical dependency. Less favorable financial requirements and QTLs violate parity if they fail the "substantially all" and "predominant" tests used to assess parity.

(5) Insurance Code §1355.004(a)(3) and Insurance Code §1368.005(a)(2) require that a plan's QTLs be "the same" as for physical illness. But providing an equivalent benefit may violate parity if the financial requirement or limit applied is more restrictive than the "substantially all" and "predominant" tests.

Section 21.2404. Section 21.2404 lists differences between terms used and provisions in Subchapter P and the federal rules. TDI makes changes to the proposed text of this section to conform to the withdrawal of §21.2410 and §21.2412, which provided for an increased cost exemption. TDI also changes the proposed text by updating references to the federal provisions that are not duplicated in this division because there is no analogous Texas law. TDI does not adopt subsection (d) because it referenced the definition of "base period" under §21.2406, which was not adopted, and §21.2412, which is withdrawn in response to comment. Finally, TDI makes two changes to the proposed text to correct punctuation in subsection (a).

Section 21.2405. Section 21.2405 notifies issuers that should there be deficiencies in an issuer's submissions, TDI may require submission of a corrective action plan, and TDI may also require notice to enrollees. The section also provides that a court's invalidation of a provision or application of Subchapter P does not affect or invalidate other provisions or applications of the subchapter.

Section 21.2406. Section 21.2406 defines terms used in Subchapter P and restates the meanings listed in the federal rule. Defined terms not used in Division 1 are meant to help issuers identify the information and data they are required to report in the spreadsheets described in Divisions 2 and 3. In response to comment, TDI makes a change to the proposed definition of "applied behavior analysis." The adopted definition of "applied behavior analysis" is consistent with the practice of applied behavior analysis in Occupations Code §506.003. In response to comment, TDI makes a change to the proposed definition of "reported claims." The change clarifies that reported claims are to be characterized by the date they are received by the issuer. In response to comment, TDI makes changes to the proposed definition of "peer-to-peer review or physician-to-physician review," to indicate that it "may" occur (instead of "must"), and to replace a description of the review requirements with a reference to the statute. Clarifying changes are also made to the proposed definitions of "administrative denial" and "reasonable method." TDI does not adopt the definition of "base period" because, in response to comment, TDI has withdrawn §21.2410 and §21.2412, making the definition no longer necessary; subsequent definitions are renumbered.

Section 21.2407. Section 21.2407 requires parity in aggregate lifetime and annual dollar limits. A plan's aggregate lifetime or annual dollar limits on MH/SUD benefits is limited in proportion to the plan's aggregate limits on medical/surgical limits. The section explains how to determine the applicable proportionality of benefits. In response to comment, TDI makes conforming changes to this section as proposed to reflect the withdrawal of proposed §21.2410 and §21.2412.

Section 21.2408. Section 21.2408 restates, without any changes that affect its meaning, the federal rule titled "Parity Requirements with Respect to Financial Requirements and Treatment Limitations," located at 45 CFR §146.136(c)(1) - (3). Section 21.2408 provides generally that a plan that provides both medical/surgical and MH/SUD benefits may not apply any financial requirement or treatment limitation to MH/SUD benefits that is more restrictive than the comparable limitation applied to substantially all comparable medical/surgical benefits. The rule also includes instructions explaining how to apply the rule and examples of plan terms that do and do not comply with the rule.

Section 21.2409. Section 21.2409 restates, without any changes that affect its meaning, the federal rule titled "Non-quantitative Treatment Limitations," at 45 CFR §146.136(c)(4). The rule provides generally that a plan may only impose an NQTL on an MH/SUD benefit, either by the plan's terms or in its operation, if the NQTL is comparable to and applied no more stringently than the same limitation on comparable medical/surgical benefits. The rule includes instructions that explain how to apply the rule and examples of plan terms that do and do not comply with the rule.

Section 21.2410. TDI withdraws this section in response to a comment that noted that the statute does not support the cost exemption in §21.2412.

Section 21.2411. Section 21.2411 requires that, when asked, an issuer must give an enrollee or contracted provider the plan's criteria for a medical necessity determination for an MH/SUD benefit. It also requires that, when asked, an issuer must give an enrollee the reason for a denial of benefits, consistent with Insurance Code §4201.303, concerning Adverse Determination: Contents of Notice. An issuer that complies with the rule may still need to give an enrollee more information under other federal or state laws.

Section 21.2412. TDI withdraws this section in response to a comment that noted that the statute does not support the cost exemption addressed in the proposed section.

Section 21.2413. Section 21.2413 prohibits an issuer from contracting to provide a plan that does not comply with the parity requirements in §§21.2407 - 21.2409. TDI makes changes to §21.2413 as proposed to remove a reference to an exemption, to conform the section with the withdrawal of proposed §21.2410.

Section 21.2414. Section 21.2414 prohibits a plan from denying benefits it would otherwise provide for treatment of a type of injury, if the injury was the result of domestic violence or a medical condition, including both physical and mental health conditions. This rule applies even if the medical condition was not diagnosed before the injury.

DIVISION 2. PLAN INFORMATION AND DATA COLLECTION

28 TAC §21.2421 - §21.2427

Section 21.2421. Section 21.2421 lists defined terms for Division 2. TDI makes changes to the section as proposed to provide additional clarity on the cited rules for "in-network." TDI also revises the proposed text to include additional examples of place of service codes for "inpatient" and "outpatient." TDI also capitalizes the reference to Division 2.

Section 21.2422. Section 21.2422 sets out the deadline for an issuer to report the data required by Division 2. The section provides that the required information and data are due annually, based on a calendar-year reporting period. In response to comment, TDI makes changes to these deadlines as proposed. Future annual reporting will be made on July 1. This puts the reporting on a slightly offset reporting schedule as compared with other reports due June 1. For 2020 reporting, TDI sets the deadline as December 1, 2021. TDI also makes a change to capitalize the reference to Division 2.

Section 21.2423. Section 21.2423 explains to issuers that they must provide, in a specified template worksheet, information to TDI for each data collection template the issuer provides to TDI. The data to be reported in separate templates is based on the type of plan and the market in which it is offered. The section includes an example (§21.2423(c)) to illustrate the requirements of the rule. TDI changes the name of the data collection template as proposed to be "MH/SUD Parity Rule Division 2 Data Collection Reporting Form."

Section 21.2424. Section 21.2424 requires an issuer to provide issuer information and information on market type, plan type, number of policies for which data is reported, number of covered lives, and premium volume. It also requires issuers providing health plans that are grandfathered under federal rules to report certain data to TDI. TDI changes the name of the data collection template as proposed to conform to the change made in §21.2423. TDI also changes the proposed text to clarify that the plan information should be reported with respect to the policies or contracts for which data is reported. TDI also makes changes

in the worksheet titled "Issuer and Plan Information" to conform to the changes in the rule text.

Section 21.2425. Section 21.2425 requires an issuer to report claims for medical/surgical and MH/SUD benefits on a worksheet titled "Claims and Utilization Review." The rule requires the claims to be separately reported for mental health and substance use disorders. Section 21.2425 sets forth the types of conditions, based on International Classification of Diseases (ICD) diagnosis codes that must be included in the worksheet, and the classifications for the claims to be reported. Section 21.2425 specifies that the classifications are based on inpatient/outpatient status, network status, emergency status, and prescription drug status. In response to comment on other sections, TDI renames the section as proposed to be "Claims and Utilization Review: Reporting Classifications," and renames the worksheet as proposed to be "Claims and Utilization Review." TDI also makes changes to the proposed text to clarify that the requirements apply to both reported claims and requests for utilization review. TDI changes the name of the data collection template to conform to the change made in §21.2423.

Section 21.2426. Section 21.2426 requires an issuer to report its plans' aggregate claims data on a worksheet titled "Claims and Utilization Review" for each of the reporting categories listed in §21.2425. Section 21.2426 provides that the aggregate claims data must be reported for the reporting year. The spreadsheet requires a detailed breakout of all reported claims. In response to comment, TDI makes changes to the rule text as proposed to clarify that the data collection requires both claims and utilization review data. In addition, the rule section as adopted is renamed to be "Claims and Utilization Review: Aggregate Data Fields." Conforming changes are also made to the proposed text of the section to reflect the changes made to the names of the template and the worksheet in §21.2423 and §21.2425. TDI adds the word "and" to §21.2426(2)(L)(iii). TDI also makes changes in the "Claims and Utilization Review" worksheet to conform to the text of the section, including deleting some references to "N/A" in the data columns relating to emergency care. While preauthorization data is not applicable to emergency care, such care may be subject to concurrent or retrospective reviews and appeals of adverse determinations resulting from such reviews.

Section 21.2427. Section 21.2427 requires an issuer to report plans' average reimbursement rate data separately for in-network and out-of-network providers, within the "MH/SUD Parity Rule Division 2 Data Collection Reporting Form" template in a worksheet titled "Reimbursement Rates." TDI makes a conforming change to the proposed text of §21.2427 to reflect the change to the name of the template made in §21.2423. Data is collected for specific types of physicians and mental health and substance use disorder providers. In the worksheet, TDI specifies billing codes and comparative Medicare reimbursement rate data. The spreadsheet includes a column that calculates the percentage of the Medicare reimbursement rate that a plan's reimbursement rate represents. Insurance Code §1355.255 directs the Commissioner to enforce compliance with §1355.254 by evaluating the benefits and coverage offered by a plan for quantitative and nonquantitative treatment limitations. The Commissioner collects reimbursement rate data as part of this enforcement effort. TDI also has authority to collect issuers' reimbursement rates under Insurance Code Chapter 38, Subchapter H. That subchapter also authorizes TDI to publish aggregated data.

DIVISION 3. COMPLIANCE ANALYSES FOR MH/SUD PARITY

28 TAC §§21.2431 - 21.2441

Section 21.2431. Section 21.2431 states the division's overall requirement that issuers perform quantitative and nonquantitative parity analyses for each of their plan designs. Section 21.2431 also advises issuers that they may use an alternative tool to perform their quantitative parity analysis, rather than the template provided on TDI's website, if the issuer demonstrates to TDI's satisfaction that it is using a methodology for the "predominant" and "substantially all" tests that is consistent with §21.2408 and provides the same level of specificity as the QTL template. TDI will assess whether the alternative compliance tool satisfies the requirements of this section at the time TDI requests that the issuer submit its compliance analysis. Section 21.2431 also advises issuers that they may use an alternative tool to perform their nonquantitative parity analysis, rather than the template provided on TDI's website, if TDI is satisfied that it collects the information required to perform each of the four steps stated in §21.2441, and if the issuer can produce documentation that provides the same level of specificity as the NQTL template. TDI anticipates requesting this documentation during market conduct exams. TDI makes a change to the text of this section as proposed by adding a comma between the section headings listed in subsection (b)(1).

Section 21.2432. Section 21.2432 provides deadlines, including phased-in deadlines for nonquantitative parity analyses. Issuers are notified of the requirements they must meet when marketing new plans or materially modifying existing plans.

Section 21.2433. Section 21.2433 informs issuers about the QTL template and instructions on TDI's website that they may use to provide the issuer and plan information required by §§21.2434 - 21.2436. The section also provides instructions on how to perform the compliance analysis for quantitative parity required by §21.2437.

Issuers are advised that they may complete a single analysis for multiple plans with the same plan design, including plans in different markets. Issuers are also informed that they must retain their completed quantitative parity analyses so that those analyses are available to TDI upon request for any plan or plan design that is available for purchase, and for at least five years after coverage terminates for the last enrollee covered. TDI makes a change to the text of this section as proposed to conform to the title of §21.2435.

Section 21.2434. Section 21.2434 requires issuers to provide identifying information for each plan design, the plan's quantitative parity analysis, and market type and plan type. TDI makes changes in the QTL template to conform to the text of the rule.

Section 21.2435. Section 21.2435 requires issuers to explain in detail their quantitative parity analysis methodology and the data sources used in performing their quantitative analyses. If an issuer does not have enough plan-level data to perform the analysis, the issuer must provide an actuarial certification explaining why the substitute data set used for the analysis is reasonable and actuarially appropriate. TDI changes "dataset" to "data set" for consistency within the rule.

Section 21.2436. Section 21.2436 requires issuers to perform quantitative parity analyses for all covered benefits under the plan documents as detailed in the QTL template's covered benefits worksheet.

Section 21.2437. Section 21.2437 requires that issuers, using the worksheets named for each classification and subclassification, perform the quantitative parity "substantially all" and "predominant" tests. TDI makes a change to the QTL template to

provide an explanatory note in the classification worksheets regarding the use of per member per month data.

Section 21.2438. Section 21.2438 provides issuers general instructions to use in performing the nonquantitative parity analyses. Issuers are instructed to use the NQTL template to perform the plan identification and nonquantitative parity compliance analyses required by §21.2440 and §21.2441. Issuers may complete a single analysis for multiple plans that contain an identical set of NQTLs.

Section 21.2439. Section 21.2439 explains generally what NQTLs are and provides a non-exhaustive list of examples.

Section 21.2440. Section 21.2440 requires issuers to provide identifying information for each plan or plan design for their nonquantitative parity analyses.

Section 21.2441. Section 21.2441 requires issuers to identify each NQTL in a plan's documents, and to complete the four-step analysis detailed in the section for each NQTL contained in the plan documents for each plan. The four-step analysis is intended to replicate the Department of Labor's (DOL's) four-step NQTL parity analysis set out in the DOL's 2020 Self-Compliance Tool for the Mental Health Parity and Addiction Equity Act (MHPAEA), found at www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/self-compliance-tool.pdf. In response to comment, TDI makes a clarification to the proposed rule text by replacing the words "the factors" with "each factor."

As adopted, §21.2441(c) states, "Step 2. Within the NQTL Template, in each classification or subclassification worksheet, an issuer must identify each factor considered in the design and application of the NQTL. Illustrative examples of factors are provided in the NQTL template." To be consistent with the "design and application" language in subsection (c), TDI adds "and apply" to the text of subsection (d) as proposed. This change also ensures the rule is consistent with 42 USC §300gg-26(a)(8)(A)(iii), as added by the Consolidated Appropriations Act, 2021. TDI makes clarifying grammatical changes to "Step 1" and "NQTL template" to be consistent with other parts of the rule. TDI makes a change to subsection (d)(5)(B) to move the semicolon outside of the quotation marks. TDI also makes changes in the NQTL template to conform to the text of the rule.

DIVISION 4. AUTISM SPECTRUM DISORDER

28 TAC §§21.2451 - 21.2453

Section 21.2451. Section 21.2451 states that Division 4 applies only to plans that provide coverage for autism spectrum disorder as required by Insurance Code Chapter 1355.

Section 21.2452. Section 21.2452 provides that the section applies only if a plan is subject to both Subchapters A and F of Insurance Code Chapter 1355. This is because the government plans created in Insurance Code Chapters 1575 and 1579, which are subject to Subchapter A, are not subject to Subchapter F. The section then requires that if an issuer's plan includes a treatment limitation that is permissible under Subchapter A but does not satisfy Subchapter F's parity requirement in §1355.254, the issuer must modify its plan to ensure compliance with Subchapter F.

Section 21.2453. TDI withdraws the proposal of §21.2453. The proposed rule revision was intended to clarify that an applied behavior analyst could provide services, but this was superseded by Occupations Code Chapter 506 (Behavior Analysts), enacted

in 2017. Elimination of this provision clarifies that the adopted rule does not depart from statute.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: Commenters in support of the proposal were Autism Society of Texas, Every Texan, La Hacienda Treatment Center, NAMI Texas, and The Kennedy Forum.

Commenters in support of the proposal with changes were Texas Medical Association, Texas Hospital Association, and Meadows Mental Health Policy Institute. Commenters against the proposal were two individuals, America's Health Insurance Plans, and Texas Association of Health Plans.

Comments on proposed rules generally

Comment. Several commenters expressed support for the proposed rules.

Agency Response. TDI thanks the commenters for the support of the proposed rules.

Comment. A commenter with a dispute before TDI's Division of Workers' Compensation relating to the compensability of an injury expressed dissatisfaction over the handling of their matter.

Agency Response. TDI declines to make a change in response to this comment and notes that the commenter's concerns are outside the scope of the rule.

Comment. Two commenters request that TDI pause rulemaking and evaluate the federal MHPAEA law and new provisions passed in December 2021 as part of the Consolidated Appropriations Act of 2021. They state that the new provisions may affect NQTLs and QTLs, and that studying these changes will provide opportunities for efficient and uniform regulatory oversight.

Another commenter states that the suggestion that TDI should wait for forthcoming guidance before requiring insurers to submit parity compliance analyses is a "red herring." The commenter notes that the DOL's requirements are directly aligned with TDI's proposed rule. A commenter notes that insurers have had nearly seven years to comply with the final MHPAEA rule issued in November 2013, and federal statute now requires plans to have a completed parity compliance analysis for each NQTL.

The commenter opposes delaying the adoption of rules. The commenter notes that Congress recently reinforced the step-wise approach in the Consolidated Appropriations Act of 2021. The commenter states that claims by insurers that these requirements are too burdensome or that plans should have more time to comply should be dismissed, particularly in light of the new unambiguous federal requirements and the significant harm to patients when they experience illegal discrimination in mental health and addiction coverage. Federal statute now requires plans to have a completed parity compliance analysis for each NQTL. The commenter states that if submitting these analyses to TDI now is burdensome, it raises significant questions about whether plans are currently complying with existing federal statutory and regulatory requirements.

Agency Response. TDI does not agree that it is necessary to pause or withdraw the rulemaking. Plans can comply with federal MHPAEA law and guidance while responding to the rule's required NQTL and QTL analyses. TDI sees no need to further delay implementation of HB 10. TDI has considered the most recent federal statute and guidance and has determined that the proposed rules are consistent with those requirements and will not result in duplicative efforts. TDI will closely monitor federal

implementation and be ready to provide additional guidance or rulemaking as needed.

Comment. A commenter expresses concern with various theoretical possible coverages or benefits that a plan could exclude or restrict based on statutes that precede HB 10. The commenter refers specifically to the potential to exclude or restrict (1) benefits for both medical/surgical and MH/SUD treatments that result from the illegal use of a controlled substance (Insurance Code §1355.006), (2) autism coverage for people diagnosed at age 10 or older (§1355.015(a-1)), (3) coverage for mental health treatment in certain types of facilities (§1355.106), and (4) changes to the plan benefit intended to avoid the intent of HB 10.

Agency Response. TDI declines to make changes to the proposed rule in response to the comment. Insurance Code Chapter 1355, Subchapter F, supersedes provisions in other parts of the Insurance Code to the extent that those other provisions authorize a limitation that violates parity requirements, including Insurance Code §§ 1355.006, 1355.015(a-1), and 1355.106 as previously referenced by a commenter. This coordination is addressed in §21.2403.

Comment on rule proposal cost note

Comment. A commenter states that its member stakeholders think that TDI's estimates of programmer and programming supervisor costs are very low.

Agency Response. TDI declines to republish the rule proposal and modify the cost note. The salary data used by TDI in its rule proposal came from the DOL's Occupational Employment and Wage Statistics webpage. However, TDI acknowledges that regulated industry and affected stakeholders may have more applicable cost information. TDI sought general stakeholder involvement and specific cost note input prior to proposal, when the initial rule draft was posted on TDI's website for stakeholder review and comment, and all information that TDI received was considered in drafting this rulemaking, including the cost note.

Comments on Division 1

Comments on §21.2406

Comment. A commenter states concerns related to the definition of "applied behavior analysis" in §21.2406. The commenter states that the definition is inaccurate.

Agency Response. TDI agrees to make a change. The definition as proposed mirrored the definition of "applied behavior analysis" in 28 TAC §21.4402, in the rules for autism spectrum disorder coverage. This definition was based on Tricare's usage. Subsequent to that rule adoption, Senate Bill 589, 85th Legislature, 2017, added a provision for the practice of applied behavior analysis in Occupations Code §506.003. TDI changes the definition as proposed to refer to this meaning.

Comment. A commenter states concerns related to the definition of "denial" in §21.2406. The commenter states that this definition combines claim denials and utilization review denials, which are not the same and should not be combined for reporting purposes. The commenter also requests that the rule clarify that administrative denials apply to claims only and not utilization review processes.

Agency Response. TDI declines to make a change to the definition of "denial." The data collection specifically separates data collected about adverse determinations and administrative denials. There is no field that calls for combining those numbers. The definition is instead relevant for other parts of the rule that

speak broadly about both types of denials. TDI agrees that an administrative denial applies only to claims, and it has modified the definition of "administrative denial" as proposed to make this clarification.

Comment. A commenter states concerns related to the definition of "peer-to-peer review or physician-to-physician review" in §21.2406. The commenter requests that the definition be clarified to acknowledge that a peer-to-peer conversation is not required. The commenter notes that statute requires that the health plan must provide a reasonable opportunity for such a discussion but has no control over whether the requesting provider avails itself of the opportunity.

Agency Response. TDI agrees that statute and rules do not require a peer-to-peer review or physician-to-physician review to have occurred, and it has modified the definition as proposed to change "must" to "may." Consistent with 28 TAC §19.1711, relating to written procedures for appeal of adverse determination, the utilization review must afford the provider of record a reasonable opportunity to discuss the plan of treatment for the enrollee with the physician, and TDI assumes that the opportunity is provided in each case. The intention of the rule is to collect data on how frequently the peer-to-peer review actually occurs.

Comment. A commenter objects to the definition of "plan documents" in §21.2406. The commenter contends that including provider contracts and manuals within this definition is incorrect. The commenter states that those documents are not plan documents that affect the benefits provided to enrollees.

Agency Response. TDI disagrees and declines to make a change. Provider contracts and manuals reflect what providers must do to provide covered services. These documents may include NQTLs and affect the quality and scope of networks, and therefore are relevant to assessing parity. The DOL's MHPAEA Self-Compliance Tool specifically states, "NOTE: NQTLs may also be included in other documents, such as internal guidelines or provider contracts."

TDI understands that plans may have confidentiality and market competition concerns, and TDI notes that information held by TDI is subject to the statutory confidentiality protections afforded by Government Code Chapter 552, including §552.110, concerning Confidentiality of Trade Secrets and Certain Commercial or Financial Information.

Comment. A commenter recommends a change to the definition of "reported claims" in §21.2406. The commenter asks that claims be reported based on claim processing date. The commenter represents that until a claim has been processed, health plan systems do not include the data needed for reporting.

Agency Response. The purpose of the data collection is to receive data for a consistent reporting period using a consistent methodology. Using the claim processing date rather than the claim reported date could skew the data because of different issuers' claim payment practices. Texas requires prompt payment of claims, and issuers report prompt pay data based on the date that claims are received.

However, TDI has revised the definition as proposed to clarify that reported claims are those received by the issuer in a year, and to allow issuers to omit data for any claim that is still pending at the time data is submitted. TDI understands concerns regarding sufficient time for claims processing and has adjusted the data collection due date to July 1 for claims received by December 31 of the previous calendar year.

Comments on §21.2412

Comment. A commenter asks for confirmation that the proposed rule does not apply to Medicaid plans.

Agency Response. TDI affirms that the proposed rule does not apply to Medicaid plans.

Comment. A commenter questions whether §21.2412 should be adopted as proposed. The commenter states that Insurance Code Chapter 1355 does not have an increased cost exemption, and that proposed §21.2412 is not grounded in statute and is contrary to the public policy in HB 10. The commenter states that there is concern about unforeseen consequences of the provision. The commenter recommends rule adoption without the exemption, and to allow insurers to provide information to TDI on any cost increase that the commenter believes may justify future legislative consideration of an exemption.

Agency Response. TDI agrees and withdraws §21.2410 and §21.2412.

Comments on Division 2

Comment on §21.2421

Comment. A commenter states concerns related to the definition of "emergency care" in §21.2421. The commenter objects to including services provided in an ambulance in the definition. The commenter notes that most plans subject to the proposed rules are likely HMOs regulated by Insurance Code Chapter 843, or PPOs regulated by Chapter 1301. Because ambulance services are not included in the meaning of "emergency care" under Chapters 843 and 1301, TDI would be exceeding its statutory authority in applying the proposed definition to those plans.

Agency Response. TDI declines to make changes to the proposed rule in response to the comment. TDI agrees that ambulance transportation and services are generally excluded from the definitions of emergency care in Insurance Code Chapters 843 and 1301. However, not all plans subject to the rule are governed under Insurance Code Chapters 843 or 1301. Inclusion of ambulance services within the definition is for data collection purposes. The intent of the inclusion of emergency ambulance services is to identify whether disparities exist that would demonstrate a lack of parity. A more in-depth parity analysis may be warranted, for example, if a health plan denies claims or utilization requests for emergency care more frequently for mental health emergencies as compared with medical emergencies.

Comment on §21.2422

Comment. A commenter objects to having to report on June 1, 2021. The commenter states that health plans will need more time for necessary computer programming and related tasks in order to prepare these reports for submission to TDI. The commenter requests that TDI delay the due date for this report for 2021 and suggests that health plans be given six months from the effective date of the rule.

Agency Response. TDI agrees and has made changes to the proposed text. Data for calendar year 2020 will be due December 1, 2021. In future years, data for the previous calendar year will be due July 1.

Comment on §21.2425

Comment. A commenter requests that plans be allowed to report the total number of office visits and all other subclassifications together. The commenter states that it is administratively

challenging to separate out these subclassifications for MH/SUD services.

Agency Response. TDI declines to make changes to the proposed rule in response to the comment. Billing codes (such as Current Procedural Terminology codes) will allow issuers to distinguish between office visits and other types of outpatient services. Collecting data separately for office visits and all other outpatient services is necessary to ensure consistent data and accommodate issuers' ability to choose to subclassify under §21.2408(c)(3)(C) for the purposes of parity compliance.

Comments on §21.2426

Comment. A commenter states that the proposed section's title is confusing because it refers only to "utilization review," while requiring the reporting of aggregate claim and utilization review data. The commenter requests clarification on whether the intent is to capture claims data for services provided or for prior authorization requests and outcomes only.

Agency Response. TDI agrees and makes changes to the rule text as proposed to clarify that the data collection requires both claims and utilization review data. In addition, the rule section heading as adopted is renamed to be "Claims and Utilization Review: Aggregate Data Fields." TDI also makes conforming changes to the name of the worksheet and the title for §21.2425, "Claims and Utilization Review: Reporting Classifications." These changes more accurately reflect the scope of the data; the first five rows of the worksheet under §21.2426(1) require claims data, while the subsequent rows under §21.2426(2) - (4) require utilization review data.

Comment. A commenter asserts that the rule requires reporting of "administrative UR denials," while TDI has made clear that such denials are not permitted. The commenter states that if a utilization review request was insufficient, then an adverse determination has occurred, triggering appeal requirements. The commenter notes that plans do not track administrative denials of a utilization review separately from adverse determinations because they are not treated differently.

Agency Response. TDI agrees that an administrative denial is not permitted for a utilization review request and believes the commenter misunderstood the data being requested on administrative denials. Under §21.2426(1)(D), issuers must report "the number of reported claims for services or benefits that have been provided . . . that were administratively denied." TDI has modified the section headings as proposed to clarify that claims data, in addition to utilization review data, is being requested.

Comment. A commenter objects to being required to categorize emergency care into either medical/surgical or MH/SUD categories. The commenter represents that the emergency category should be combined for medical/surgical and MH/SUD claims, since it is difficult to determine whether emergency care was for medical or behavioral conditions. The commenter suggests either deletion of this category or that TDI provide additional guidance on this required categorization.

Agency Response. TDI declines to make changes to the proposed rules in response to the comment. In accordance with §21.2425, plans will use ICD diagnosis codes to distinguish between medical/surgical and MH/SUD categories. Since standardized claim forms include a field for ICD diagnosis codes to be identified, this information should be readily available in issuers' claim data.

Comment. A commenter objects to the requirement to segregate data by age bands. The commenter states that this requirement is not authorized by the MHPAEA or state law and creates an additional and unnecessary administrative burden for health plans.

Agency Response. TDI declines to make changes to the proposed rule in response to the comment. TDI collected this information in the previous data collection for HB 10, and health plans were able to provide the requisite breakdowns. Previous analyses have demonstrated that this information can highlight significant disparities and aid in parity compliance and enforcement. TDI disagrees that state law does not authorize this requirement. Age band inclusion will help TDI pinpoint specific areas where disparities exist and more efficiently direct resources for parity investigations. It has already proven to be useful to TDI in evaluating plan compliance with the MH/SUD coverage requirements in Insurance Code Chapter 1355, as required by §1355.255.

Comment. A commenter objects to the collection of data on the number of adverse determinations that were internally appealed that "then received a peer-to-peer or physician-to-physician review." The commenter notes that an appeal does not require an opportunity for a peer-to-peer discussion; rather, an opportunity must be provided prior to adverse determination. The commenter also requests additional guidance to clarify the meaning of a peer-to-peer review.

Agency Response. TDI declines to make changes to the proposed data collection in response to the comment, but has modified the proposed definition of "peer-to-peer review or physician-to-physician review" to clarify the meaning. TDI disagrees that an opportunity for a peer-to-peer review is not required in the context of an internal appeal. In the example of a prior authorization, an opportunity for a peer-to-peer review must be provided before the plan may issue an adverse determination denying the prior authorization. If that initial adverse determination is appealed, the plan can either reverse the initial determination and approve the care or uphold the original decision and issue an adverse determination. Before issuing an adverse determination, the plan must again provide an opportunity for a peer-to-peer review, consistent with Insurance Code §4201.456 and 28 TAC §19.1710. The data requested is for the number of peer-to-peer reviews that actually occur, recognizing that issuers are required to offer them in every case before issuing an adverse determination.

Comment. A commenter objects to reporting of administrative claim denials as part of the data reporting. The commenter states that an administrative claim denial has nothing to do with prior authorization, utilization review, or medical necessity in general. The commenter strongly recommends that the rule not include this reporting category.

Agency Response. TDI declines to make changes to the proposed rules in response to this comment. TDI agrees that an administrative denial is not relevant or permitted in the context of a request for utilization review. Rather, this data is requested only in the context of claims. The data collected on administrative claim denials is relevant for understanding potential parity issues.

Comment on §21.2427

Comment. A commenter requests that TDI pre-populate the reporting forms with the appropriate Medicare reimbursement rate. The commenter states this would save administrative resources and expenses for health plans.

Agency Response. In response to comment, TDI has pre-populated the reporting forms with the appropriate Medicare reimbursement rate for calendar year 2020. Issuers are not responsible under §21.2427 for reporting the appropriate Medicare reimbursement rate. The percentages of Medicare are calculated by the form.

Comments on Division 3

Comment. Two commenters suggest that TDI use the existing NAIC Market Conduct Annual Statement compliance tool. A commenter states that since this tool has already been thoroughly vetted and operationalized, it should be used in lieu of the proposed compliance analysis. The commenter believes this would serve as an effective vehicle for data collection and both commenters state the NAIC tool allows for a more useful baseline of standardized data elements for TDI.

Agency Response. TDI declines to make changes to the proposed rules in response to the comment. TDI has considered the NAIC Market Regulation Handbook, but the tools adopted in Division 3 are more thorough and will better ensure compliance with parity requirements.

Comment. One commenter strongly supports the required NQTL compliance analyses and highlights the importance of determining compliance prospectively. The commenter also requests that TDI better ensure transparency by requiring compliance analyses to be submitted to TDI and made available to the public.

Agency Response. TDI declines to make a change to the proposed rule. Under §21.2431, issuers must provide their compliance analyses upon request. Information held by TDI will be managed consistent with existing statutes, including Government Code Chapter 552.

Comment on §21.2431

Comment. A commenter is concerned that issuers' use of alternative tools for quantitative and nonquantitative analyses will result in the receipt of inconsistent, incomplete, and potentially nonresponsive information. The administrative burden for TDI will also be greatly increased by having to examine analyses, provided through alternative tools, to determine whether those analyses yield information that is specific enough and consistent with the templates, and potentially requiring issuers to re-submit such analyses according to the templates provided. The commenter recommends that issuers be required to use the templates and associated technical instructions published on TDI's website for all quantitative and nonquantitative analyses, as is required for data collection and reporting, and that the option to use alternative tools be removed.

Agency Response. TDI declines to make a change to the proposed rule. When TDI requests an issuer's compliance analyses, staff will evaluate the issuer's tool and confirm that it uses the correct methodology, provides the same level of specificity, and includes all required information, consistent with TDI's QTL and NQTL templates.

Comment on §21.2434

Comment. A commenter objects to having to report separately by market and plan type and strongly recommends that the rules require reporting by legal entity. The commenter represents that this level of collection is prevalent in other states. The commenter states that the level of detailed reporting is overly granular, causing plans with low membership to yield statistically insignificant data.

Agency Response. TDI declines to make changes to the proposed rule in response to comment. However, TDI agrees that it is more efficient for an issuer to combine reporting where applicable information is the same. Under §21.2433(c), issuers may combine the QTL analysis for any plans that have the same plan design and identify the applicable plans consistent with §21.2434(c). Under §21.2438, issuers may complete a single analysis for multiple plans that contain an identical set of NQTLs and identify the applicable plans consistent with §21.2440(c).

Comment on §21.2435

Comment. A commenter requests clarification on whether there is a required review period for claims or other past data under Division 3. If a particular review period is required, the commenter recommends that it be the prior calendar year.

Agency Response. TDI declines to make changes to the proposed rule in response to comment. TDI notes that the proposed definition of "reasonable method" under §21.2406 provides guidance relevant for determining expected payments, and §21.2435(b)(2) allows for flexibility in reporting by the issuer. TDI agrees that the previous calendar year is appropriate if there is sufficient data at the time the issuer is completing the analysis.

Comment on §21.2436

Comment. A commenter recommends that the rule allow health plans to create their own covered benefits list, rather than being held to the specific proposed list.

Agency Response. TDI agrees with the comment but does not make a change to the proposed text or worksheet. The template for covered benefits is blank. Consistent with §21.2436(b), issuers are able to create their own list.

Comment on §21.2439

Comment. A commenter requests clarification that the list of illustrative examples of NQTLs does not require reporting for each of the examples listed.

Agency Response. TDI declines to make changes to the proposed rule in response to comment. The illustrative examples are a non-exhaustive list of NQTLs that are commonly applied. Section 21.2441 makes clear that plans are required to provide the analysis for each NQTL contained in the plan documents.

Comment on §21.2441

Comment. A commenter recommends that the proposed rules be amended to require issuers to identify "all" factors considered or "each" factor considered in the design of the NQTL. The commenter states that issuers often only identify a single factor or example of factors considered.

Agency Response. TDI agrees and has made a change to the proposed text of §21.2441 in response to comment. As adopted, §21.2441(c) states, "Step 2. Within the NQTL Template, in each classification or subclassification worksheet, an issuer must identify each factor considered in the design and application of the NQTL. Illustrative examples of factors are provided in the NQTL template." This change will provide additional clarification.

Comments on Division 4

Comment. An individual expresses concern that including autism spectrum disorder regulations in a rule that also addresses substance use disorder may give the impression that ASD is an acquired condition.

Agency Response. HB 10 requires issuers to provide benefits and coverage for mental health conditions and substance use disorders under the same terms and conditions applicable to the plan's medical and surgical benefits and coverage. The protections apply to all types of mental health conditions, including ASD. TDI agrees that ASD is not an acquired condition, and that insurance coverage is important for helping people with ASD receive the services they need to achieve their full potential.

Comment on §21.2453

Comment. A commenter objects to the proposed text of §21.2453 to the extent that it does not fully capture existing law in Insurance Code §1355.015(b). The commenter states that the proposed language in §21.2453 appears to address only the requirements of §1355.015(b)(1) and (2), and that this could unintentionally be interpreted to remove the important role of the primary care physician. The commenter provides alternate language for TDI to consider.

Agency Response. TDI declines to adopt the specific language suggested. However, TDI has withdrawn proposed §21.2453. The proposed rule revision was intended to clarify that an applied behavior analyst could provide services, but this was superseded by Occupations Code Chapter 506, concerning Behavior Analysts, which was enacted in 2017. Not adopting the proposed amendments to this section ensures that the rule does not depart from statute.

SUBCHAPTER P. MENTAL HEALTH PARITY

28 TAC §§21.2401 - 21.2407

STATUTORY AUTHORITY. The Commissioner adopts the repeal of 28 TAC Subchapter P, §§21.2401 - 21.2407, under Insurance Code §§1355.257, 1355.258, and 36.001.

Insurance Code §1355.257 provides that Chapter 1355, Subchapter F, supplements Subchapters A and B of that chapter, and Chapter 1368, and the rules adopted under those statutes. Insurance Code §1355.257 also provides that the legislature intends that Subchapter A or B of Insurance Code Chapter 1355, Chapter 1368, or a department rule adopted under those statutes, controls over Subchapter F in any circumstance in which those statutes or rules require a benefit that is not required by Subchapter F, or require a more extensive benefit than is required by Subchapter F.

Insurance Code §1355.258 states that the Commissioner is to adopt rules necessary to implement Chapter 1355, Subchapter F.

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

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

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SUBCHAPTER P. MENTAL HEALTH AND SUBSTANCE USE DISORDER PARITY DIVISION 1. GENERAL PROVISIONS AND PARITY REQUIREMENTS

28 TAC §§21.2401 - 21.2409, 21.2411, 21.2413, 21.2414

STATUTORY AUTHORITY. The Commissioner adopts §§21.2401 - 21.2414 under Insurance Code §§1355.255, 1355.257, 1355.258, and 36.001.

Insurance Code §1355.255 directs the Commissioner to enforce compliance with §1355.254 by evaluating the benefits and coverage offered by a plan for quantitative and nonquantitative treatment limitations.

Insurance Code §1355.257 provides that Chapter 1355, Subchapter F, supplements Subchapters A and B of that chapter, and Chapter 1368, and the rules adopted under those statutes. Insurance Code §1355.257 also provides that the legislature intends that Insurance Code Chapter 1355's Subchapter A or B, Chapter 1368, or a department rule adopted under those statutes, control over Subchapter F in any circumstance in which those statutes or rules require a benefit that is not required by Subchapter F, or require a more extensive benefit than is required by Subchapter F.

Insurance Code §1355.258, addressing coverage for mental health conditions and substance use disorders, states that the Commissioner shall adopt rules necessary to implement Chapter 1355, Subchapter F.

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.

§21.2401. Purpose and Scope.

This subchapter provides rules to interpret, implement, and enforce Insurance Code Chapter 1355, Subchapter F, concerning Coverage for Mental Health Conditions and Substance Use Disorders. Except as identified in §21.2404 of this title (relating to Differences from Federal Rules), these rules are intended to be consistent with the Insurance Code and to closely track the federal rules found at 45 CFR §146.136 (concerning Parity in Mental Health and Substance Use Disorder Benefits), 45 CFR §146.121(b)(2)(iii) (concerning Prohibiting Discrimination Against Participants and Beneficiaries Based on a Health Factor), and 45 CFR §147.160 (concerning Parity in Mental Health and Substance Use Disorder Benefits) as published in the *Federal Register*, Vol. 78, No. 219 on November 13, 2013.

§21.2402. Applicability.

(a) Plans subject to this subchapter. This subchapter applies to all health benefit plans subject to Insurance Code Chapter 1355, Subchapter F, concerning Coverage for Mental Health Conditions and Substance Use Disorders. Health benefit plans subject to Insurance Code Chapter 1355, Subchapter F, are plans that provide benefits or coverage

for treatment expenses incurred as a result of a mental health condition or offer mental health or substance use disorder benefits, whether as mandatory coverage under Insurance Code Chapter 1355, concerning Benefits for Certain Mental Disorders, or under another Insurance Code chapter, or as optional coverage (for instance, in an individual short-term limited duration plan).

(b) Excepted plans. This subchapter does not apply to a plan that is excepted from:

(1) Insurance Code Chapter 1355, Subchapter F, as identified in Insurance Code §1355.253, concerning Exceptions; or

(2) Insurance Code Chapter 1425, concerning Application of Subtitle to Certain Coverage, as identified in Insurance Code §1425.001, concerning Exemption from Application of Subtitle.

§21.2404. Differences from Federal Rules.

(a) Global substitution of terms. This subchapter substitutes the following terms for terms used in 45 CFR §146.136 (concerning Parity in Mental Health and Substance Use Disorder Benefits) with no change in meaning:

(1) the term "enrollees" is substituted for the term "participants and beneficiaries";

(2) the term "health benefit plan" is substituted for the terms "group health plan" (or health insurance coverage offered in connection with such plans) and "plan or coverage"; and

(3) the terms "requirement" or "requirements" are substituted for the terms "rule" or "rules."

(b) Omission of federal provisions. The following federal provisions are not duplicated in this division either because they were superseded by a later federal rule or there is no analogous Texas law, or because they are otherwise captured in this subchapter:

(1) 45 CFR §146.136(b)(1)(ii), which addresses exemptions;

(2) 45 CFR §146.136(c)(5), which addresses exemptions;

(3) 45 CFR §146.136(f), which addresses small employer exemption; and

(4) 45 CFR §146.136(g), which addresses increased cost exemption.

(c) Substitutions for federal provisions. Where a state requirement exists, a corresponding but incongruent federal provision has been omitted. Specifically, §21.2411 of this title (relating to Availability of Plan Information) replaces the federal provision at 45 CFR §146.136(d)(2), which addresses reason for any denial. In addition, a portion of 45 CFR §146.136(d)(3), which addresses provisions of other law, has been omitted.

§21.2406. Definitions.

Definitions. For purposes of this subchapter, the following terms have the meanings indicated, except where the context clearly indicates otherwise:

(1) Administrative denial--A denial of a claim that is not an adverse determination, including, but not limited to, denials of claims for noncovered benefits, duplicate claims, incorrect billing, and because an individual is not an enrollee.

(2) Adverse determination--A determination by a health benefit plan or utilization review agent that health care services or benefits provided or proposed to be provided to an enrollee are not medically necessary, appropriate, or are experimental or investigational. Consistent with Insurance Code Chapter 1369, concerning

Benefits Related to Prescription Drugs and Devices and Related Services, the following are adverse determinations:

(A) a denial of a fail-first (or step therapy) protocol exception request; and

(B) an issuer's refusal to treat the drug as a covered benefit, if an enrollee's physician has determined that a drug is medically necessary and the drug is not included in the enrollee's plan formulary.

(3) Aggregate lifetime dollar limit--A dollar limitation on the total amount of specified benefits that may be paid under a health benefit plan for any coverage unit.

(4) Allowed amount--The dollar amount covered under the plan for a particular service or benefit, including the amount of cost sharing owed by the enrollee and the amount to be paid by the plan. This term refers both to the contracted amount for in-network services or benefits and the amount designated by the plan for out-of-network services or benefits.

(5) Annual dollar limit--A dollar limitation on the total amount of specified benefits that may be paid in a 12-month period under a health benefit plan for any coverage unit.

(6) Applied behavior analysis--The design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior that is consistent with the practice of applied behavior analysis as addressed in Occupations Code §506.003.

(7) Approved claim--A claim for a service or benefit that is determined, at initial review or upon receipt of additional information, to be covered and payable at the plan's allowed amount.

(8) Concurrent review--A form of utilization review for ongoing health care or for an extension of treatment beyond previously approved health care.

(9) Coverage unit--Coverage unit as described in §21.2408(a)(4) of this title (relating to Parity Requirements with Respect to Financial Requirements and Treatment Limitations).

(10) Cumulative financial requirements--Financial requirements that determine whether or to what extent benefits are provided based on accumulated amounts and include deductibles and out-of-pocket maximums. Cumulative financial requirements do not include aggregate lifetime or annual dollar limits.

(11) Cumulative quantitative treatment limitations--Treatment limitations that determine whether or to what extent benefits are provided based on accumulated amounts, such as annual or lifetime day or visit limits. The term includes a deductible, a copayment, coinsurance, or another out-of-pocket expense or annual or lifetime limit, or another financial requirement.

(12) Denial--An administrative denial or an adverse determination.

(13) Fail-first or step therapy--A treatment protocol that requires an enrollee to use a prescription drug or sequence of prescription drugs other than the drug that the enrollee's physician recommends for the enrollee's treatment before the health benefit plan provides coverage for the recommended drug.

(14) Financial requirements--Plan deductibles, copayments, coinsurance, or out-of-pocket maximums. Financial requirements do not include aggregate lifetime or annual dollar limits.

(15) Health benefit plan or plan--A plan that is subject to Insurance Code Chapter 1355, Subchapter F, concerning Coverage for Mental Health Conditions and Substance Use Disorders.

(16) Independent review--A system for final administrative review by an independent review organization (IRO) of an adverse determination regarding the medical necessity, the appropriateness, or the experimental or investigational nature of health care services or benefits.

(17) Individual market--Health benefit plans subject to Insurance Code Chapter 1355, Subchapter F, that are bought on an individual or family basis in which the contract holder is also personally enrolled under the plan, other than in connection with a group health plan.

(18) Internal appeal--A formal process by which an enrollee, an individual acting on behalf of an enrollee, or an enrollee's provider of record may request reconsideration of an adverse determination.

(19) Large group market--Health benefit plans subject to Insurance Code Chapter 1355, Subchapter F, that are sold to groups that have 51 or more members, whether through an employer or through an association.

(20) Market type--Individual, small group, or large group market.

(21) Medical or surgical (medical/surgical) benefit--A benefit with respect to an item or service for medical conditions or surgical procedures, as defined under the terms of the health benefit plan and in accordance with applicable federal and state law, but does not include mental health or substance use disorder benefits. Any condition defined by a plan as being or as not being a medical/surgical condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most recent edition of the ICD or state guidelines).

(22) Mental health benefit--A benefit with respect to an item or service for a mental health condition, as defined under the terms of a health benefit plan and in accordance with applicable federal and state law. Any condition defined by a health benefit plan as being or as not being a mental health condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, the most recent edition of the ICD, or state guidelines).

(23) NQTL--Nonquantitative treatment limitation.

(24) Peer-to-peer review or physician-to-physician review--A utilization review process that may occur before an adverse determination is issued by a utilization review agent, consistent with Insurance Code §4201.206, concerning Opportunity to Discuss Treatment Before Adverse Determination.

(25) Plan design--A plan's discrete package of benefits, cost-sharing structure, provider network, plan type, quantitative treatment limitations, and nonquantitative treatment limitations.

(26) Plan documents--All instruments under which a plan is established or operated, including, but not limited to, policies, certificates of coverage, contracts of insurance, evidences of coverage, provider contracts, provider manuals, internal guidelines and procedures, medical guidelines, and other documents used in making claims determinations and conducting utilization reviews. Instruments under which the plan is established or operated includes the processes, strategies, evidentiary standards, and other factors used to apply a nonquantitative treatment limitation (NQTL) with respect to medical/surgical benefits and mental health/substance use disorder (MH/SUD) benefits under the plan.

(27) Plan type--A preferred provider organization (PPO) plan, exclusive provider organization (EPO) plan, health maintenance organization (HMO) plan, health maintenance organization-point of service (HMO-POS) plan, and indemnity policy.

(28) Preauthorization or prior authorization--A utilization review process in which an issuer conditions coverage of a health care service, benefit, or prescription drug on the issuer's approval of the provider's request to provide an enrollee the service, benefit, or drug. For purposes of this rule:

(A) preauthorization includes reauthorization of services or benefits that had received preauthorization, but for which the approval period has lapsed;

(B) preauthorization does not include utilization review needed to reauthorize ongoing services or benefits (concurrent review); and

(C) a request for preauthorization is one received during the reporting period, regardless of the date the claim is incurred.

(29) Prescription drugs--Drugs covered under a plan's prescription drug benefit.

(30) QTL--Quantitative treatment limitation.

(31) Reasonable method--To determine the dollar amount or the per member per month amount of plan payments for the substantially all or predominant analyses required by §21.2408 of this title, reasonable methods are:

(A) a projection based on claims data for the plan or the plan design, if there is sufficient claims data for a reasonable projection of future claims costs; or

(B) a projection based on appropriate and sufficient data (such as data from other similarly structured plans with similar demographics) to perform the analysis in compliance with applicable Actuarial Standards of Practice set by the Actuarial Standards Board if:

(i) there is not enough claims data;

(ii) the plan significantly changed its benefit package;

(iii) the plan experienced a significant workforce change that would impact claims costs; or

(iv) the group health plan (or the plan design) is new.

(32) Reported claims--Claims that are received by an issuer in a year, regardless of the incurred date, the final decision date, or a claim's pending status. For example, claims reported in 2020 could include claims incurred in 2019, claims with final decisions made in the first few months of 2020, or claims awaiting a determination.

(33) Retrospective review--The process of reviewing the medical necessity and reasonableness of health care that has been provided to an enrollee.

(34) Small group market--Health benefit plans subject to Insurance Code Chapter 1355, Subchapter F, that are sold to groups that have at least two but no more than 50 members.

(35) Substance use disorder benefit--A benefit with respect to an item, treatment, or service for a substance use disorder, as defined under the terms of a health benefit plan and in accordance with applicable federal and state law. Any disorder defined by the plan as being or as not being a substance use disorder must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the DSM, the most recent edition of the ICD, or state guidelines).

(36) Treatment limitations--This term includes limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations (QTLs), which are expressed numerically (such as 50 outpatient visits per year), and NQTLs, which otherwise limit the scope or duration of benefits for treatment under a plan. (An illustrative list of NQTLs is provided in §21.2409(b) of this title (relating to Nonquantitative Treatment Limitations).) A permanent exclusion of all benefits for a particular condition or disorder, however, is not a treatment limitation for purposes of this definition.

(37) Utilization review--A system for prospective, concurrent, or retrospective review of the medical necessity or appropriateness of health care services or benefits and a system for prospective, concurrent, or retrospective review to determine the experimental or investigational nature of health care services or benefits. The term does not include a review in response to an elective request for clarification of coverage.

§21.2407. Parity Requirements with Respect to Aggregate Lifetime and Annual Dollar Limits.

This section details application of the parity requirements under this subchapter with respect to aggregate lifetime and annual dollar limits that may be permitted by state or federal law.

(1) General parity requirement. A health benefit plan that provides both medical/surgical benefits and MH/SUD benefits must comply with paragraph (2), (3), or (5) of this section, as applicable.

(2) Plan with no limit or limits on less than one-third of all medical/surgical benefits. If a health benefit plan does not include an aggregate lifetime or annual dollar limit on any medical/surgical benefits or includes an aggregate lifetime or dollar limit that applies to less than one-third of all medical/surgical benefits, it may not impose an aggregate lifetime or annual dollar limit, respectively, on mental health or substance use disorder benefits.

(3) Plan with a limit on at least two-thirds of all medical/surgical benefits. If a health benefit plan includes an aggregate lifetime or annual dollar limit on at least two-thirds of all medical/surgical benefits, it must either:

(A) apply the aggregate lifetime or annual dollar limit both to the medical/surgical benefits to which the limit would otherwise apply and to MH/SUD benefits in a manner that does not distinguish between the medical/surgical benefits and MH/SUD benefits; or

(B) not include an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is less than the aggregate lifetime or annual dollar limit, respectively, on medical/surgical benefits. (Some cumulative financial requirements and cumulative quantitative treatment limitations other than aggregate lifetime or annual dollar limits are prohibited in §21.2408 of this title (relating to Parity Requirements with Respect to Financial Requirements and Treatment Limitations).)

(4) Determining one-third and two-thirds of all medical/surgical benefits. For purposes of this section, the determination of whether the portion of medical/surgical benefits subject to an aggregate lifetime or annual dollar limit represents one-third or two-thirds of all medical/surgical benefits is based on the dollar amount of all plan payments for medical/surgical benefits expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the aggregate lifetime or annual dollar limits). Any reasonable method may be used to determine whether the dollar amount expected to be paid under the

plan will constitute one-third or two-thirds of the dollar amount of all plan payments for medical/surgical benefits.

(5) Plan not described in paragraph (2) or (3) of this section.

(A) In general. A health benefit plan that is not described in paragraph (2) or (3) of this section with respect to aggregate lifetime or annual dollar limits on medical/surgical benefits, must either:

(i) impose no aggregate lifetime or annual dollar limit, as appropriate, on mental health or substance use disorder benefits; or

(ii) impose an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is no less than an average limit calculated for medical/surgical benefits in the following manner. The average limit is calculated by taking into account the weighted average of the aggregate lifetime or annual dollar limits, as appropriate, that are applicable to the categories of medical/surgical benefits. Limits based on delivery systems, such as inpatient/outpatient treatment or normal treatment of common, low-cost conditions (such as treatment of normal births), do not constitute categories for purposes of this clause. In addition, for purposes of determining weighted averages, any benefits that are not within a category that is subject to a separately designated dollar limit under the plan are taken into account as a single separate category by using an estimate of the upper limit on the dollar amount that a plan may reasonably be expected to incur with respect to such benefits, taking into account any other applicable restrictions under the plan.

(B) Weighting. For purposes of this paragraph, the weighting applicable to any category of medical/surgical benefits is determined in the manner set forth in paragraph (4) of this section for determining one-third or two-thirds of all medical/surgical benefits.

§21.2408. Parity Requirements with Respect to Financial Requirements and Treatment Limitations.

(a) Clarification of terms.

(1) Classification of benefits. When reference is made in this subchapter to a classification of benefits, the term "classification" means a classification as described in subsection (b)(2) of this section.

(2) Type of financial requirement or treatment limitation. When reference is made in this subchapter to a type of financial requirement or treatment limitation, the reference to type means its nature. Different types of financial requirements include deductibles, copayments, coinsurance, and out-of-pocket maximums. Different types of quantitative treatment limitations include annual, episode, and lifetime day and visit limits. An illustrative list of nonquantitative treatment limitations is provided in §21.2409(b) of this title (relating to Nonquantitative Treatment Limitations).

(3) Level of a type of financial requirement or treatment limitation. When reference is made in this subchapter to a level of a type of financial requirement or treatment limitation, "level" refers to the magnitude of the type of financial requirement or treatment limitation. For example, different levels of coinsurance include 20% and 30%, different levels of a copayment include \$15 and \$20, different levels of a deductible include \$250 and \$500, and different levels of an episode limit include 21 inpatient days per episode and 30 inpatient days per episode.

(4) Coverage unit. When reference is made in this subchapter to a coverage unit, "coverage unit" refers to the way in which a health benefit plan groups individuals for purposes of determining benefits, or premiums or contributions. For example, different coverage units include self-only, family, and employee-plus-spouse.

(b) General parity requirement.

(1) General requirement. A health benefit plan that provides both medical/surgical benefits and mental health or substance use disorder benefits may not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification. Whether a financial requirement or treatment limitation is a predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in a classification is determined separately for each type of financial requirement or treatment limitation. The application of the requirements of this subsection to financial requirements and quantitative treatment limitations is addressed in subsection (c) of this section; the application of the requirements of this subsection to nonquantitative treatment limitations is addressed in §21.2409 of this title.

(2) Classifications of benefits used for applying requirements.

(A) In general. If a health benefit plan provides mental health or substance use disorder benefits in any classification of benefits described in this subparagraph, mental health or substance use disorder benefits must be provided in every classification in which medical/surgical benefits are provided. In determining the classification in which a particular benefit belongs, a health benefit plan must apply the same standards to medical/surgical benefits and to mental health or substance use disorder benefits. To the extent that a health benefit plan provides benefits in a classification and imposes any separate financial requirement or treatment limitation (or separate level of a financial requirement or treatment limitation) for benefits in the classification, the requirements of this subsection apply separately with respect to that classification for all financial requirements or treatment limitations (illustrated in examples in paragraph (2)(C) of this subsection). The following classifications of benefits are the only classifications used in applying the requirements of this subsection:

(i) An "inpatient, in-network" classification is for benefits furnished on an inpatient basis and within a network of providers established or recognized under a health benefit plan. Special requirements for plans with multiple network tiers are addressed in subsection (c)(3) of this section.

(ii) An "inpatient, out-of-network" classification is for benefits furnished on an inpatient basis and outside any network of providers established or recognized under a health benefit plan. This classification includes inpatient benefits under a health benefit plan that has no network of providers.

(iii) An "outpatient, in-network" classification is for benefits furnished on an outpatient basis and within a network of providers established or recognized under a health benefit plan. Special requirements for office visits and plans with multiple network tiers are addressed in subsection (c)(3) of this section.

(iv) An "outpatient, out-of-network" classification is for benefits furnished on an outpatient basis and outside any network of providers established or recognized under a health benefit plan. This classification includes outpatient benefits under a health benefit plan that has no network of providers. Special requirements for office visits are addressed in subsection (c)(3) of this section.

(v) An "emergency care" classification is for benefits for emergency care.

(vi) A "prescription drug" classification is for benefits for prescription drugs. See special requirements for multi-tiered prescription drug benefits in subsection (c)(3) of this section.

(B) Application to out-of-network providers. Application to out-of-network providers is addressed in subparagraph (A) of this paragraph, under which a health benefit plan that provides mental health or substance use disorder benefits in any classification of benefits must provide mental health or substance use disorder benefits in every classification in which medical/surgical benefits are provided, including out-of-network classifications.

(C) Examples. The requirements of this paragraph are illustrated by examples provided in the figure §21.2408(b)(2)(C). In each example, the health benefit plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Figure: 28 TAC §21.2408(b)(2)(C)

(c) Financial requirements and quantitative treatment limitations.

(1) Determining "substantially all" and "predominant."

(A) Substantially all. For purposes of this section, a type of financial requirement or quantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification. (For this purpose, benefits expressed as subject to a zero level of a type of financial requirement are treated as benefits not subject to that type of financial requirement, and benefits expressed as subject to a quantitative treatment limitation that is unlimited are treated as benefits not subject to that type of quantitative treatment limitation.) If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, then that type cannot be applied to mental health or substance use disorder benefits in that classification.

(B) Predominant.

(i) If a type of financial requirement or quantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in a classification as determined under subparagraph (A) of this paragraph, the level of the financial requirement or quantitative treatment limitation that is considered the predominant level of that type in a classification of benefits is the level that applies to more than one-half of medical/surgical benefits in that classification subject to the financial requirement or quantitative treatment limitation.

(ii) If, with respect to a type of financial requirement or quantitative treatment limitation that applies to at least two-thirds of all medical/surgical benefits in a classification, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to the financial requirement or quantitative treatment limitation, the plan may combine levels until the combination of levels applies to more than one-half of medical/surgical benefits subject to the financial requirement or quantitative treatment limitation in the classification. The least restrictive level within the combination is considered the predominant level of that type in the classification. (For this purpose, a plan may combine the most restrictive levels first, with each less restrictive level added to the combination until the combination applies to more than one-half of the benefits subject to the financial requirement or treatment limitation.)

(C) Portion based on plan payments. For purposes of this section, the determination of the portion of medical/surgical benefits in a classification of benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation) is based on the dollar

amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan for the plan year (for the portion of the plan year after a change in plan benefits that affects the applicability of the financial requirement or quantitative treatment limitation).

(D) Clarifications for certain threshold requirements. For any deductible, the dollar amount of plan payments includes all plan payments with respect to claims that would be subject to the deductible if it had not been satisfied. For any out-of-pocket maximum, the dollar amount of plan payments includes all plan payments associated with out-of-pocket payments that are taken into account toward the out-of-pocket maximum, as well as all plan payments associated with out-of-pocket payments that would have been made toward the out-of-pocket maximum if it had not been satisfied.

(E) Determining the dollar amount of plan payments. Subject to subparagraph (D) of this paragraph, any reasonable method may be used to determine the dollar amount expected to be paid under a plan for medical/surgical benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation).

(2) Application to different coverage units. If a health benefit plan applies different levels of a financial requirement or quantitative treatment limitation to different coverage units in a classification of medical/surgical benefits, the predominant level that applies to substantially all medical/surgical benefits in the classification is determined separately for each coverage unit.

(3) Special requirements.

(A) Multi-tiered prescription drug benefits. If a health benefit plan applies different levels of financial requirements to different tiers of prescription drug benefits based on reasonable factors determined in accordance with the requirements in §21.2409(a) of this title and without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits, the health benefit plan satisfies the parity requirements of this section with respect to prescription drug benefits. Reasonable factors include cost, efficacy, generic versus brand name, and mail order versus pharmacy pick-up.

(B) Multiple network tiers. If a health benefit plan provides benefits through multiple tiers of in-network providers (such as an in-network tier of preferred providers with more generous cost-sharing to participants than a separate in-network tier of participating providers), the plan may divide its benefits furnished on an in-network basis into subclassifications that reflect network tiers, if the tiering is based on reasonable factors determined in accordance with the requirements in §21.2409(a) of this title (such as quality, performance, and market standards) and without regard to whether a provider provides services with respect to medical/surgical benefits or mental health or substance use disorder benefits. After the subclassifications are established, the issuer may not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in any subclassification that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in the subclassification using the methodology in subsection (c)(1) of this section.

(C) Subclassifications permitted for office visits, separate from other outpatient services. For purposes of applying the financial requirement and treatment limitation requirements of this section, a plan may divide its benefits furnished on an outpatient basis into the two subclassifications described in this subparagraph. After the subclassifications are established, the plan may not impose any financial requirement or quantitative treatment limitation on mental health or

substance use disorder benefits in any subclassification that is more restrictive than the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in the subclassification using the methodology in paragraph (1) of this subsection. Subclassifications other than these special requirements, such as separate subclassifications for generalists and specialists, are not permitted. The two subclassifications permitted under this subparagraph are:

(i) office visits (such as physician visits), and

(ii) all other outpatient items and services (such as outpatient surgery, facility charges for day treatment centers, laboratory charges, or other medical items).

(4) Examples. The requirements of paragraph (3)(A) - (C) of this subsection are illustrated by examples provided in figure 28 TAC §21.2408(c)(4). In each example, the health benefit plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits. Figure: 28 TAC §21.2408(c)(4)

(5) No separate cumulative financial requirements or cumulative quantitative treatment limitations.

(A) A health benefit plan may not apply any cumulative financial requirement or cumulative quantitative treatment limitation for mental health or substance use disorder benefits in a classification that accumulates separately from any established for medical/surgical benefits in the same classification.

(B) The requirements of this paragraph are illustrated by examples provided in figure 28 TAC §21.2408(c)(5)(B). Figure: 28 TAC §21.2408(c)(5)(B)

§21.2413. Sale of Nonparity Health Benefit Plans.

An issuer may not sell a health benefit plan, policy, certificate, or contract of insurance that fails to comply with §21.2407 of this title (relating to Parity Requirements with Respect to Aggregate Lifetime and Annual Dollar Limits), §21.2408 of this title (relating to Parity Requirements with Respect to Financial Requirements and Treatment Limitations), and §21.2409 of this title (relating to Nonquantitative Treatment Limitations).

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

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General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584



DIVISION 2. PLAN INFORMATION AND DATA COLLECTION

28 TAC §§21.2421 - 21.2427

STATUTORY AUTHORITY. The Commissioner adopts §§21.2421 - 21.2427 under Insurance Code §§843.151, 846.005, 1202.051, 1251.008, 1271.004, 1355.257, 1355.258, 1501.010, and 36.001.

Insurance Code §843.151, addressing health maintenance organizations' group health plans, provides that the Commissioner may adopt reasonable rules as necessary and proper to meet the requirements of federal law and regulations.

Insurance Code §846.005, addressing multiple employer welfare arrangements' health benefit plans, provides that the Commissioner shall adopt rules necessary to meet the minimum requirements of federal law and regulations.

Insurance Code §1202.051, addressing individual health benefit plans, requires that the Commissioner adopt rules necessary to meet the minimum requirements of federal law, including regulations.

Insurance Code §1251.008, addressing group and blanket health benefit plans, provides that the Commissioner may adopt rules necessary to administer Chapter 1251, concerning Group and Blanket Health Insurance.

Insurance Code §1271.004, addressing health maintenance organizations' individual health care plans, provides that the Commissioner may adopt rules necessary to meet the minimum requirements of federal law, including regulations.

Insurance Code §1355.257 provides that Chapter 1355, Subchapter F, supplements Subchapters A and B of that chapter, and Chapter 1368, and the rules adopted under those statutes. Insurance Code §1355.257 also provides that the legislature intends that Insurance Code Chapter 1355's Subchapter A or B, Chapter 1368, or a department rule adopted under those statutes, control over Subchapter F in any circumstance in which those statutes or rules require a benefit that is not required by Subchapter F, or require a more extensive benefit than is required by Subchapter F.

Insurance Code §1355.258, addressing coverage for mental health conditions and substance use disorders, requires that the Commissioner adopt rules necessary to implement Chapter 1355, Subchapter F.

Insurance Code §1501.010, addressing employers' group health plans, provides that the Commissioner may adopt rules necessary to meet the minimum requirements of federal law, including regulations.

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

§21.2421. Definitions - Division 2.

Definitions for Division 2. For purposes of Division 2 of this subchapter, the following terms have the meanings indicated, except where the context clearly indicates otherwise:

(1) Emergency care--A health care service or benefit:

(A) provided in an air, land, or water ambulance, and that is emergency care as defined under Insurance Code Chapter 1201; or

(B) that meets a plan's applicable statutory definition of emergency care in Insurance Code Chapters 843, 1201, or 1301, or emergency care as required in Insurance Code §1271.155, provided in a hospital emergency facility, licensed freestanding emergency medical care facility, community mental health center, or comparable emergency facility.

(2) In-network--Care covered under the plan's in-network benefit, including care provided by:

(A) an in-network provider; or

(B) an out-of-network provider as required by Insurance Code Chapters 1271 and 1301, and §3.3708 (relating to Payment of Certain Basic Benefit Claims and Related Disclosures), §3.3725 (relating to Payment of Certain Out-of-Network Claims) of this title, and §11.1611 (relating to Out-of-Network Claims; Non-Network Physicians and Providers) of this title.

(3) Inpatient--Care provided on an inpatient basis. Inpatient health care services or benefits are provided in an inpatient facility, including, but not limited to, those identified in CMS Form 1500 POS Codes 21 (Inpatient Hospital (other than psychiatric)), 31 (Skilled Nursing Facility), 32 (Nursing Facility), 34 (Hospice), 51 (Inpatient Psychiatric Facility), 54 (Intermediate Care Facility/Individuals with Intellectual Disabilities), 55 (Residential Substance Abuse Treatment Facility), 56 (Psychiatric Residential Treatment Center), and 61 (Comprehensive Inpatient Rehabilitation Facility).

(4) Office visit--A medical/surgical or mental health/substance use disorder (MH/SUD) service or benefit received in an office, including, but not limited to, those identified in CMS Form 1500 POS Code 11 (Office).

(5) Outpatient--Care provided on an outpatient basis. Outpatient health care services or benefits are provided in an outpatient setting other than an office visit, including, but not limited to, those identified in CMS Form 1500 POS Codes 17 (Walk-in Retail Health Clinic), 18 (Place of Employment/Worksite), 19 (Off Campus - Outpatient Hospital), 20 (Urgent Care Facility), 22 (On Campus - Outpatient Hospital), 24 (Ambulatory Surgical Center), 49 (Independent Clinic), 52 (Psychiatric Facility - Partial Hospitalization), 53 (Community Mental Health Center), 57 (Non-residential Substance Abuse Treatment Facility), 62 (Comprehensive Outpatient Rehabilitation Facility), 65 (End-Stage Renal Disease Treatment Facility), and 72 (Rural Health Clinic).

(6) Out-of-network--Care covered under the plan's out-of-network benefit, and all care under an indemnity plan or other health benefit plan that has no network of providers. Care provided by an out-of-network provider that is covered under the plan's in-network benefit is not out-of-network care.

§21.2422. Deadline for Reporting Data.

Annual reporting. The information and data an issuer must report as required by Division 2 of this subchapter are due annually.

(1) Each reporting period is a calendar year.

(2) The first reporting date for this subchapter is December 1, 2021, for data from January 1, 2020, through December 31, 2020.

(3) An issuer's annual reports for calendar year 2021 and subsequent reporting periods are due not later than July 1 following the reporting period.

§21.2423. Collecting and Reporting Data.

(a) Requirement to collect and report data. An issuer must collect and report the data required by this division for each applicable health benefit plan using the data collection template titled "MH/SUD Parity Rule Division 2 Data Collection Reporting Form," consisting of multiple worksheets, published on TDI's website.

(b) Separate templates required. For each combination of plan type and market type the issuer offers, the data must be reported in a separate template with its own worksheets.

(c) Example. An example of how subsection (b) of this section would be satisfied is that an issuer offering PPO plans and EPO plans in the individual, small, and large group markets will submit a separate

template with its own worksheets for its PPO individual plans, its PPO small group plans, and its PPO large group plans, and another three files for its EPO plans, for a total submission of six templates with their own worksheets.

§21.2424. Issuer and Plan Information.

(a) Identifying issuer information. For each data collection template an issuer provides to TDI under §21.2423 of this title (relating to Collecting and Reporting Data), within the "MH/SUD Parity Rule Division 2 Data Collection Reporting Form" template, in the worksheet titled "Issuer and Plan Information," an issuer must provide the:

- (1) issuer name;
- (2) NAIC number, or if none, issuer license number;
- (3) reporting year;
- (4) submission date;
- (5) contact name;
- (6) title;
- (7) phone number; and
- (8) email address.

(b) Identifying plan information. In the "Issuer and Plan Information" worksheet, an issuer must identify the:

- (1) market type;
- (2) plan type;
- (3) number of policies or contracts for which data is reported;
- (4) number of covered lives for which data is reported; and
- (5) premium volume for policies or contracts for which data is reported.

(c) Information on grandfathered coverage. In the "Issuer and Plan Information" worksheet, an issuer must specify whether it has any plans subject to this rule that provide grandfathered coverage, as defined in 45 CFR §147.140 (concerning Preservation of Right to Maintain Existing Coverage). If so, the issuer must identify the:

- (1) number of policies or contracts that provide grandfathered coverage;
- (2) number of covered lives under grandfathered coverage; and
- (3) premium volume for grandfathered policies or contracts.

§21.2425. Claims and Utilization Review: Reporting Classifications.

(a) Separate reporting. Within the "MH/SUD Parity Rule Division 2 Data Collection Reporting Form" template, in the worksheet titled "Claims and Utilization Review," an issuer must separately report claims and requests for utilization review for medical/surgical and MH/SUD.

(b) ICD diagnosis codes. In the worksheet titled "Claims and Utilization Review," all claims and utilization review requests with mental, behavioral, and neurodevelopmental disorder diagnosis codes in the International Classification of Diseases and Related Health Problems should be categorized as MH/SUD. Claims and utilization review requests with all other ICD diagnostic codes should be categorized as medical/surgical.

(c) Reporting classifications. Claims and requests for utilization review are to be identified in the worksheet as belonging in one the following reporting classifications:

- (1) inpatient, in-network;
- (2) inpatient, out-of-network;
- (3) outpatient, in-network, consisting of:
 - (A) office visits; and
 - (B) all other;
- (4) outpatient, out-of-network, consisting of:
 - (A) office visits; and
 - (B) all other;
- (5) emergency; and
- (6) prescription drugs.

(d) Unneeded information. Where appropriate, an issuer may enter "N/A" in the worksheet. For example, indemnity plans will not have data for in-network classifications, and HMOs with no POS component and EPOs will not have data for out-of-network classifications. An issuer of those plans may therefore enter N/A where that data is requested.

§21.2426. Claims and Utilization Review: Aggregate Data Fields.

Within the "MH/SUD Parity Rule Division 2 Data Collection Reporting Form" template, in the worksheet titled "Claims and Utilization Review," for medical/surgical, MH/SUD, and for each of the classifications listed in §21.2425(c) of this title (relating to Claims and Utilization Review: Reporting Classifications), an issuer must provide the following aggregate claims and utilization review data for the reporting year:

- (1) the number of reported claims for services or benefits that have been provided:
 - (A) in total;
 - (B) by out-of-network providers that were covered as in-network benefits;
 - (C) that were approved;
 - (D) that were administratively denied; and
 - (E) that were adversely determined;
- (2) the number of utilization reviews, including:
 - (A) preauthorization requests for:
 - (i) children ages 0 - 12;
 - (ii) adolescents ages 13 - 17; and
 - (iii) adults;
 - (B) preauthorization requests approved for:
 - (i) children ages 0 - 12;
 - (ii) adolescents ages 13 - 17; and
 - (iii) adults;
 - (C) preauthorization requests that received a peer-to-peer or physician-to-physician review for:
 - (i) children ages 0 - 12;
 - (ii) adolescents ages 13 - 17; and
 - (iii) adults;

(D) preauthorization requests that were subject to a fail-first or step therapy requirement;

(E) preauthorization requests that were adversely determined for:

- (i) children ages 0 - 12;
- (ii) adolescents ages 13 - 17; and
- (iii) adults;

(F) concurrent reviews for:

- (i) children ages 0 - 12;
- (ii) adolescents ages 13 - 17; and
- (iii) adults;

(G) concurrent reviews approved for:

- (i) children ages 0 - 12;
- (ii) adolescents ages 13 - 17; and
- (iii) adults;

(H) concurrent reviews that received a peer-to-peer or physician-to-physician review for:

- (i) children ages 0 - 12;
- (ii) adolescents ages 13 - 17; and
- (iii) adults;

(I) concurrent reviews that were adversely determined for:

- (i) children ages 0 - 12;
- (ii) adolescents ages 13 - 17; and
- (iii) adults;

(J) retrospective reviews for:

- (i) children ages 0 - 12;
- (ii) adolescents ages 13 - 17; and
- (iii) adults;

(K) retrospective reviews that were approved for:

- (i) children ages 0 - 12;
- (ii) adolescents ages 13 - 17; and
- (iii) adults;

(L) retrospective reviews that received a peer-to-peer or physician-to-physician review for:

- (i) children ages 0 - 12;
- (ii) adolescents ages 13 - 17; and
- (iii) adults; and

(M) retrospective reviews that were adversely determined for:

- (i) children ages 0 - 12;
- (ii) adolescents ages 13 - 17; and
- (iii) adults;

(3) the number of adverse determinations that were internally appealed that:

(A) then received a peer-to-peer or physician-to-physician review on internal appeal;

(B) were again adversely determined on internal appeal; and

(C) were reversed on internal appeal; and

(4) the number of adverse determinations independently reviewed that were:

(A) upheld on independent review; and

(B) reversed on independent review.

§21.2427. *Plan Reimbursement Rates Compared with Medicare Rates.*

(a) Reporting worksheet. An issuer must report the data required by this section within the "MH/SUD Parity Rule Division 2 Data Collection Reporting Form" template in the worksheet titled "Reimbursement Rates."

(b) Categories of providers and billing codes. An issuer must report average plan reimbursement rates separately for in-network and out-of-network providers for services provided by the following categories of providers for the billing codes specified by TDI in the worksheet:

- (1) orthopedic surgeons;
- (2) cardiologists;
- (3) internists;
- (4) endocrinologists;
- (5) gastroenterologists;
- (6) neurologists;
- (7) pediatricians;
- (8) dermatologists;
- (9) psychiatrists;
- (10) psychologists;
- (11) licensed clinical social workers;
- (12) podiatrists;
- (13) chiropractors;
- (14) occupational therapists; and
- (15) physical therapists.

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

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General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584

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DIVISION 3. COMPLIANCE ANALYSIS FOR
MH/SUD PARITY

28 TAC §§21.2431 - 21.2441

STATUTORY AUTHORITY. The Commissioner adopts §§21.2431 - 21.2441 under Insurance Code §§1355.257, 1355.258, and 36.001.

Insurance Code §1355.257 provides that Chapter 1355, Subchapter F, supplements Subchapters A and B of that chapter, and Chapter 1368, and the rules adopted under those statutes. Insurance Code §1355.257 also provides that the legislature intends that Insurance Code Chapter 1355's Subchapter A or B, Chapter 1368, or a department rule adopted under those statutes, control over Subchapter F in any circumstance in which those statutes or rules require a benefit that is not required by Subchapter F, or require a more extensive benefit than is required by Subchapter F.

Insurance Code §1355.258, addressing coverage for mental health conditions and substance use disorders, requires that the Commissioner adopt rules necessary to implement Chapter 1355, Subchapter F.

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.

§21.2431. Required Analyses for Quantitative and Nonquantitative Parity; Alternative Tools.

(a) QTL and NQTL templates.

(1) For purposes of this division, "QTL template" is the template titled "Compliance Analysis for Quantitative Parity" and its associated technical instructions, available on TDI's website.

(2) For purposes of this division, "NQTL template" is the template titled "Compliance Analysis for Nonquantitative Parity" and its associated technical instructions, available on TDI's website.

(b) Analyses of quantitative and nonquantitative parity.

(1) An issuer must analyze each health benefit plan to determine whether its plan design complies with the quantitative parity requirements in §§21.2433 - 21.2437 of this title (relating to Compliance Analysis for Quantitative Parity: General Requirements, Quantitative Parity Analysis: Issuer and Plan Information, Quantitative Parity Analysis: Methodology for Determining Expected Payments, Quantitative Parity Analysis: Covered Benefits, and Quantitative Parity Analysis: "Substantially All" and "Predominant" Tests), using the QTL template, except as permitted by subsection (c) of this section.

(2) An issuer must analyze each health benefit plan to determine whether its plan design complies with the nonquantitative parity requirements in §§21.2438 - 21.2441 of this title (relating to Compliance Analysis for Nonquantitative Parity: General Instructions, Nonquantitative Treatment Limitations Generally, Nonquantitative Parity Analysis: Issuer and Plan Information, and Four-Step Analysis of Nonquantitative Treatment Limitations), using the NQTL template, except as permitted by subsection (d) of this section.

(c) Alternative tool for quantitative parity analysis. An issuer may use an alternative quantitative parity analysis tool instead of the QTL template if the issuer demonstrates to TDI's satisfaction that it is using a methodology for the "predominant" and "substantially all" tests that is consistent with §21.2408 of this title (relating to Parity Requirements with Respect to Financial Requirements and Treatment Limitations).

(1) Upon request by TDI, an issuer must produce documentation that provides the same level of specificity as the QTL template.

(2) TDI will assess whether the alternative compliance tool satisfies the requirements of this section at the time TDI requests that the issuer submit its compliance analysis.

(d) Alternative tool for nonquantitative parity analysis. An issuer may use an alternative tool instead of the NQTL template if the issuer demonstrates to TDI's satisfaction that the alternative tool contains the information required for each step of the four-step process stated in §21.2441 of this title.

(1) Upon request by TDI, an issuer must produce documentation that provides the same level of specificity as the NQTL template.

(2) TDI will assess whether the alternative tool satisfies the requirements of this section at the time TDI requests that the issuer submit its compliance analysis.

§21.2433. Compliance Analysis for Quantitative Parity: General Requirements.

(a) Template and instructions. Except as provided in §21.2431 of this title (relating to Required Analyses for Quantitative and Nonquantitative Parity; Alternative Tools), an issuer must use the QTL template and associated technical instructions to:

(1) provide the information required by §21.2434 of this title (relating to Quantitative Parity Analysis: Issuer and Plan Information), §21.2435 of this title (relating to Quantitative Parity Analysis: Methodology for Determining Expected Payments), and §21.2436 of this title (relating to Quantitative Parity Analysis: Covered Benefits); and

(2) perform the compliance analysis for quantitative parity required by §21.2437 of this title (relating to Quantitative Parity Analysis: "Substantially All" and "Predominant" Tests).

(b) Template programming. TDI may program the QTL template to populate some information and complete some steps of the analysis automatically.

(c) Compliance analysis for plans with the same plan design. An issuer may complete a single analysis for multiple plans with the same plan design.

(d) Retention of completed template. An issuer must retain its completed quantitative parity analysis for each plan, plan design, or modified plan design. The completed analysis must be available to TDI upon request for any plan or plan design that is available for purchase, and for at least five years after coverage terminates for the last enrollee covered.

(e) Version control. The issuer must use a version control system to ensure that the issuer can provide to TDI upon request the version of the completed analysis that applied to a plan on a given date.

§21.2435. Quantitative Parity Analysis: Methodology for Determining Expected Payments.

(a) Expected payment methodology. Within each QTL template, in the worksheet titled "Expected Payment Methodology," an issuer must provide an explanation of the methodology that describes the underlying data used to determine the total payments of each benefit in the quantitative analyses, such as the steps, data, and assumptions used to calculate or project expected payments. The description must demonstrate that:

(1) the quantitative analysis is based on the total allowed amounts (not limited to the portion paid by the plan), projected for the applicable plan year;

(2) the quantitative analysis for each classification and subclassification, if applicable, accounts for all expected payments for all covered medical/surgical benefits under the plan or plan design; and

(3) a reasonable method was used to determine the expected payment amount. An issuer must document the assumptions used in choosing a data set and making projections.

(b) Data sources. An issuer must clearly describe the following information, in addition to any other relevant information:

(1) the specific plans or other sources of claims data used to determine the expected payment amounts for the analysis;

(2) the time period of the claims data--for example, calendar years 2018 and 2019; and

(3) what adjustments, if any, were made to the data or payment projections.

(c) Insufficient plan-level data. If data other than plan-level data was used for the analysis, an issuer must submit a separate actuarial certification addressing:

(1) the sufficiency and credibility of plan-level data; and

(2) why the substitute data set used for the analyses is reasonable and actuarially appropriate, including a description of any assumptions used in choosing the data and making projections.

§21.2436. Quantitative Parity Analysis: Covered Benefits.

(a) General information. Within each QTL template, in the worksheet titled "Covered Benefits," an issuer must identify:

(1) whether outpatient benefits are subclassified into "office visit" and "other;"

(2) whether the plan or plan design has a tiered network; and

(3) if the plan or plan design has a tiered network, the number of tiers.

(b) List of covered benefits. In the worksheet titled "Covered Benefits," an issuer must list each benefit covered by the plan or plan design, including all benefits listed in the schedule of benefits and the policy, certificate, evidence of coverage, or contract of insurance. Covered benefits must be repeated as needed to list each benefit on separate lines, based on:

(1) network;

(2) types and levels of applicable financial requirements and QTLs; and

(3) classification or subclassification, as applicable.

(c) Combining covered benefits. Covered benefits that have the same QTLs may be combined for the purposes of the QTL analysis;

(d) Examples. The examples in this subsection illustrate the requirements of subsections (b) and (c) of this section.

(1) Example 1. If a plan or plan design covers the first office visit with \$0 cost sharing, and subsequent office visits are subject to coinsurance, then each level of cost sharing must be listed on a separate line.

(2) Example 2. If a plan or plan design covers occupational therapy for both medical/surgical and MH/SUD diagnoses, then occupational therapy must be listed on separate lines for each.

(3) Example 3. If a plan or plan design covers physical therapy, occupational therapy, and speech therapy subject to identical QTLs, then the covered benefits may be combined in a single line.

(4) Example 4. If a plan or plan design applies identical types and levels of QTLs to all in-network medical/surgical and MH/SUD covered benefits, then all in-network medical/surgical

covered benefits may be combined in a single line and all in-network MH/SUD covered benefits may be combined in a single line, for a total of two lines of covered benefits in each classification worksheet.

(e) Categorization, classification, and subclassification of covered benefits. For each covered benefit, the issuer must:

(1) categorize the covered benefit, consistent with the definitions of "medical/surgical benefit," "mental health benefit," and "substance use disorder benefit" in §21.2406 of this title (relating to Definitions), as medical/surgical or MH/SUD;

(2) classify the covered benefit consistent with §21.2408(b)(2)(A)(i) - (vi) of this title (relating to Parity Requirements with Respect to Financial Requirements and Treatment Limitations) as:

(A) inpatient, in-network;

(B) inpatient, out-of-network;

(C) outpatient, in-network;

(D) outpatient, out-of-network; and

(E) emergency care;

(3) if the issuer uses multiple network tiers, add separate subclassifications for in-network classifications, consistent with §21.2408(c)(3)(B) of this title; and

(4) if applicable to outpatient benefits, subclassify the covered benefit, consistent with §21.2408(c)(3)(C) of this title, as:

(A) outpatient, in-network including, if applicable, separate identification of:

(i) outpatient in-network office visits; and

(ii) all other outpatient in-network benefits; and

(B) outpatient, out-of-network, including, if applicable, separate identification of:

(i) outpatient out-of-network office visits; and

(ii) all other outpatient out-of-network benefits.

(f) Methodology for categorizing covered benefits. Within the QTL template, in the worksheet titled "Categorization Methodology," an issuer must provide an explanation of the methodology used to categorize a covered benefit as a mental health benefit, medical/surgical benefit, or substance use disorder benefit. If a plan defines a condition as a mental health condition, substance use disorder, or medical or surgical condition, it must categorize benefits for those conditions in the same way for purposes of this rule. For example, if a plan defines unspecified dementia as a mental health condition, it must categorize benefits for unspecified dementia as mental health benefits. An issuer must apply the same categorization for both the QTL and NQTL analyses.

(g) Methodology for classifying and subclassifying covered benefits. Within the QTL template, in the worksheet titled "Classification Methodology," an issuer must provide an explanation of the methodology used to classify and subclassify covered benefits, consistent with §21.2408(b)(2) and (c)(3) of this title. In determining the classification in which a particular benefit belongs, an issuer must apply the same standards to medical/surgical benefits as to MH/SUD benefits. Plans and issuers must assign covered intermediate MH/SUD benefits (such as residential treatment, partial hospitalization, and intensive outpatient treatment) to the existing six classifications in the same way that they assign intermediate medical/surgical benefits to these classifications. For example, if a plan classifies care in skilled nursing facilities

and rehabilitation hospitals for medical/surgical benefits as inpatient benefits, it must classify covered care in residential treatment facilities for MH/SUD benefits as inpatient benefits. If a plan treats home health care as an outpatient benefit, then any covered intensive outpatient MH/SUD services and partial hospitalization must be considered outpatient benefits as well. An issuer must apply its methodology consistently when classifying covered benefits and use the same classification for both the QTL and NQTL analyses.

§21.2437. Quantitative Parity Analysis: "Substantially All" and "Predominant" Tests.

(a) Separate worksheet and analysis for each classification and subclassification. Within the QTL template are separate worksheets, named for each classification or subclassification (classification worksheets) identified in §21.2436(e) of this title (relating to Quantitative Parity Analysis: Covered Benefits). If an issuer's plan design applies a QTL or financial requirement to a MH/SUD benefit in a given classification or subclassification, the issuer must document, in the applicable classification worksheet, the following:

(1) in Column 1 of each classification worksheet: the dollar amount or per member per month amount of all plan payments expected to be paid under the plan for the plan year consistent with §21.2408(c)(1)(C) - (E) of this title (relating to Parity Requirements with Respect to Financial Requirements and Treatment Limitations);

(2) in Column 2 of each classification worksheet: whether a copay applies and, if applicable, the copay amount;

(3) in Column 3 of each classification worksheet: whether a coinsurance applies and, if applicable, the coinsurance percentage amount;

(4) in Column 4 of each classification worksheet: whether a deductible applies and, if applicable, the deductible amount;

(5) in Column 5 of each classification worksheet: whether a session limit applies and, if applicable, the session limit quantity; and

(6) in Column 6 of each classification worksheet: whether a day limit applies to each service category and, if applicable, the day limit quantity.

(b) "Substantially all" test. Consistent with §21.2408(c)(1)(A) of this title, an issuer must perform the following calculations separately in each classification worksheet to determine whether a QTL or financial requirement that applies to MH/SUD benefits also applies to substantially all medical/surgical benefits.

(1) To calculate the aggregate total of expected plan payments for medical/surgical benefits in the classification worksheet, add the dollar amounts listed in every row of Column 1.

(2) To determine whether a copay applies to substantially all medical/surgical benefits in the classification worksheet:

(A) for every row in Column 2 of the worksheet with a copay amount listed greater than \$0, add the expected plan payment amounts for the benefit listed in Column 1 of that row; and

(B) divide the amount in subsection (b)(2)(A) of this section by the aggregate total calculated under subsection (b)(1) of this section.

(3) To determine whether a coinsurance applies to substantially all medical/surgical benefits in the classification worksheet:

(A) for every row in Column 3 of the worksheet with an enrollee coinsurance amount listed greater than \$0, add the expected plan payment amounts for the benefit listed in Column 1 of that row; and

(B) divide the amount addressed in subsection (b)(3)(A) of this section by the aggregate total calculated under subsection (b)(1) of this section.

(4) To determine whether a deductible applies to substantially all medical/surgical benefits in the classification worksheet:

(A) for every row in Column 4 of the worksheet with a deductible amount listed greater than \$0, add the expected plan payment amounts for the benefit listed in Column 1 of that row; and

(B) divide the amount addressed in subsection (b)(4)(A) of this section by the aggregate total calculated under subsection (b)(1) of this section.

(5) To determine whether a session limit applies to substantially all medical/surgical benefits in the classification worksheet:

(A) for every row in Column 5 of the worksheet with a session limit listed that is less than unlimited, add the expected plan payment amounts for the benefit category listed in Column 1 of that row; and

(B) divide the amount addressed in subsection (b)(5)(A) of this section by the aggregate total calculated under subsection (b)(1) of this section.

(6) To determine whether a day limit applies to substantially all medical/surgical benefits in the classification worksheet:

(A) for every row in Column 6 of the worksheet with a day limit listed that is less than unlimited, add the expected plan payment amounts for the benefit listed in Column 1 of that row; and

(B) divide the amount addressed in subsection (b)(6)(A) of this section by the aggregate total calculated under subsection (b)(1) of this section.

(7) If the amount calculated under any of the paragraphs in subsections (b)(2) - (b)(6) of this section is less than two-thirds on any of the classification worksheets, the financial requirement or quantitative treatment limitation in that paragraph fails the "substantially all" test under §21.2408(c)(1)(A) of this title and cannot be applied to a MH/SUD benefit.

(c) "Predominant" test. Consistent with §21.2408(c)(1)(B) of this title, the issuer must separately perform the following calculations in each classification worksheet, as applicable, to determine whether the level of a type of quantitative treatment limitation or financial requirement that satisfied the "substantially all" test in subsection (b) of this section is no less favorable than the predominant quantitative treatment limitation or financial requirement that applies to medical/surgical benefits.

(1) Calculate the aggregate total of expected plan payments for medical/surgical benefits within each classification or subclassification that is subject to a particular type of financial requirement or quantitative treatment limitation. Separately, in Columns 2 through 6 of the classification worksheet, for every row with an amount listed, add the expected claim dollar amounts from Column 1 of the worksheet for the benefit listed in that row.

(2) To determine whether the level of a financial requirement or quantitative treatment limitation applied to MH/SUD is not less favorable than the predominant financial requirement or quantitative treatment limitation applied to medical/surgical benefits, follow the instructions in the following subparagraphs for each financial requirement and quantitative treatment limitation identified in Columns 2 through 4 of each classification worksheet.

(A) Rank each level of each type of financial requirement and quantitative treatment limitation from highest to lowest.

(B) For each level of each type of financial requirement and quantitative treatment limitation identified in Columns 2 through 4 of the classification worksheet, add the expected plan payments identified in Column 1 of the worksheet for each benefit to which the level of financial requirement or quantitative treatment limitation applies.

(C) Divide each amount calculated under subsection (c)(2)(B) of this section by the aggregate total addressed in subsection (c)(1) of this section.

(D) Add the amounts calculated under subsection (c)(2)(C) of this section for each level of each type of financial requirement and quantitative treatment limitation identified in Columns 2 through 4 of the classification worksheet, from highest to lowest, until the aggregate total exceeds 50%.

(E) In each of the classification worksheets, the least restrictive level of each type of financial requirement or quantitative treatment limitation calculated under subsection (c)(2)(D) of this section to exceed 50% is the predominant level and the least restrictive level that can be applied to MH/SUD benefits. For example:

(i) for copays, coinsurance, and deductibles, the predominant level is the highest amount that can be applied to MH/SUD benefits; and

(ii) for day limits and session limits, the predominant level is the lowest level of day or session limits that can be applied to MH/SUD benefits.

§21.2441. Four-Step Analysis of Nonquantitative Treatment Limitations.

(a) Four-step analysis. An issuer must complete the four-step analysis detailed in this section for each NQTL contained in the plan documents for each plan. An issuer must report its NQTL analyses separately for each applicable classification or subclassification, using the classification worksheets as described in subsection (b) of this section.

(b) Step 1. Within the NQTL template, in the worksheet titled "NQTL Summary," an issuer must identify each NQTL that applies to MH/SUD or medical/surgical benefits covered by the plan, including, but not limited to, those identified in §21.2439 of this title (relating to Nonquantitative Treatment Limitations Generally).

(1) Within the NQTL Summary worksheet, an issuer must identify, for each NQTL listed:

(A) whether the NQTL does or does not apply to benefits categorized as:

(i) medical/surgical benefits; and

(ii) MH/SUD benefits; and

(B) whether the NQTL does or does not apply to the following classifications and subclassifications:

(i) in-network inpatient;

(ii) out-of-network inpatient;

(iii) in-network outpatient, including, if applicable:

(I) in-network outpatient - office; and

(II) in-network outpatient - all other;

(iv) out-of-network outpatient, including, if applicable:

(I) out-of-network outpatient - office; and

(II) out-of-network outpatient - all other;

(v) emergency care; or

(vi) prescription drugs.

(2) Within the NQTL template, in each classification or subclassification worksheet, an issuer must provide the specific plan document terms, coverage terms, or other relevant terms regarding the NQTL.

(3) Within the NQTL template, in each classification or subclassification worksheet, an issuer must list all MH/SUD and medical/surgical covered benefits to which each NQTL applies, and:

(A) assign covered benefits to classifications using a comparable methodology across medical/surgical benefits and MH/SUD benefits;

(B) use the same categorization and classification of a given covered benefit for both its QTL and NQTL analyses;

(C) analyze the NQTLs separately for MH/SUD and medical/surgical benefits;

(D) analyze each NQTL separately if a covered benefit includes multiple components (such as outpatient and prescription drug classifications), and each component is subject to a different type of NQTL (such as prior authorization and limits on treatment dosage or duration); and

(E) describe how the requirements for each NQTL are implemented, who makes the decisions, and what the decision maker's qualifications are.

(c) Step 2. Within the NQTL template, in each classification or subclassification worksheet, an issuer must identify each factor considered in the design and application of the NQTL. Illustrative examples of factors are provided in the NQTL template.

(1) If only certain benefits are subject to an NQTL (such as meeting a fail-first protocol or requiring preauthorization), issuers must have information available to substantiate how the applicable factors were used to apply the specific NQTL to medical/surgical and MH/SUD benefits.

(2) An issuer must document whether any factors were given more weight than others and the reasons for doing so, including evaluating the specific data used in the determination (if any).

(d) Step 3. Within the NQTL template, in each classification or subclassification worksheet, an issuer must identify the sources (including any processes, strategies, or evidentiary standards) used to define the factors identified in Step 2 to design and apply the NQTL. Illustrative examples of sources of factors are provided in the NQTL template.

(1) If an issuer uses these sources of factors, they must apply them comparably to MH/SUD and medical/surgical benefits.

(2) Evidentiary standards and processes that an issuer relies on may include any evidence that the issuer considers in developing its medical management techniques, including recognized medical literature and professional standards and protocols (such as comparative effectiveness studies and clinical trials), and published research studies.

(3) If there is any variation in the application of a guideline or standard being relied on by the issuer, an issuer must explain the process and factors relied on for establishing that variation.

(4) If an issuer relies on any experts, the issuer must describe the experts' qualifications and whether the expert evaluations in

setting recommendations for both MH/SUD and medical/surgical conditions are comparable.

(5) When identifying the sources of the factors considered in designing the NQTL, an issuer must identify any threshold at which each factor will implicate the NQTL. For example, if high cost is identified as a factor used in designing a prior authorization requirement, the issuer would identify and explain:

(A) the threshold dollar amount at which prior authorization will be required for any benefit;

(B) the data used to determine the benefit is "high cost"; and

(C) how, if at all, the amount that is to be considered "high cost" is different for MH/SUD benefit as compared with medical/surgical benefits, and how the issuer justifies this difference.

(6) The NQTL template includes examples of how factors identified based on evidentiary standards may be defined to set applicable thresholds for NQTLs.

(e) Step 4. Within the NQTL template, in each classification or subclassification worksheet, an issuer must provide a comparative analysis demonstrating that the processes, strategies, evidentiary standards, and other factors used to apply the NQTL to MH/SUD benefits, as written and in operation, are comparable to and are applied no more stringently than the processes, strategies, evidentiary standards, and other factors used to apply the NQTL to medical/surgical benefits. Examples of methods and analyses an issuer could use to substantiate that factors, evidentiary standards, and processes are comparable are included in the NQTL template. When applicable, the comparability analysis must:

(1) demonstrate any methods, analyses, or other evidence used to determine that any factor used, evidentiary standard relied upon, and process employed in developing and applying the NQTL are comparable and applied no more stringently to MH/SUD benefits and medical/surgical benefits;

(2) if utilization review is conducted by different entities or individuals for medical/surgical and MH/SUD benefits, identify the measures in place to ensure comparable application of utilization review policies to the NQTL;

(3) identify any consequences or penalties that apply to the benefits when the NQTL requirement is not met, such as a reduction in benefits if not preauthorized; and

(4) demonstrate compliance both as written and in operation by:

(A) identifying all exception processes available and when they may be applied;

(B) identifying how much discretion is allowed in applying the NQTL and whether such discretion is afforded comparably for processing MH/SUD benefit claims and medical/surgical benefits claims;

(C) identifying who makes denial determinations and whether the decision makers have comparable expertise with respect to MH/SUD and medical/surgical benefits;

(D) performing and documenting an audit to check sample claims to assess how several NQTLs operate in practice, and whether written processes are correctly carried out;

(E) determining and documenting average denial rates and appeal overturn rates for concurrent review, and assessing the par-

ity between these rates for MH/SUD benefits and medical/surgical benefits; and

(F) demonstrating that there are not arbitrary or discriminatory differences in how the issuer applies underlying processes and strategies to NQTLs with respect to medical/surgical benefits versus MH/SUD benefits.

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

Filed with the Office of the Secretary of State on August 18, 2021.

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James Person

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Texas Department of Insurance

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For further information, please call: (512) 676-6584



DIVISION 4. AUTISM SPECTRUM DISORDER

28 TAC §21.2451, §21.2452

STATUTORY AUTHORITY. The Commissioner adopts §21.2451 and §21.2452 under Insurance Code §§1355.257, 1355.258, and 36.001.

Insurance Code §1355.257 provides that Chapter 1355, Subchapter F, supplements Subchapters A and B of that chapter, and Chapter 1368, and the rules adopted under those statutes. Insurance Code §1355.257 also provides that the legislature intends that Insurance Code Chapter 1355's Subchapter A or B, Chapter 1368, or a department rule adopted under those statutes, control over Subchapter F in any circumstance in which those statutes or rules require a benefit that is not required by Subchapter F, or require a more extensive benefit than is required by Subchapter F.

Insurance Code §1355.258, addressing coverage for mental health conditions and substance use disorders, requires that the Commissioner adopt rules necessary to implement Chapter 1355, Subchapter F.

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

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

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SUBCHAPTER JJ. AUTISM SPECTRUM DISORDER COVERAGE

28 TAC §§21.4401 - 21.4404

STATUTORY AUTHORITY. The Commissioner adopts the repeal of 28 TAC Subchapter JJ, §§21.4401 - 21.4404, under Insurance Code §§1355.257, 1355.258, and 36.001.

Insurance Code §1355.257 provides that Chapter 1355, Subchapter F, supplements Subchapters A and B of that chapter, and Chapter 1368, and the rules adopted under those statutes. Insurance Code §1355.257 also provides that the legislature intends that Insurance Code Chapter 1355's Subchapter A or B, Chapter 1368, or a department rule adopted under those statutes, control over Subchapter F in any circumstance in which those statutes or rules require a benefit that is not required by Subchapter F, or require a more extensive benefit than is required by Subchapter F.

Insurance Code §1355.258 states that the Commissioner may adopt rules necessary to implement Chapter 1355, Subchapter F.

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

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER A. ADMINISTRATION

40 TAC §700.104, §700.106

The Department of Family and Protective Services (DFPS) adopts the repeal of §700.104 and §700.106 in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter A, relating to Administration. The repeals are adopted without changes to the proposed text published in the June 18, 2021 issue of the *Texas Register* (46 TexReg 3723). These repeals will not be republished.

BACKGROUND AND JUSTIFICATION

The justification of the repeals is to consolidate the rules regarding DFPS records and the central registry into one chapter, as currently both Chapters 700 and 702 address records and the central registry.

COMMENTS

The 30-day comment period ended July 18, 2021. During this period, DFPS did not receive any comments regarding the repealed rules.

STATUTORY AUTHORITY

The repealed sections are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

The adopted repealed sections implement Texas Family Code §261.002 and Texas Government Code §§441.183 - 441.189.

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

Filed with the Office of the Secretary of State on August 19, 2021.

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Effective date: September 8, 2021

Proposal publication date: June 18, 2021

For further information, please call: (512) 438-3083



CHAPTER 702. GENERAL ADMINISTRATION

The Department of Family and Protective Services (DFPS) adopts amendments to §§702.201, 702.213, 702.221, 702.251, 702.255, and 702.257; new §§702.203, 702.205, 702.207, 702.209; and the repeals of §§702.205, 702.209, 702.217, 702.223 and 702.253 in Title 40, Texas Administrative Code (TAC), Chapter 702, relating to General Administration. Sections 702.205 and 702.213 are adopted with non-substantive changes to correct grammatical errors in the proposed text as published in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3726), and will be republished. Sections 702.201, 702.203, 702.207, 702.209, 702.213, 702.221, 702.251, 702.255, and 702.257, as well as the repeals of §§702.205, 702.209, 702.217, 702.223 and 702.253, are adopted without changes to the proposed text as published in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3726) and will not be republished.

BACKGROUND AND JUSTIFICATION

The justification of the proposed changes is to update the rules concerning DFPS records to reflect DFPS's current policy and practice of creating and maintaining records, including the central registry, as many of the rules are outdated. These amendments include updates to rule sections concerning what DFPS considers confidential case records, how long DFPS retains records and the process for retaining records, and how an individual can access confidential case records and public records. Finally, the rule changes also include clarifying for the

public and DFPS staff when DFPS will maintain records past the retention schedule pursuant to the mandates in Government Code §441.186, including for litigation holds, and how DFPS uses and handles such records. While the changes appear far reaching, they do not result in any changes to the DFPS records retention schedules, do not increase the amount of time DFPS maintains records, do not change the persons and entities DFPS currently releases records to pursuant to state and federal law, and do not change the process for requesting or releasing records.

COMMENTS

The 30-day comment period ended July 18, 2021. During this period, DFPS did not receive any comments regarding the repealed rules.

SUBCHAPTER B. AGENCY RECORDS AND INFORMATION

40 TAC §§702.201, 702.203, 702.205, 702.207, 702.209, 702.213, 702.221

STATUTORY AUTHORITY

The new and amended sections are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

The adopted new and amended sections implement Texas Family Code §261.002 and Texas Government Code §§441.183-441.189.

§702.205. How long does the Department of Family and Protective Services retain confidential case records?

(a) Physical case records and case records and information in DFPS's electronic case management system entitled Information Management Protecting Adults and Children in Texas (IMPACT) and other electronic systems are generally retained and destroyed in accordance with the Department of Family and Protective Services' (DFPS) Records Retention Schedule. The Schedule can be found on DFPS's public website. The retention period of a record is calculated from the time the case is closed. When the retention period has expired, DFPS permanently removes the case information from any electronic storage, including IMPACT, and destroys any paper case record in a manner that protects confidentiality.

(b) Notwithstanding subsection (a) of this section, the retention period for a DFPS record may be extended for the following reasons:

(1) Pursuant to Texas Government Code §441.187, if a litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the record is initiated before the retention period for the record expires, DFPS may not destroy the record until the completion of the action and resolution of all issues that arise from the action, even if the retention period for the record expires during that period. If an action or activity involving the record is initiated, the retention period for that record is extended for the amount of time that the action or activity is in process.

(2) If DFPS opens a new case on a party to an older closed case that has not been destroyed pursuant to DFPS's retention schedule, DFPS may merge or relate the cases. Merged cases may be reclassified and extended to coincide with the retention period of the case with

the latest retention period. For purposes of this section, merge means combining two or more separate cases into one case.

(c) If the retention period for a case record is extended as provided in subsection (b) of this section, DFPS may use the information in the case record as necessary to make case related decisions, assess risk of abuse or neglect, or for any other purpose for as long as DFPS retains the case record.

§702.213. How can a member of the public obtain information or copies of administrative records that are not on the Department of Family and Protective Services web site?

Requests for copies of administrative records as defined in §702.201(a) in this subchapter (relating to What types of records are maintained by the Department of Family and Protective Services?) must be submitted following the instructions on the DFPS public website, Open Records Policy. A written request may also be hand delivered to the DFPS headquarters office or mailed to the mailing address found on the DFPS public website.

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

Filed with the Office of the Secretary of State on August 19, 2021.

TRD-202103256

Vicki Kozikoujekian

General Counsel

Department of Family and Protective Services

Effective date: September 8, 2021

Proposal publication date: June 18, 2021

For further information, please call: (512) 438-3083



40 TAC §§702.205, 702.209, 702.217, 702.223

The repeals are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

The repeals implement Texas Family Code §261.002 and Texas Government Code §§441.183-441.189.

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

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Vicki Kozikoujekian

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3083



SUBCHAPTER C. CHILD ABUSE AND NEGLECT CENTRAL REGISTRY

40 TAC §§702.251, 702.255, 702.257

The amended sections are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

The amended sections implement Texas Family Code §261.002 and Texas Government Code §§441.183-441.189.

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

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Vicki Kozikoujekian

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3083



40 TAC §702.253

The repeal is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

The repeal implements Texas Family Code §261.002 and Texas Government Code §§441.183-441.189.

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

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Vicki Kozikoujekian

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Department of Family and Protective Services

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For further information, please call: (512) 438-3083





REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this Notice of Intent to Review to consider for re-adoption, revision, or repeal the chapters listed below, in their entirety, contained in Title 16, Part 4, of the Texas Administrative Code. This review is being conducted in accordance with Texas Government Code §2001.039.

Building and Mechanical Programs

Chapter 62, Code Enforcement Officers

Chapter 78, Mold Assessors and Remediators

Chapter 119, Sanitarians

Court-Ordered Education Programs

Chapter 90, Offender Education Programs for Alcohol and Drug-Related Offenses

Chapter 92, Responsible Pet Owners

Transportation Programs

Chapter 95, Transportation Network Companies

Medical and Health Professions Programs

Chapter 118, Laser Hair Removal

During the review, the Department will assess whether the reasons for adopting or readopting the rules in these chapters continue to exist. The Department will review each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current Department procedures. This review is required every four years.

Written comments regarding the review of these chapters may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules> (select the appropriate chapter name for your comment); 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*.

Any proposed changes to the rules in these chapters as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Texas Commission of Licensing and Regulation, the Department's governing body, in accordance with the

requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202103355

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Filed: August 25, 2021



Texas Board of Nursing

Title 22, Part 11

In accordance with the Government Code §2001.039, the Texas Board of Nursing (Board) files this notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following chapter contained in Title 22, Part 11, of the Texas Administrative Code, pursuant to the 2019 rule review plan adopted by the Board at its July 2018 Board meeting.

Chapter 227. Pilot Programs for Innovative Applications to Vocational and Professional Nursing Education, §§227.1 - 227.4.

In conducting its review, the Board will assess whether the reasons for originally adopting this chapter continues to exist. Each section of this chapter will be reviewed to determine whether it is obsolete, whether it reflects current legal and policy considerations and current procedures and practices of the Board, and whether it is in compliance with Chapter 2001 of the Government Code (Administrative Procedure Act).

The public has thirty (30) days from the publication of this rule review in the *Texas Register* to comment and submit any response or suggestions. Written comments may be submitted to James W. "Dusty" Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701; by email to dusty.johnston@bon.texas.gov; or by fax to James W. "Dusty" Johnston at (512) 305-8101. Any proposed changes to this chapter as a result of this review will be published separately in the Proposed Rules section of the *Texas Register* and will be open for an additional comment period prior to the final adoption or repeal by the Board.

TRD-202103346

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Filed: August 25, 2021



Adopted Rule Reviews

Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 1, Chapter 7, concerning Texas Financial Education Endowment Fund, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 7 was published in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3425). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the Office of Consumer Credit Commissioner, the commission has determined that certain revisions are appropriate and necessary. Those proposed changes are published elsewhere in this issue of the *Texas Register*.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 7 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202103276
Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Finance Commission of Texas
Filed: August 20, 2021



Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 89, concerning Property Tax Lenders, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 89 was published in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3425). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the Office of Consumer Credit Commissioner, the commission has determined that certain revisions are appropriate and necessary. Those proposed changes are published elsewhere in this issue of the *Texas Register*.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 89 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202103274
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Filed: August 20, 2021



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §109.1001(e)(5)
School FIRST - Rating Worksheet Dated [April 2020] [October 2021] for Rating Years 2020-2021+
Fiscal Year Ended June 30, ____, or August 31, ____

School FIRST Worksheet based on Fiscal Year End Data			Select the appropriate box below
Indicator number	Critical Indicators	Pass	
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year end date of June 30 or August 31, respectively?	Yes	No
2	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	Yes	No
3	Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (= person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	Yes	No
4	Did the school district make timely payments to the Teacher Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies? If the school district received a warrant hold and the warrant hold was not cleared within 30 days from the date the warrant hold was issued, the school district is considered to not have made timely payments and will fail this indicator. If the school district was issued a warrant hold, the maximum points and highest rating that the school district may receive is 95 points, A = Superior Achievement (even if the issue surrounding the initial warrant hold was resolved and cleared within 30 days).	Yes	No
5	Was the total unrestricted net position balance (Net of the accretion of interest for capital appreciation bonds) in the governmental activities column in the Statement of Net Position greater than zero? (If the school district's increase of students in membership over 5 years was 7 percent or more, then the school district passes this indicator. If the school district passes indicator 5 based on the school district's 7 percent or more increase in students in membership, the maximum points and highest rating that the school district may receive is 79 points, C = Meets Standard Achievement.) Note: This indicator will not be utilized for the 2020-2021 rating year.	Yes	No

Solvency Indicators		Points
6	Was the average change in (assigned and unassigned) fund balance over 3 years less than a 25 percent decrease or did the current year assigned and unassigned fund balance exceed 75 days of operational expenditures? (If the school district fails indicator 6, the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.)	Ceiling Indicator
7	Was the number of days of cash on hand and current investments in the general fund for the school district sufficient to cover operating expenditures (excluding facilities acquisition and construction)? (See ranges below.)	10
8	Was the measure of current assets to current liabilities ratio for the school district sufficient to cover short-term debt? (See ranges below.)	10
9	Did the school district's general fund revenues equal or exceed expenditures (excluding facilities acquisition and construction)? If not, was the school district's number of days of cash on hand greater than or equal to 60 days?	10
10	Did the school district average less than a 10 percent variance (90%-110%) when comparing budgeted revenues to actual revenues for the last 3 fiscal years?	10
11	Was the ratio of long-term liabilities to total assets for the school district sufficient to support long-term solvency? (If the school district's increase of students in membership over 5 years was 7 percent or more, then the school district passes this indicator.) (See ranges below.)	10
12	Was the debt per \$100 of assessed property value ratio sufficient to support future debt repayments? (See ranges below.)	10

13	Was the school district's administrative cost ratio equal to or less than the threshold ratio? (See ranges below.)	10
14	Did the school district not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the school district will automatically pass this indicator.)	10
Financial Competence Indicators		
15	Was the school district's actual ADA within the allotted range of the district's biennial pupil projection(s) submitted to TEA? If the district did not submit pupil projections to TEA, did it certify TEA's projections? (see ranges below)	5
16	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function? (If the school district fails indicator 16, the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.)	Ceiling Indicator
17	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.) (If the school district fails indicator 17, the maximum points and highest rating that the school district may receive is 79 points, C = Meets Standard Achievement.)	Ceiling Indicator
18	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	10
19	Did the school district post the required financial information on its website in accordance with Government Code, Local Government Code, Texas Education Code, Texas Administrative Code and other statutes, laws and rules that were in effect at the school district's fiscal year end?	5
20	Did the school board members discuss the district's property values at a board meeting within 120 days before the district adopted its budget? (If the school district fails indicator 20 the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.)	Ceiling Indicator
Maximum possible points		100

School FIRST Determination of Points

Indicator number	10	8	6	4	2	0	
6	Yes	Ceiling Indicator - If the school district fails indicator 6 the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.					No
7	≥ 90	< 90	≥ 75	< 75	≥ 60	< 45	≥ 30
8	≥ 3	< 3	≥ 2.5	< 2.5	≥ 2	< 1.5	≥ 1
9	10	10 points are awarded if the school district has at least 60 days cash on hand as determined in indicator #7.					0
	≥ 0%						< 0%
10	10	10 points are awarded if the school districts budgeted to actual revenues are < 10% variance (90% to 110%).					0
	< 10%						≥ 10%
11	≤ 0.60	> 0.60	≤ 0.70	> 0.70	≤ 0.80	> 0.90	≤ 1.00
12	≤ 4	> 4	≤ 7	> 7	≤ 10	> 11.5	≤ 13.5
Indicator number	10	8	6	4	2	0	
13	Threshold Ratio (based on ADA size)						
ADA Size							
≥ 10,000	≤ 0.0855	≤ 0.1105	≤ 0.1355	> 0.1355	≤ 0.1605	> 0.1605	≤ 0.1855
5,000 to 9,999	≤ 0.1000	≤ 0.1250	≤ 0.1500	> 0.1500	≤ 0.1750	> 0.1750	≤ 0.2000
1,000 to 4,999	≤ 0.1151	≤ 0.1401	≤ 0.1651	> 0.1651	≤ 0.1901	> 0.1901	≤ 0.2151
500 to 999	≤ 0.1311	≤ 0.1561	≤ 0.1811	> 0.1811	≤ 0.2061	> 0.2061	≤ 0.2311
< 500	≤ 0.2404	≤ 0.2654	≤ 0.2904	> 0.2904	≤ 0.3154	> 0.3154	≤ 0.3404
Sparse	≤ 0.3364	≤ 0.3614	≤ 0.3864	> 0.3864	≤ 0.4114	> 0.4114	≤ 0.4364
Indicator number	10						0
14	Yes						No
15	5						0
	Yes						No
ADA Size Range	Allotted Range (based on ADA size)						
		≥ 10,000	5,000 to 9,999	1,000 to 4,999	500 to 999	< 500	Sparse
		≤ 7%	≤ 10%	≤ 20%	≤ 25%	≤ 30%	≤ 35%
16	Yes	Ceiling Indicator - If the school district fails indicator 16 the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.					No
17	Yes	Ceiling Indicator - If the school district fails indicator 17 the maximum points and highest rating that the school district may receive is 79 points, C = Meets Standard Achievement.					No
18	10						0
	Yes						No
19	5						0
	Yes						No
20	Yes	Ceiling Indicator - If the school district fails indicator 20 the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.					No

Ceiling Indicators		
Did the school district meet the criteria for any of the following ceiling indicators 4, 5, 6, 16, 17, or 20? If so, the school district's applicable maximum points and rating are disclosed below.		
Determination of rating based on meeting ceiling criteria.	Maximum Points	Applicable Rating
Indicator 4 (Timely Payments) - School district was issued a warrant hold.	95	A = Superior Achievement
Indicator 5 (Unrestricted Net Position) - Negative unrestricted net position balance and pass indicator based on only (en) 7% or more increase in growth in students in enrollment over 5 years.	79	C = Meets Standard Achievement
Indicator 6 (Average Change in Fund Balance) - Response to indicator is <i>No</i> .	89	B = Above Standard Achievement
Indicator 16 (PEIMS to AFR) - Response to indicator is <i>No</i> .	89	B = Above Standard Achievement
Indicator 17 (Material Weaknesses) - Response to indicator is <i>No</i> .	79	C = Meets Standard Achievement
Indicator 20 (Property Values and Tax Discussion) - Response to indicator is <i>No</i> .	89	B = Above Standard Achievement
If the school district's overall points earned is less than the maximum points allowed by the applicable ceiling indicator, the school district will receive a rating based on the lesser points earned. If the school district fails a critical indicator or the school district's total number of points is equal to or less than 69 points, the school district will receive an F = Substandard Achievement rating, regardless of any ceiling indicator criteria met.		

Examples of the points and rating that a district may earn when the criteria of a ceiling indicator is met:

Example 1: Your district fails ceiling indicator 17 and your district's total points before failing ceiling indicator 17 is 98 points, the maximum points and rating that your district may receive is 79 points, C = Meets Standard Achievement, respectively.
Example 2: Your district fails ceiling indicator 6 and your district's total points before failing ceiling indicator 6 is 86 points, the maximum points and rating that your district may receive is 86 points, B = Above Standard Achievement, not 89 points, B = Above Standard Achievement.
Example 3: Your district fails critical indicator 4 and ceiling indicator 16 and your district's total points before failing indicators 4 and 16 is 67 points, the maximum points and rating that your district may receive is 67 points, F = Substandard Achievement.
Example 4: Your district fails Part 1 of indicator 5, but passes critical indicator 5 based on Part 2, the district's 7% or more increase in growth in students in enrollment over 5 years. Your district's total points before passing indicator 5 solely on Part 2 of the indicator is 100 points, the maximum points and rating that your district may receive is 79 points, C = Meets Standard Achievement.
Example 5: Your district received a warrant hold (Indicator 4) that was cleared within 30 days from the date that the warrant hold was issued and the district's total points is 90 points before any ceiling deduction. The maximum points and rating that your district may receive is 90 points, A = Superior Achievement because the total points is less than the ceiling of 95 points.

Determination of School District Rating	
Did the school district fail any of the critical indicators 1, 2, 3, 4, or 5 (parts 1 and 2)? If so, the school district's rating is F for Substandard Achievement regardless of points earned.	
Determine the rating by the applicable number of points.	Points
A = Superior Achievement	90 through 100
B = Above Standard Achievement	80 through 89
C = Meets Standard Achievement	70 through 79
F = Substandard Achievement (The school district receives an F if it scores below the minimum passing score, if it failed any critical indicator 1, 2, 3, 4, or 5, if the AFR or the data were not both complete, or if either the AFR or the data were not submitted on time for FIRST analysis.)	0 through 69
No Rating = A school district receiving territory that annexes with a school district ordered by the commissioner under TEC 13.054, or consolidation under Subchapter H, Chapter 49. No rating will be issued for the school district receiving territory until the third year after the annexation/consolidation.	

Figure: 19 TAC §109.1001(e)(5)

School FIRST - Rating Worksheet Calculations Dated April 2020 October 2021 for Rating Years 2020-2021+		
	Indicator	Calculation Defined
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year end date of June 30 or August 31, respectively?	No Calculation Involved
2	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	No Calculation Involved
3	Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (= person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	No Calculation Involved
4	Did the school district make timely payments to the Teacher Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies? (Payments to the TRS and TWC are considered timely if a warrant hold that was issued in connection to the untimely payment was cleared within 30 days from the date the warrant hold was issued.) (Payments to the IRS are considered timely if a penalty or delinquent payment notice was cleared within 30 days from the date the notice was issued).	<p>If the school district received a warrant hold and the warrant hold was not cleared within 30 days from the date the warrant hold was issued, the school district is considered to not have made timely payments and will fail this indicator.</p> <p>If the school district was issued a warrant hold, the maximum points and highest rating that the school district may receive is 95 points, A = Superior Achievement (even if the issue surrounding the initial warrant hold was resolved and cleared within 30 days).</p> <p>The agency will use the AFR, warrant holds, information from the IRS, and other sources to make a determination of timely payments.</p>
5	Was the total unrestricted net position balance (Net of the accretion of interest for capital appreciation bonds) in the governmental activities column in the Statement of Net Position greater than zero? (If the school district's increase of students in membership over 5 years was 7 percent or more, then the school district passes this indicator.) <u>Note: This indicator will not be utilized for the 2020–2021 rating year.</u>	<p>$(A - B) / B \geq C$ OR $(D + E + F + G) > 0$, where</p> <p>A = Number of students in membership in year 5 from base year; B = Number of students in membership in base year; C = Threshold for 5 year percent increase in students in membership, which = 7%; D = Total unrestricted net position balance in the governmental activities column in Exhibit A-1 (Statement of Net Position) in the annual financial report; E = Accretion of interest for capital appreciation bonds; F = Net Pension Liability (NPL), as applicable G = Other Post Employment Benefits (OPEB)</p>

School Districts 20-21+

School FIRST - Rating Worksheet Calculations Dated April 2020 October 2021 for Rating Years 2020-2021+		
	Indicator	Calculation Defined
6	Was the average change in (general fund - assigned and unassigned) fund balance over 3 years less than a 25% decrease or did the current year assigned and unassigned fund balance (fund 199) exceed 75 days of total expenditures (fund 199)?	$\frac{((A-B)/B)+((C-A)/A)+((D-C)/C)}{3} < 25\%$ <p>or</p> $D > [(E-F)/365]*75, \text{ where}$ <p>A = Assigned and Unassigned Fund Balance (fund 199) for Year 2 (two years prior to current year under review) B = Assigned and Unassigned Fund Balance (fund 199) for Year 1 (three years prior to current year under review) C = Assigned and Unassigned Fund Balance (fund 199) for Year 3 (one year prior to current year under review) D = Assigned and Unassigned Fund Balance (fund 199) for Year 4 (current year under review) E = Total Expenditures (fund 199) F = Capital Outlay (Function 81)</p> <p>The average of the change in fund balance (general fund assigned and unassigned) over 3 years must be less than 25%</p> <p>If the average change in fund balance (general fund assigned and unassigned) is not less than 25%, then use: $D > [(E-F)/365]*75$</p>
7	Was the number of days of cash on hand and current investments in the general fund for the school district sufficient to cover expenditures (excluding facilities acquisition and construction - function 81, fund 199)?	$[(A + B) / (C - D)] * 365, \text{ where}$ <p>A = Cash & Equivalents; (fund 199) B = Current Investments; (fund 199) C = Total Expenditures; (fund 199) D = Facilities Acquisition and Construction (fund 199, function 81)</p>
8	Was the measure of current assets to current liabilities ratio for the school district sufficient to cover short-term debt?	$A / B, \text{ where}$ <p>A = Current Assets (governmental activities column from the Statement of Net Position) B = Current Liabilities (governmental activities column from the Statement of Net Position)</p>
9	Did the school district's general fund revenues equal or exceed expenditures (excluding facilities acquisition and construction)? If not, was the school district's number of days of cash on hand greater than or equal to 60 days?	$[A / (B - C) - 1] > 0, \text{ where}$ <p>A = Total Revenues (fund 199; code 5020 from the Statement of Revenues, Expenditures, and Changes in Fund Balance) B = Total Expenditures (fund 199; code 6030 from the Statement of Revenues, Expenditures, and Changes in Fund Balance) C = Facilities Acquisition and Construction (fund 199; function 81 - from the Statement of Revenues, Expenditures, and Changes in Fund Balance)</p>

School Districts 20-21+

School FIRST - Rating Worksheet Calculations Dated April 2020 October 2021 for Rating Years 2020-2021+		
	Indicator	Calculation Defined
10	Did the school district average less than a 10 percent variance (90%-110%) when comparing budgeted revenues to actual revenues for the last 3 fiscal years?	$\frac{(((A-B)/B)+((C-D)/D)+((E-F)/F))/3 = +/- 10\% \text{ variance, where}}$ <p>A=Actual Revenues for year 1(two years prior to current year under review) B=Budgeted Revenues for year 1(two years prior to current year under review) C=Actual Revenues for year 2 (one year prior to current year under review) D=Budgeted Revenues for year 2 (one year prior to current year under review) E=Actual Revenues for year 3 (current year under review) F=Budgeted Revenues for year 3 (current year under review)</p> <p>Data source: TSDS PEIMS collections - General fund (199); object codes 57XX through 58XX, October Snapshot - Fall PEIMS (Budgeted Revenues); and Mid-year PEIMS (Actual Revenues) Note: October Snapshot is the last Friday in October whether this is a day of instruction or not.</p>
11	Was the ratio of long-term liabilities to total assets for the school district sufficient to support long-term solvency? (If the school district's increase of students in membership over 5 years was 7 percent or more, then the school district passes this indicator.)	$A/B, \text{ where}$ <p>A = Long Term Liabilities (governmental activities column from the Statement of Net Position) B = Total Assets (governmental activities column from the Statement of Net Position)</p>
12	Was the debt per \$100 of assessed property value ratio sufficient to support future debt repayments?	$(A/B)*C*100/D, \text{ where}$ <p>A = Total Local and Intermediate Sources (code 5700) from fund 599 B = Total Revenue (code 5020, fund 599) C = Long Term Liabilities (governmental activities column from the Statement of Net Position) D = Assessed Property Value (Schedule of Delinquent Taxes Receivable)</p>
13	Was the school district's administrative cost ratio equal to or less than the threshold ratio?	$(A/B) < \text{threshold based on district ADA size, where}$ <p>A = Sum of amounts for function codes 21 and 41; B = Sum of amounts for function codes 11, 12, 13, and 31 *Includes object codes 61XX-64XX in fund code 199, except 6144</p>
14	Did the school district not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the school district will automatically pass this indicator.)	$(A/B) - 1 > -0.15 \text{ or } C - D > 0, \text{ where}$ <p>A = Student to Staff ratio in the year under review; B = Student to Staff ratio 3 years prior to the year under review; C = Enrollment in year under review; D = Enrollment 3 years prior to the year under review</p>
15	Was the school district's actual ADA within the allotted range of the district's biennial pupil projection(s) submitted to TEA? If the district did not submit pupil projections to TEA, did it certify TEA's projections?	$(A-B)/B \leq \text{threshold hold based on district ADA size, where}$ <p>A = Actual Average Daily Attendance (ADA) B = Projected Average Daily Attendance (ADA)</p>
16	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function?	$(A/B) < C, \text{ where}$ <p>A = Sum of the absolute values of all differences in expenditures (determined by function) between Exhibit C-2 (Statement of Revenues, Expenditures, and Changes in Fund Balance) and PEIMS, by function in Fund Code 199; B = Sum of expenditures in PEIMS by function in fund code 199; C = Threshold level variance, which = 3%</p>

School Districts 20-21+

School FIRST - Rating Worksheet Calculations Dated April 2020 October 2021 for Rating Years 2020-2021+		
	Indicator	Calculation Defined
17	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	No Calculation Involved
18	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	No Calculation Involved
19	Did the school district post the required financial information on its website in accordance with Government Code, Local Government Code, Texas Education Code, Texas Administrative Code and other statutes, laws and rules that were in effect at the school district's fiscal year end?	No Calculation Involved
20	Did the school board members discuss the district's property values at a board meeting within 120 days before the district adopted its budget?	No Calculation Involved

School Districts 20-21+

Figure 19 TAC §109.1001(f)(5)
 Charter FIRST - Rating Worksheet Dated ~~April 2020~~ [October 2021] for Rating Years 2020-2021+
 Fiscal Year Ended June 30, ____, or August 31, ____

Charter FIRST Worksheet based on Fiscal Year End Data			Select the appropriate box below
Indicator number	Critical Indicators	Pass	
1	Was the complete annual financial report (AFR) and charter school financial data submitted to TEA within 30 days of the November 27 or January 28 deadline depending on the charter school's fiscal year end date of June 30 or August 31, respectively?	Yes	No
2	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	Yes	No
3	Was the charter school in compliance with the payment terms of all debt agreements at fiscal year end? (If the charter school was in default in a prior fiscal year, an exemption applies in following years if the charter school is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	Yes	No
4	Did the charter school make timely payments to the Teacher Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies? If the charter school received a warrant hold and the warrant hold was not cleared within 30 days from the date the warrant hold was issued, the charter school is considered to not have made timely payments and will fail this indicator. If the charter school was issued a warrant hold, the maximum points and highest rating that the charter school may receive is 95 points, A = Superior Achievement (even if the issue surrounding the initial warrant hold was resolved and cleared within 30 days).	Yes	No
5	Was the total net asset balance in the Statement of Financial Position for the charter school greater than zero? (If the charter school's increase of students in membership over 5 years was 7 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have an average of 7 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 7 percent increase in 5 years.) (If the charter school passes indicator 5 based only on the charter school's 7 percent or more increase in students in membership, the maximum points and highest rating that the charter school may receive is 79 points, C = Meets Standard Achievement.)	Yes	No

Solvency Indicators		Points
6	Was the average change in total net assets over 3 years less than a 25 percent decrease or did the current year total net asset balance exceed 75 days of operational expenditures (total expenditures less depreciation) / 365 * 75 days? (If the charter school fails indicator 6, the maximum points and highest rating that the charter school may receive is 89 points, B = Above Standard Achievement.)	Ceiling Indicator
7	Was the number of days of cash on hand and current investments for the charter school sufficient to cover operating expenses? The calculation will use expenses, excluding depreciation. (See ranges below.)	10
8	Was the measure of current assets to current liabilities ratio for the charter school sufficient to cover short-term debt? (See ranges below.)	10
9	Did the charter school's revenues equal or exceed expenses, excluding depreciation? If not, was the charter school's number of days of cash on hand greater than or equal to 40 days? The calculation will use expenses, excluding depreciation. For government charter schools, pension expense will be excluded.	5
10	Did the charter school average less than a 10 percent variance (90%-110%) when comparing budgeted revenues to actual revenues for the last 3 fiscal years?	10

11	Was the ratio of long-term liabilities to total assets for the charter school sufficient to support long-term solvency? (If the charter school's increase of students in membership over 5 years was 7 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have an average of 7 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 7 percent increase in 5 years.) (See ranges below.)	10
12	Was the debt service coverage ratio sufficient to meet the required debt service?	10
13	Did the charter school have a debt-to-capitalization percentage that was reasonable for the charter school to continue operating?	5
14	Was the charter school's administrative cost ratio equal to or less than the threshold ratio? (See ranges below.)	10
15	Did the charter school not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the charter school will automatically pass this indicator.)	10

Financial Competence Indicators		Points
16	Was the charter school's actual average daily attendance (ADA) within 10 percent of the charter school's annual estimated ADA?	5
17	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the charter school's AFR result in a total variance of less than 3 percent of all expenses by function? (If the charter school fails indicator 17, the maximum points and highest rating that the charter school may receive is 89 points, B = Above Standard Achievement.)	Ceiling Indicator
18	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.) (If the charter school fails indicator 18, the maximum points and highest rating that the charter school may receive is 79 points, C = Meets Standard Achievement.)	Ceiling Indicator
19	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	10
20	Did the charter school post the required financial information on its website in accordance with Government Code, Local Government Code, Texas Education Code, Texas Administrative Code and other statutes, laws and rules that were in effect at the charter school's fiscal year end?	5
21	Did the charter school serve students that reside within its approved geographic boundaries? (If the charter school fails indicator 21, the maximum points and highest rating that the charter school may receive is 89 points, B = Above Standard Achievement.) <i>Note: This indicator will not be utilized for the 2020-2021 rating year.</i>	Ceiling Indicator

Maximum possible points	100
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Charter FIRST Determination of Points

Indicator number	10	8	6	4	2	0
6	Yes	Ceiling Indicator - If the charter school fails indicator 6, the maximum points and highest rating that the charter school may receive is 89 points, B = Above Standard Achievement.				
7	≥ 60	≥ 50	≥ 40	≥ 30	≥ 20	≥ 20
8	≥ 2	≥ 1.75	≥ 1.5	≥ 1.25	≥ 1	≥ 1
9	≥ 5	5 points are awarded if the charter school has at least 40 days cash on hand as determined in indicator #7.				
10	≥ 10	10 points are awarded if the charter school's budgeted to actual revenues are < 10% variance (90% to 110%).				
11	≥ 0.60	≥ 0.70	≥ 0.80	≥ 0.90	≥ 1.00	≥ 1.00
12	≥ 1.20	≥ 1.15	≥ 1.10	≥ 1.05	≥ 1.00	≥ 1.00
13	≥ 5	5 points are awarded if the charter school has a debt to capitalization ratio < 95%.				
	≥ 95%					

Indicator number	10	8	6	4	2	0
14	Threshold Ratio (based on ADA size)					
ADA Size						
≥ 1,000	≥ 0.1401	≥ 0.1651	≥ 0.1901	≥ 0.2151	≥ 0.2401	≥ 0.2401
500 to 1,000	≥ 0.1561	≥ 0.1811	≥ 0.2061	≥ 0.2311	≥ 0.2561	≥ 0.2561
< 500	≥ 0.2645	≥ 0.2895	≥ 0.3145	≥ 0.3395	≥ 0.3645	≥ 0.3645

Indicator number	10	8	6	4	2	0
15	Yes					
16	Yes					
17	Yes	Ceiling Indicator - If the charter school fails indicator 17, the maximum points and highest rating that the charter school may receive is 89 points, B = Above Standard Achievement.				
18	Yes	Ceiling Indicator - If the charter school fails indicator 18, the maximum points and highest rating that the charter school may receive is 79 points, C = Meets Standard Achievement.				
19	Yes					
20	Yes					
21	Yes	Ceiling Indicator - If the charter school fails indicator 21, the maximum points and highest rating that the charter school may receive is 89 points, B = Above Standard Achievement.				

Ceiling Indicators		
Did the charter school meet the criteria for any of the following ceiling indicators 4, 5, 6, 17, 18, or 21? If so, the charter school's applicable maximum points and rating are disclosed below.		
Determination of rating based on meeting ceiling criteria.	Maximum Points	Maximum Rating
Indicator 4 (Timely Payments) - Charter school was issued a warrant hold.	93	A = Superior Achievement
Indicator 5 (Total Net Assets) - Negative total net assets and pass indicator based only on 7% or more increase in students in membership over 3 years.	79	C = Meets Standard Achievement
Indicator 6 (Average Change in Total Net Assets) - Response to indicator is <i>No</i> .	89	B = Above Standard Achievement
Indicator 17 (PEIMS to AFR) - Response to indicator is <i>No</i> .	89	B = Above Standard Achievement
Indicator 18 (Material Weaknesses) - Response to indicator is <i>No</i> .	79	C = Meets Standard Achievement
Indicator 21 (Geographic Boundaries) - Response to indicator is <i>No</i> .	89	B = Above Standard Achievement
If the charter school's overall points earned is less than the maximum points allowed by the applicable ceiling indicator, the charter school will receive a rating based on the lesser points earned. If the charter school fails a critical indicator or the charter school's total number of points is equal to or less than 69 points, the charter school will receive an F = Substandard Achievement rating, regardless of any ceiling indicator criteria met.		

Examples of the points and rating that a charter school may earn when the criteria of a ceiling indicator is met:

Example 1: Your charter school fails ceiling indicator 18 and your charter school's total points before failing ceiling indicator 18 is 98 points, the maximum points and rating that your charter school may receive is 79 points, C = Meets Standard Achievement.
Example 2: Your charter school fails ceiling indicator 6 and your charter school's total points before failing ceiling indicator 6 is 86 points, the maximum points and rating that your charter school may receive is 89 points, B = Above Standard Achievement, not 89 points, B = Above Standard Achievement.
Example 3: Your charter school fails critical indicator 4 and ceiling indicator 17 and your charter school's total points before failing indicators 4 and 17 is 67 points, the maximum points and rating that your charter school may receive is 67 points, F = Substandard Achievement.
Example 4: Your charter school fails Part 1 of indicator 5, but passes critical indicator 5 based on Part 2, the charter school's 7% or more increase in growth in students in membership over 5 years. Your charter school's total points before passing indicator 5 solely on Part 2 of the indicator is 100 points, the maximum points and rating that your charter school may receive is 79 points, C = Meets Standard Achievement.
Example 5: Your charter school received a warrant hold (Indicator 4) that was cleared within 30 days from the date that the warrant hold was issued and the charter school's total points is 90 points before any ceiling deduction. The maximum points and rating that your charter school may receive is 90 points, A = Superior Achievement because the total points is less than the ceiling of 95 points.

Determination of Charter School Rating	
Did the charter school fail any of the critical indicators 1, 2, 3, 4, or 5 (parts 1 and 2)? If so, the charter school's rating is F for Substandard Achievement regardless of points earned.	
Determine the rating by the applicable number of points.	Points
A = Superior Achievement	90 through 100
B = Above Standard Achievement	80 through 89
C = Meets Standard Achievement	70 through 79
F = Substandard Achievement (The charter school receives an F if it scores below the minimum passing score, if it failed any critical indicator 1, 2, 3, 4, or 5, if the AFR or the data were not both complete, or if either the AFR or the data were not submitted on time for FIRST analysis.)	0 through 69

Figure: 19 TAC §109.1001(f)(5)

Charter FIRST - Rating Worksheet Calculations Dated April 2020 October 2021 for Rating Years 2020-2021+		
	Indicator	Calculation Defined
1	Was the complete annual financial report (AFR) and charter school financial data submitted to TEA within 30 days of the November 27 or January 28 deadline depending on the charter school's fiscal year end date of June 30 or August 31, respectively?	No calculation involved
2	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	No calculation involved
3	Was the charter school in compliance with the payment terms of all debt agreements at fiscal year end? (If the charter school was in default in a prior fiscal year, an exemption applies in following years if the charter school is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	No calculation involved
4	Did the charter school make timely payments to the Teacher Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies? (Payments to the IRS are considered timely if a penalty or delinquent payment notice was cleared within 30 days from the date the notice was issued).	<p>If the charter school received a warrant hold and the warrant hold was not cleared within 30 days from the date the warrant hold was issued, the charter school is considered to not have made timely payments and will fail this indicator.</p> <p>If the charter school was issued a warrant hold, the maximum points and highest rating that the charter school may receive is 95 points, A = Superior Achievement (even if the issue surrounding the initial warrant hold was resolved and cleared within 30 days).</p> <p>The agency will use the AFR, warrant holds, information from the IRS, and other sources to make a determination of timely payments.</p>
5	Was the total net asset balance in the Statement of Financial Position for the charter school greater than zero? (If the charter school's increase of students in membership over 5 years was 7 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have an average of 7 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 7 percent increase in 5 years.)	<p>$(A + B) > C$ OR $((D - E) / E) \times 100 \geq F$, where</p> <p>A = Total net asset balance in the Statement of Financial Position in the annual financial report B = Pension Expense, Other Post Employment Benefits (OPEB), and Net Pension Liability (NPL), as applicable C = Net assets threshold, which = 0 D = Number of students in membership in year 5 from base year E = Number of students in membership in base year F = Threshold for percent increase in students in membership, which = 7%</p>
6	Was the average change in total net assets in the Statement of Financial Position over 3 years less than a 25% decrease or did the current year total net asset balance in the Statement of Financial Position exceed 75 days of operational expenditures [(total expenditures less depreciation) / 365]*75?	<p>The average of the change in the total net asset balance in the Statement of Financial Position over 3 years must be less than 25%.</p> <p>$[(B-A)/A] + [(C-B)/B] + [(D-C)/C] / 3 < 25\%$</p> <p>or</p> <p>$D > [(E-F)/365]*75$, where</p> <p>A = Total Net Asset Balance for Year 1 (three years prior to current year under review) B = Total Net Asset Balance for Year 2 (two years prior to current year under review) C = Total Net Asset Balance for Year 3 (one year prior to current year under review) D = Total Net Asset Balance for Year 4 (current year under review) E = Total Expenditures (total from Statement of Activities) F = Depreciation (reported in the Charter School AFR Data Template Required Questions tab) Note: The data for variable "F" comes from the Statement of Cash Flows</p> <p>If the average change in total net assets is not less than 25%, then use: $D > [(E-F)/365]*75$</p>

Charter FIRST 20-21+

Charter FIRST - Rating Worksheet Calculations Dated April 2020 October 2021 for Rating Years 2020-2021+		
	Indicator	Calculation Defined
7	Was the number of days of cash on hand and current investments for the charter school sufficient to cover operating expenses? The calculation will use expenses, excluding depreciation. For government charter schools, pension expense will be excluded.	$[(A + B) / (C - D - E)] * 365 = F, \text{ where}$ <p>A = Cash & Equivalents (total from the Statement of Financial Position) B = Current Investments (total from the Statement of Financial Position) C = Total Expenditures (total from the Statement of Activities) D = Depreciation Expense (reported in the Charter School AFR Data Template Required Questions tab) Note: The data for variable "D" comes from the Statement of Cash Flows E = Pension Expense, OPEB, and NPL, as applicable (Notes to the Financial Statements) F = Days of Cash on Hand & Current Investments</p>
8	Was the measure of current assets to current liabilities ratio for the charter school sufficient to cover short-term debt?	$A / B = C, \text{ where}$ <p>A = Current Assets (total from the Statement of Financial Position) B = Current Liabilities (total from the Statement of Financial Position) C = Current Assets to Current Liabilities Ratio</p>
9	Did the charter school's revenues equal or exceed expenses, excluding depreciation? If not, was the charter school's number of days of cash on hand greater than or equal to 40 days? The calculation will use expenses, excluding depreciation. For government charter schools, pension expense will be excluded.	$[A / (B - C - D) - 1] > 0, \text{ where}$ <p>A = Total Revenue (total from the Statement of Activities) B = Total Expenses (total of all function codes from the Statement of Activities) C = Depreciation (reported in the Charter School AFR Data Template Required Questions tab) Note: The data for variable "C" comes from the Statement of Cash Flows D = Pension Expense, OPEB, and NPL, as applicable (Notes to the Financial Statements)</p>
10	Did the charter school average less than a 10 percent variance (90%-110%) when comparing budgeted revenues to actual revenues for the last 3 fiscal years?	$[(A-B)/B + ((C-D)/D) + ((E-F)/F)]/3 = G \text{ +/- 10\% variance, where}$ <p>A = Actual Revenues for Year 1 (two years prior to current year) B = Budgeted Revenues for Year 1 (two years prior to current year) C = Actual Revenues for Year 2 (one year prior to current year) D = Budgeted Revenues for Year 2 (one year prior to current year) E = Actual Revenues for Year 3 (current year under review) F = Budgeted Revenues for Year 3 (current year under review) G = Average Variance</p> <p>Data source: TSDS PEIMS collections - General fund (420 & 199); object codes 57XX and 58XX, October Snapshot - Fall PEIMS (Budgeted Revenues); and Mid-year PEIMS (Actual Revenues)</p> <p>Note: October Snapshot is the last Friday in October whether this is a day of instruction or not.</p>
11	Was the ratio of long-term liabilities to total assets for the charter school sufficient to support long-term solvency? (If the charter school's increase of students in membership over 5 years was 7 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have an average of 7 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 7 percent increase in 5 years.)	$(A - B) / C = D, \text{ where}$ <p>A = Long Term Liabilities; (total from the Statement of Financial Position) B = Pension Expense, OPEB, and NPL, as applicable (Notes to the Financial Statements) C = Total Assets (total from the Statement of Financial Position) D = Long-term Liabilities to Total Assets Ratio</p>

Charter FIRST - Rating Worksheet Calculations Dated April 2020 October 2021 for Rating Years 2020-2021+		
	Indicator	Calculation Defined
12	Was the debt service coverage ratio sufficient to meet the required debt service?	$(A - B + C + D + E + F) / (D + E) = G$, where A = Total Revenues (total from the Statement of Activities) B = Total Expenses (total of all function codes from the Statement of Activities) C = Depreciation (as reported in the Charter School AFR Data Template Required Questions tab) D = Interest (as reported in the Charter School AFR Data Template Required Questions tab) E = Principal (as reported in the Charter School AFR Data Template Required Questions tab) F = Pension Expense (Notes to the Financial Statements) G = Debt Service Coverage Ratio Note: The data for variables C, D, E come from the Statement of Cash Flows
13	Did the charter school have a debt-to-capitalization percentage that was reasonable for the charter school to continue operating?	$A / (B + A) \times 100 = C$, where A = Long-term Liabilities (total from the Statement of Financial Position) B = [Unrestricted] Total Net Assets (total [unrestricted] from the Statement of Financial Position) C = Debt to Capitalization Percentage
14	Was the charter school's administrative cost ratio equal to or less than the threshold ratio?	$(A / B) < \text{threshold based on CS size, where}$ A = Sum of amounts for function codes 21 and 41 B = Sum of amounts for function codes 11, 12, 13, and 31 *Includes object codes 61XX-64XX in fund codes 199 and 420
15	Did the charter school not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the charter school will automatically pass this indicator.)	$(A / B) - 1 > -0.15$ or $C - D > 0$, where A = Student to Staff ratio in the year under review B = Student to Staff ratio 3 years prior to the year under review C = Enrollment in the year under review D = Enrollment 3 years prior to the year under review
16	Was the charter school's actual average daily attendance (ADA) within 10% of the charter school's annual estimated ADA?	$(A - B) / B \leq 10\%$, where A = Actual Average Daily Attendance (ADA) B = Estimated Average Daily Attendance (ADA)
17	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the charter school's AFR result in a total variance of less than 3 percent of all expenses by function?	$(A / B) < C$, where A = Sum of the absolute values of all differences in expenses (determined by function) between the Statement of Activities and PEIMS B = Sum of expenses for all expenses presented in the Statement of Activities C = Threshold for percentage of data variance, which = 3%
18	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, federal funds? (The AICPA defines material weakness.)	No calculation involved
19	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	No calculation involved
20	Did the charter school post the required financial information on its website in accordance with Government Code, Local Government Code, Texas Education Code, Texas Administrative Code and other statutes, laws and rules that were in effect at the charter school's fiscal year end?	No calculation involved.
21	Did the charter school serve students that reside within its approved geographic boundaries?	No calculation involved. Sources: Charter School Tracking System compared to TSDS PEIMS summer submission
	Note: This indicator will not be utilized for the 2020-2021 rating year.	

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Alcoholic Beverage Commission

DRAFT Marketing Practices Advisory - MPA 036, Product Displays and Enhancement Items

Join TABC staff on September 10 at 10:00 a.m. by videoconference to discuss this amended advisory. The advisory has been amended to incorporate additional examples of permissible industry practices for arranging product displays and using enhancement items at a retailer's premise. For more details on the stakeholder meeting, please visit TABC's webpage at <https://www.tabc.texas.gov/about-us/agency-meetings/>.

DRAFT MARKETING PRACTICES ADVISORY - MPA036

Product Displays & Enhancement Items

To: Upper-tier Members and Retailers

Scope of the Advisory

This advisory provides guidance to industry members in the wholesale and manufacturing tiers authorized to organize and construct in-store displays of alcoholic beverage products they sell to retailers.

Source of Law

Alcoholic Beverage Code §102.20 allows distributors and wholesalers to restock displays and rotate alcoholic beverages in-stock at a retailer's premises from the retailer's storeroom, salesroom, display counter, or cooler. Rule §45.109 implements the statutory provision and extends the authority to manufacturing tier members who are authorized to sell directly to retailers. These permit/license holders may (with the retailer's permission) stock, rotate, affix prices, and reset or rearrange alcoholic beverages at the retailer's premises. The rule also allows these permittees and licensees to organize and construct displays that are accessible to consumers. Generally, alcoholic beverages sold by other industry members may not be altered or disturbed when conducting these activities. However, products of other industry members that are arranged on floor or endcap displays may be moved with the retailer's permission as needed to perform display construction or organization. These activities may only take place at the retailer's premises during the legal hours of sale or delivery for the type of alcoholic beverage being restocked or placed on a display. Specifically, for wine and malt beverages, these activities may also take place between 5:00 a.m. and 12:00 noon on Sundays.

Enhancement Items

In constructing the authorized displays, distributors, wholesalers, and manufacturers may also provide retailers with temporary display enhancement items. Display enhancement/enhancer items may include: televisions, grills, etc., provided that these items are used for the sole purpose of product promotion. Upper-tier members are not authorized to leave display enhancement/enhancer items on the retail premises for an extended period of time or allow the retailer to keep these items.

Temporary display enhancement items must be returned to the wholesaler, distributor, or manufacturer that provided the item. Code §§102.07 and 102.15, prohibit upper-tier members from furnishing, lending, renting, or selling anything of value to a retailer, including

but not limited to items used in the construction of product displays. TABC generally views items provided for a period longer than 30 days as going beyond the scope of these authorizations and considers the practice as an unlawful provision of something of value to a retailer in violation of Code §§102.07 and 102.15, unless the specific promotion is set to last longer than that period (e.g. seasonal displays). Nonetheless, upper-tier members who construct displays and provide enhancement items should ensure that the display item(s) are not given or left with the retailer after the conclusion of the promotional event.

Below is a non-inclusive list of examples for practices TABC views as going beyond the scope of these authorizations (and thus an administrative violation) when providing product display enhancement items:

- Metal racks with generic signage (not thematic) should not be utilized in the same place in-store with the same product for longer than 30 days.

- Product display enhancement items must be removed from the retailer's licensed premise at the conclusion of the promotional event. Abandoned display enhancement items at the retailer's location are considered a benefit and violate Code §§102.07 and 102.15.

- The distributor, wholesaler, or manufacturer is responsible for constructing and maintaining the product display enhancement items. The enhancement items should contain and be restocked with alcoholic beverage products that are part of the promotional event.

- Thematic product display enhancement items that are still present at the retail location well after the promotional event has ended. For example, a football-themed product display enhancement item that remains in a retail location after football season is over is considered an illegal benefit.

- Equipment utilized by the retailer for use other than as part of the product display is prohibited. As part of the product display, a branded television could operate a branded, commercial loop to promote the brand. If the branded television is being used for standard broadcast that would be prohibited.

- Refrigeration equipment that is plugged in and used to cool beverages.

Statement From TABC

This advisory is issued pursuant to Alcoholic Beverage Code §5.57. It represents the opinion of the staff of the Commission. We hope this opinion will assist you in your endeavors. If you would like additional information or have questions regarding this advisory, you may contact me in writing at P.O. Box 13127, Austin, Texas 78711; by email to advisories@tabc.texas.gov; or by phone at (512) 206-3411.

Sincerely,

Thomas Graham

Director of Tax & Marketing Practices

TRD-202103352

Amanda Collins

Associate Director of Strategic Initiative and Performance Improvement
Texas Alcoholic Beverage Commission

Filed: August 25, 2021

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/30/21 - 09/05/21 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/30/21 - 09/05/21 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202103345

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 24, 2021

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 5, 2021**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **October 5, 2021**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: ASPK PROPERTIES LLC dba Big Z Food Mart; DOCKET NUMBER: 2021-0453-PST-E; IDENTIFIER: RN103012936; LOCATION: Rhome, Wise County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES

VIOLATED: 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to ensure that all installed spill containment devices are maintained in good operating condition; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; PENALTY: \$40,999; ENFORCEMENT COORDINATOR: Courtney Atkins, (512) 239-1118; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: BAIN TIRE CO. INCORPORATED; DOCKET NUMBER: 2021-0407-PST-E; IDENTIFIER: RN103200523; LOCATION: Stratford, Sherman County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure the UST corrosion protection system is operated and maintained in a manner that will provide continuous corrosion protection; 30 TAC §334.50(b)(2)(B)(i)(I) and TWC, §26.3475(a), by failing to provide release detection for the suction piping associated with the UST system; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator, Class A, Class B, and Class C for the facility; PENALTY: \$7,150; ENFORCEMENT COORDINATOR: Courtney Atkins, (512) 239-1118; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: BAYTOWN TRAVEL CENTER, L.L.C. dba Baytown Express Travel Center; DOCKET NUMBER: 2021-0452-PST-E; IDENTIFIER: RN102223062; LOCATION: Baytown, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: City of Ballinger; DOCKET NUMBER: 2021-0415-PWS-E; IDENTIFIER: RN101409928; LOCATION: Ballinger, Runnels County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(2), by failing to institute special precautions as described in the flowchart found in 30 TAC §290.47(e) in the event of low distribution pressure and water outages; PENALTY: \$1,035; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: City of Liberty Hill; DOCKET NUMBER: 2021-0162-MWD-E; IDENTIFIER: RN104102132; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014477001, Interim II Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$26,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$21,000; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(6) COMPANY: City of Sweeny; DOCKET NUMBER: 2021-0424-PWS-E; IDENTIFIER: RN101420313; LOCATION: Sweeny, Brazoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(2) and (3)(B)(v), by failing to maintain water works operation and maintenance records and make them

readily available for review by the executive director upon request; PENALTY: \$50; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 834-4968; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: DIAMOND MESQUITE VENTURE, INCORPORATED dba Mesquite Food Mart; DOCKET NUMBER: 2021-0489-PST-E; IDENTIFIER: RN100704048; LOCATION: Mesquite, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: DP Construction, LLC; DOCKET NUMBER: 2021-0435-WQ-E; IDENTIFIER: RN111141610; LOCATION: Boyd, Wise County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Grassland Water Supply Corporation; DOCKET NUMBER: 2021-0414-PWS-E; IDENTIFIER: RN101244093; LOCATION: Post, Lynn County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the executive director within 90 days after being notified of the analytical results that caused an exceedance of the operation evaluation level for total trihalomethanes (TTHM) for Stage 2 Disinfection Byproducts at Site 1 during the fourth quarter of 2019; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for TTHM based on the locational running annual average; PENALTY: \$2,835; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(10) COMPANY: HAJI, INCORPORATED dba RPS Discount Store; DOCKET NUMBER: 2021-0455-PST-E; IDENTIFIER: RN102061504; LOCATION: Baytown, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every 30 days; and 30 TAC §37.815(a) and (b) and §334.54(e)(5), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$5,819; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 756-3994; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: JCT GANDHI LLC dba Super Sak 3; DOCKET NUMBER: 2021-0496-PST-E; IDENTIFIER: RN10375632; LOCATION: Tyler, Smith County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Terrany Binford, (512) 239-1116; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: Jeetpur Corporation dba Quick Track #55; DOCKET NUMBER: 2021-0450-PST-E; IDENTIFIER: RN101550796; LO-

CATION: Corsicana, Navarro County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Johan Alexander DeBoer and Klazina Jikke DeBoer dba Fluit South Dairy; DOCKET NUMBER: 2021-0479-AGR-E; IDENTIFIER: RN102065281; LOCATION: Dublin, Erath County; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: 30 TAC §§305.62, 305.125(1), and 321.33(g)(3) and Texas Pollutant Discharge Elimination System Permit Number WQ0005094000, Part V.B and Part VII.A(1)(b)(1), by failing to obtain TCEQ authorization prior to beginning physical construction or operation of a new control facility; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Lake Padre Development Company, LLC; DOCKET NUMBER: 2021-0477-WQ-E; IDENTIFIER: RN109187450; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, 40 Code of Federal Regulations §122.26(c), and Docket Number 2017-1553-MLM-E, Ordering Provision Number 2.b.ii, by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$9,072; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(15) COMPANY: NIROJ CORPORATION dba Whip In 113; DOCKET NUMBER: 2021-0446-PST-E; IDENTIFIER: RN102393543; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.225 and Texas Health and Safety Code, §382.085(b), by failing to comply with annual Stage I vapor recovery testing requirements; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$5,530; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Ragsdale Enterprises, LLC dba Southbound RV Park and Cabins; DOCKET NUMBER: 2021-0396-PWS-E; IDENTIFIER: RN107699324; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(h)(3) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director in writing as to the completion of a water works project and attest to the fact that the completed work is substantially in accordance with the plans and specifications on file with the commission; and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's public drinking water well into service; PENALTY: \$475; ENFORCEMENT COORDINATOR: Julianne Matthews, (817) 588-5861; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(17) COMPANY: Richland Special Utility District; DOCKET NUMBER: 2021-0405-PWS-E; IDENTIFIER: RN101451524; LOCATION: Richland Springs, San Saba County; TYPE OF FACILITY:

public water supply; RULES VIOLATED: 30 TAC §290.44(d) and §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operation conditions and 20 psi during emergencies such as firefighting; PENALTY: \$1,605; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: San Antonio River Authority; DOCKET NUMBER: 2021-0434-MWD-E; IDENTIFIER: RN105285506; LOCATION: Saint Hedwig, Bexar County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010749007, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$4,687; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: Sergio S. Gonzalez dba R & S Center; DOCKET NUMBER: 2021-0449-PST-E; IDENTIFIER: RN101434157; LOCATION: Laredo, Webb County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(20) COMPANY: TOM-TOM INVESTMENTS, INCORPORATED dba Texas Meat Market 4; DOCKET NUMBER: 2021-0456-PST-E; IDENTIFIER: RN102271301; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202103320

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: August 24, 2021



Enforcement Orders

An agreed order was adopted regarding Sherman/Grayson Hospital, LLC dba Wilson N. Jones Regional Medical Center, Docket No. 2019-0400-PST-E on August 24, 2021, assessing \$5,017 in administrative penalties with \$1,003 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FORT AUSTIN LIMITED PARTNERSHIP dba Brookdale Broadway Cityview, Docket No. 2019-0820-PST-E on August 24, 2021, assessing \$2,979 in administrative penalties with \$595 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ZAM, INC. and ZNJ ENTERPRISES, INC. dba Circle A Grocery, Docket No. 2019-0879-PST-E on August 24, 2021, assessing \$3,684 in administrative penalties with \$736 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tamnine, LLC dba Scotties Exxon, Docket No. 2019-1002-PST-E on August 24, 2021, assessing \$3,143 in administrative penalties with \$628 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Luna Bell dba Express Food Mart, Docket No. 2019-1110-PST-E on August 24, 2021, assessing \$4,862 in administrative penalties with \$972 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jose Montoya, Docket No. 2019-1465-MSW-E on August 24, 2021, assessing \$1,562 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Christopher Mullins, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 3-D Mobile Home and RV Park, Inc., Docket No. 2019-1735-PWS-E on August 24, 2021, assessing \$455 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Warms, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2020-0301-PWS-E on August 24, 2021, assessing \$6,502 in administrative penalties with \$1,299 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Petrolia, Docket No. 2020-0355-MWD-E on August 24, 2021, assessing \$3,850 in administrative penalties with \$770 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ricardo Ceja dba Talked About Customs, Docket No. 2020-0380-MSW-E on August 24, 2021, assessing \$950 in administrative penalties with \$190 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2020-0545-MLM-E on August 24, 2021, assessing \$3,280 in administrative penalties with \$656 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Petro-Chemical Transport, LLC, Docket No. 2020-0594-PST-E on August 24, 2021, assessing

\$1,773 in administrative penalties with \$354 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BIM INVESTMENT INC, Docket No. 2020-0596-PWS-E on August 24, 2021, assessing \$300 in administrative penalties with \$60 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gary Glazier and Jo Deene Glazier, Docket No. 2020-0633-MLM-E on August 24, 2021, assessing \$4,313 in administrative penalties with \$862 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Peter Henry Schouten Sr. and Nova Darlene Schouten dba P & L Dairy, Docket No. 2020-0644-AGR-E on August 24, 2021, assessing \$4,800 in administrative penalties with \$960 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Narcisco Lopez, Docket No. 2020-0714-MSW-E on August 24, 2021, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Carolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CYRUS 10 INVESTMENTS LLC, Docket No. 2020-0728-PST-E on August 24, 2021, assessing \$3,825 in administrative penalties with \$765 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding West Materials LLC, Docket No. 2020-0841-AIR-E on August 24, 2021, assessing \$4,001 in administrative penalties with \$800 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dirt Expert Sitework LLC, Docket No. 2020-0882-AIR-E on August 24, 2021, assessing \$2,550 in administrative penalties with \$510 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MM 2128 and J Inc dba 3rd St Handy Stop, Docket No. 2020-0887-PST-E on August 24, 2021, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WHITE OAK RADIATOR SERVICE, INC., Docket No. 2020-0891-WQ-E on August 24, 2021, assessing \$6,850 in administrative penalties with \$1,370 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ahern Rentals, Inc., Docket No. 2020-0904-PST-E on August 24, 2021, assessing \$2,516 in administrative penalties with \$503 deferred. Information concerning any aspect of this order may be obtained by contacting Terrany Binford, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HUT Enterprises, LLC, Docket No. 2020-0916-WQ-E on August 24, 2021, assessing \$1,150 in administrative penalties with \$230 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rohm and Haas Texas Incorporated, Docket No. 2020-0942-AIR-E on August 24, 2021, assessing \$7,200 in administrative penalties with \$1,440 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DELGADO & SON TRUCKING, LLC, Docket No. 2020-0972-WQ-E on August 24, 2021, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shell Chemical LP, Docket No. 2020-0991-AIR-E on August 24, 2021, assessing \$6,563 in administrative penalties with \$1,312 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SHKH LLC dba IK Food Mart, Docket No. 2020-1009-PST-E on August 24, 2021, assessing \$4,976 in administrative penalties with \$995 deferred. Information concerning any aspect of this order may be obtained by contacting Carolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MURPHY OIL USA, INC., Docket No. 2020-1013-PST-E on August 24, 2021, assessing \$1,750 in administrative penalties with \$350 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Yara Freeport LLC, Docket No. 2020-1014-AIR-E on August 24, 2021, assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Albemarle Corporation, Docket No. 2020-1016-AIR-E on August 24, 2021, assessing \$4,988 in administrative penalties with \$997 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SOUTHWEST UNIVERSAL, INC. dba Unique Food Mart, Docket No. 2020-1023-PST-E on August 24, 2021, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BARI GROUP, INC. dba Mini Mart, Docket No. 2020-1027-PST-E on August 24, 2021, assessing \$4,062 in administrative penalties with \$812 deferred. Information concerning any aspect of this order may be obtained by contacting Terrany Binford, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Targa Downstream LLC, Docket No. 2020-1041-AIR-E on August 24, 2021, assessing \$6,563 in administrative penalties with \$1,312 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Dickinson, Docket No. 2020-1074-WQ-E on August 24, 2021, assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Land Tejas Sterling Lakes South, L.L.C., Docket No. 2020-1075-WQ-E on August 24, 2021, assessing \$2,814 in administrative penalties with \$562 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Chevron Phillips Chemical Company LP, Docket No. 2020-1092-AIR-E on August 24, 2021, assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PHILLIPS 66 COMPANY, Docket No. 2020-1106-AIR-E on August 24, 2021, assessing \$2,813 in administrative penalties with \$562 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Navarro Midstream Services, LLC, Docket No. 2020-1124-AIR-E on August 24, 2021, assessing \$4,125 in administrative penalties with \$825 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NESZ Enterprises LLC dba Tiger Express, Docket No. 2020-1132-PST-E on August 24, 2021, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP, Docket No. 2020-1143-AIR-E on August 24, 2021, assessing \$3,983 in administrative penalties with \$796 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GANESH FNY INC dba Texas Pride n Joy, Docket No. 2020-1144-PST-E on August 24, 2021, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Grand Prairie Landfill Gas Production, Limited Liability Company, Docket No. 2020-1160-AIR-E on August 24, 2021, assessing \$5,626 in administrative penalties with \$1,125 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Chevron Phillips Chemical Company LP, Docket No. 2020-1181-AIR-E on August 24, 2021, assessing \$7,387 in administrative penalties with \$1,477 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ARO ENTERPRISES LLC dba Lucky Star Grocery, Docket No. 2020-1186-PST-E on August 24, 2021, assessing \$4,579 in administrative penalties with \$915 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding D.S.K Fortune Inc dba J&B Food Mart, Docket No. 2020-1187-PST-E on August 24, 2021, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JUICY FOOD MART INC dba Lake Kiowa Express, Docket No. 2020-1188-PST-E on August 24, 2021, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ClubCorp NV V, LLC dba Prestonwood Country Club, Docket No. 2020-1189-PST-E on August 24, 2021, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ANUALI CORPORATION INC dba Mr Kwik, Docket No. 2020-1196-PST-E on August 24, 2021, assessing \$6,989 in administrative penalties with \$1,397 deferred. Information concerning any aspect of this order may be obtained by con-

tacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Carl Burris dba Super C West, Docket No. 2020-1198-PST-E on August 24, 2021, assessing \$2,601 in administrative penalties with \$520 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Corbet Water Supply Corporation, Docket No. 2020-1200-PWS-E on August 24, 2021, assessing \$3,325 in administrative penalties with \$665 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cabinetworks Group Michigan LLC f/k/a Masco Cabinetry LLC, Docket No. 2020-1216-AIR-E on August 24, 2021, assessing \$6,075 in administrative penalties with \$1,215 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SA FAIR, LLC dba Petro Pantry 22, Docket No. 2020-1224-PST-E on August 24, 2021, assessing \$4,625 in administrative penalties with \$925 deferred. Information concerning any aspect of this order may be obtained by contacting Terrany Binford, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Continental Carbon Company, Docket No. 2020-1237-AIR-E on August 24, 2021, assessing \$4,125 in administrative penalties with \$825 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fordyce Holdings, Inc., Docket No. 2020-1269-PWS-E on August 24, 2021, assessing \$2,550 in administrative penalties with \$510 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Matthews, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Elliott Oil & Gas Operating Company, Docket No. 2020-1277-AIR-E on August 24, 2021, assessing \$6,875 in administrative penalties with \$1,375 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding S & M Retail, Corp dba Payless Fuel Center of Mesquite, Docket No. 2020-1290-PST-E on August 24, 2021, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GRAVES TRUCK STOP, INC, Docket No. 2020-1295-PST-E on August 24, 2021, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe,

Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Reliable Groceries Investment Inc dba 7 Eagle Food Mart, Docket No. 2020-1296-PST-E on August 24, 2021, assessing \$4,275 in administrative penalties with \$855 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAIDIP BROADWAY INC dba Harvey's, Docket No. 2020-1382-PST-E on August 24, 2021, assessing \$3,724 in administrative penalties with \$744 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Abubaker Yusuf dba Texaco Station, Docket No. 2020-1383-PST-E on August 24, 2021, assessing \$4,375 in administrative penalties with \$875 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HINESCLIFF, INC. dba Arena Mart, Docket No. 2020-1404-PST-E on August 24, 2021, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Atkins, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lone Star NGL Fractionators LLC, Docket No. 2020-1416-AIR-E on August 24, 2021, assessing \$5,188 in administrative penalties with \$1,037 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Harris County Municipal Utility District 304, Docket No. 2020-1419-PWS-E on August 24, 2021, assessing \$573 in administrative penalties with \$114 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Spade Water Supply Corporation, Docket No. 2020-1421-PWS-E on August 24, 2021, assessing \$2,940 in administrative penalties with \$588 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lyondell Chemical Company, Docket No. 2020-1432-AIR-E on August 24, 2021, assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Landmark Construction LLC, Docket No. 2020-1442-WQ-E on August 24, 2021, assessing \$3,000 in administrative penalties with \$600 deferred. Information concerning

any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Overton, Docket No. 2020-1461-MWD-E on August 24, 2021, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hitchcock Business Ventures Limited Liability Company dba Roadway, Docket No. 2020-1478-PST-E on August 24, 2021, assessing \$2,501 in administrative penalties with \$500 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Atkins, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Clarke Products, Inc., Docket No. 2020-1482-AIR-E on August 24, 2021, assessing \$3,638 in administrative penalties with \$727 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding East Texas Imperial Petroleum LLC dba Race Runner 5, Docket No. 2020-1495-PST-E on August 24, 2021, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BASF Corporation, Docket No. 2020-1522-AIR-E on August 24, 2021, assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Claude Webb, Docket No. 2020-1545-MSW-E on August 24, 2021, assessing \$1,312 in administrative penalties with \$262 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Town of Lakewood Village, Docket No. 2020-1554-MWD-E on August 24, 2021, assessing \$4,387 in administrative penalties with \$877 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Martin Marietta Materials Southwest, LLC, Docket No. 2020-1571-EAQ-E on August 24, 2021, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KTM Nepal LLC dba The Lively Grocery, Docket No. 2020-1589-PST-E on August 24, 2021, assessing \$5,250 in administrative penalties with \$1,050 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NAEEM GROUP ENTERPRISES INC dba Shop N Go 2, Docket No. 2020-1608-PST-E on August 24, 2021, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Terrany Binford, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Manakamana Properties, Inc. dba Proctor Grocery, Docket No. 2021-0016-PST-E on August 24, 2021, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Atkins, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202103353

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 25, 2021



Enforcement Orders

An agreed order was adopted regarding American Religious Town Hall Meeting, Inc., Docket No. 2020-0274-MWD-E on August 25, 2021, assessing \$7,812 in administrative penalties with \$1,562 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mike Knowles dba Western Skies RV Campground and Kimberly Knowles dba Western Skies RV Campground, Docket No. 2020-0817-PWS-E on August 25, 2021, assessing \$1,575 in administrative penalties with \$1,575 deferred. Information concerning any aspect of this order may be obtained by contacting Casey Kurnath, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Wichita Falls, Docket No. 2020-0854-MWD-E on August 25, 2021, assessing \$11,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nerro Supply, LLC, Docket No. 2020-0919-MWD-E on August 25, 2021, assessing \$9,002 in administrative penalties with \$1,800 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Texas Inc, Docket No. 2020-1035-MWD-E on August 25, 2021, assessing \$1,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Randy Corbin, Docket No. 2020-1058-MSW-E on August 25, 2021, assessing \$11,250 in administrative penalties with \$2,250 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP, Docket No. 2020-1140-AIR-E on August 25, 2021, assessing \$15,939 in administrative penalties with \$3,187 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Stolthaven Houston Inc, Docket No. 2020-1156-AIR-E on August 25, 2021, assessing \$1,342 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gemini HDPE LLC, Docket No. 2020-1179-AIR-E on August 25, 2021, assessing \$129,000 in administrative penalties with \$25,800 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Odfjell Terminals (Houston) Inc., Docket No. 2020-1180-AIR-E on August 25, 2021, assessing \$23,850 in administrative penalties with \$4,770 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Coryell City Water Supply District, Docket No. 2020-1207-PWS-E on August 25, 2021, assessing \$20,930 in administrative penalties with \$4,186 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Scout Energy Management LLC, Docket No. 2020-1209-AIR-E on August 25, 2021, assessing \$10,689 in administrative penalties with \$2,137 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bison Drilling and Field Services LLC, Docket No. 2020-1221-PWS-E on August 25, 2021, assessing \$1,925 in administrative penalties with \$1,650 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rock Solid Precast, LP, Docket No. 2020-1241-AIR-E on August 25, 2021, assessing \$14,627 in administrative penalties with \$2,925 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Freeport LNG Development, L.P., Docket No. 2020-1417-AIR-E on August 25, 2021, assessing \$12,375 in administrative penalties with \$2,475 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding North Runnels Water Supply Corporation, Docket No. 2020-1446-PWS-E on August 25, 2021, assessing \$2,025 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Michael Lewis Barker dba Buddy's Kwik Stop, Docket No. 2020-1516-PST-E on August 25, 2021, assessing \$11,452 in administrative penalties with \$2,290 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Atkins, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202103356

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 25, 2021



Notice of District Petition

Notice issued August 19, 2021

TCEQ Internal Control No. D-02012021-002; Robert M. Tiemann and Carrie Parker Tiemann (Petitioners) filed a petition for creation of Prairie Crossing Municipal Utility District No. 1 of Williamson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution; Chapter 375, Texas Local Government Code; and Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land in the proposed District; (2) the Petitioners certify that AXA Equitable Life Insurance Company is the only person or entity holding a lien on the Land described in the petition; (3) the proposed District will contain approximately 311.398 acres located within Williamson County, Texas; and (4) a portion of the proposed District is within the extraterritorial jurisdiction of the City of Taylor, Texas and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. R20-08, passed and approved February 13, 2020, the City of Taylor gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will (1) purchase, construct, acquire, maintain, and operate water, wastewater for commercial and residential purposes; (2) construct acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment and appliances to prove more adequate drainage for the District; (3) control, abate and amend local storm waters or other harmful excesses of waters in the District; (4) to design, acquire, construct, finance, improve, operate, and maintain, and convey to this state, a county, or a municipality for operation and maintenance, roads or any or improvements in aid of those roads; and (5) to purchase, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is created. According to the petition, a

preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately \$23,500,000 (including \$18,100,000 for utilities plus \$4,200,000 for roads plus \$1,200,000 for park and recreational facilities).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202103262

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 19, 2021



Notice of District Petition

Notice issued August 19, 2021

TCEQ Internal Control No. D-02012021-003; Robert M. Tiemann and Carrie Parker Tiemann (Petitioners) filed a petition for creation of Prairie Crossing Municipal Utility District No. 2 of Williamson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution; Chapter 375, Texas Local Government Code; and Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land in the proposed District; (2) the Petitioners certify that AXA Equitable Life Insurance Company is the only person or entity holding a lien on the Land described in the

petition; (3) the proposed District will contain approximately 506.604 acres located within Williamson County, Texas; and (4) a portion of the proposed District is within the extraterritorial jurisdiction of the City of Taylor, Texas and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. R20-08, passed and approved February 13, 2020, the City of Taylor gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will (1) purchase, construct, acquire, maintain, and operate water, wastewater for commercial and residential purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment and appliances to provide more adequate drainage for the District; (3) control, abate and amend local storm waters or other harmful excesses of waters in the District; (4) to design, acquire, construct, finance, improve, operate, and maintain, and convey to this state, a county, or a municipality for operation and maintenance, roads or any or improvements in aid of those roads; and (5) to purchase, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately \$28,850,000 (including \$22,300,000 for utilities plus \$5,050,000 for roads plus \$1,500,000 for park and recreational facilities).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202103263



Notice of District Petition

Notice issued August 25, 2021

TCEQ Internal Control No. D-03242021-033; KY-TEX PROPERTIES, LLC (Petitioner) filed a petition for creation of East Hays County Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 378.572 acres located within Hays County, Texas; and (4) all of the land within the proposed District is within the corporate limits of the City of Niederwald, Texas. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve and extend an adequate and efficient waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, parks and recreation facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$32,350,000 (\$26,600,000 for water, wastewater, and drainage, plus \$5,750,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and

will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202103354

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 25, 2021



Notice of Hearing on INEOS Nitriles USA LLC: SOAH
Docket No. 582-21-3191; TCEQ Docket No. 2021-0055-IWD;
Permit No. WQ0002181000

APPLICATION.

INEOS Nitriles USA LLC, P.O. Box 659, Port Lavaca, Texas 77979, which operates INEOS Green Lake Plant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002181000 to add water treatment wastes to Outfall 001; to correct the nonhazardous landfill wastewaters description; to remove Outfall 004; to add Outfalls 006 and 007; to renumber internal Outfalls 104 and 204 to final Outfalls 002 and 003; and to remove Other Requirement No. 4, which authorizes irrigation. The draft permit authorizes water treatment wastes, boiler blowdown, cooling tower blowdown, nonhazardous landfill leachate and stormwater from the nonhazardous landfill, treated domestic water, supernatant from lime sludge pits, and previously monitored effluent (from internal Outfall 101) at a daily average flow not to exceed 1.20 million gallons per day via Outfall 001; hydrostatic test water and stormwater via Outfalls 002 and 007; hydrostatic test water, compressor condensate, and stormwater via Outfall 003; and stormwater via Outfalls 005 and 006, all on an intermittent and flow-variable basis. The TCEQ received this application on August 1, 2019.

The facility is located at 13050 State Highway 185 North, west of the City of Port Lavaca, in Calhoun County, Texas 77979. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-96.833333%2C28.571111&level=12>. For the exact location, refer to the application.

The effluent is discharged via Outfall 001 directly to the Victoria Barge Canal Tidal; via Outfall 002 to a drainage way, thence to an unnamed tributary; via Outfalls 003, 006, and 007 to an unnamed tributary; via Outfall 005 to a drainage way, thence to a ditch, thence to Jones Creek; and all to the Victoria Barge Canal Tidal in Segment No. 1701 of the Lavaca-Guadalupe Coastal Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed ditch, tributary, and drainage way and high aquatic life use for Jones Creek. The designated uses for Segment No. 1701 are non-contact recreation and high aquatic life use.

In accordance with Title 30 Texas Administrative Code (TAC) Section 307.5 and TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Jones Creek and Victoria Barge Canal Tidal, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Calhoun County Library, 200 West Mahan Street, Port Lavaca, Texas.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - October 4, 2021

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 160 758 4419

Password: qWY4B9

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 160 758 4419

Password: 248910

Visit the SOAH website for registration at: <http://www.soah.texas.gov/> or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on June 14, 2021. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

Further information may also be obtained from INEOS Nitriles USA LLC at the address stated above or by calling Ms. Erica Dromgoole, Environmental Engineer, at (361) 552-8252.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: August 24, 2021

TRD-202103344

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 24, 2021



Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 5, 2021**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 5, 2021**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; how-

ever, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Tom Holloway; DOCKET NUMBER: 2020-0647-MSW-E; TCEQ ID NUMBER: RN110651510; LOCATION: 7120 Retta Mansfield Road, Mansfield, Tarrant County; TYPE OF FACILITY: municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$3,937; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202103322

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: August 24, 2021



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 5, 2021**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 5, 2021**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: UG OPERATIONS LLC dba U Mart 2; DOCKET NUMBER: 2020-1190-PST-E; TCEQ ID NUMBER: RN101860799; LOCATION: 35415 United States Highway 59, Louise, Wharton County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; STAFF ATTORNEY: Barrett Hollingsworth, Litigation, MC 175, (512) 239-0657; REGIONAL OFFICE: Houston Regional

Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: AHAM LLC dba SNACK N GO; DOCKET NUMBER: 2020-1197-PST-E; TCEQ ID NUMBER: RN101873081; LOCATION: 1817 61st Street, Galveston, Galveston County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases in a manner that will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; STAFF ATTORNEY: Judy Bohr, Litigation, MC 175, (512) 239-5807; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202103321

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: August 24, 2021



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Hermilo Pena dba Penas Exxon: SOAH Docket No. 582-21-3125; TCEQ Docket No. 2020-0231-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - September 23, 2021

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 160 770 1159

Password: Sept23TCEQ

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252 or (646) 828-7666

Meeting ID: 160 770 1159

Password: 2701342779

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed March 3, 2021 concerning assessing administrative penalties against and requiring certain actions of Hermilo Pena dba Penas Exxon, for violations in Nueces County, Texas, of: Texas Water Code §26.3475(d); 30 Texas Administrative Code §§334.602(a), 334.7(d)(1)(A), (d)(1)(B), and (d)(3), 334.49(a), (c)(2)(C), and 334.54(c)(1); and TCEQ Agreed Order Docket No. 2017-0730-PST-E, Section IV, Ordering Provisions No. 2.a.ii, 2.d.ii, and 2.d.iv.

The hearing will allow Hermilo Pena dba Penas Exxon, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Hermilo Pena dba Penas Exxon, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance

at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Hermilo Pena dba Penas Exxon to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Hermilo Pena dba Penas Exxon, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Benjamin Warmes, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: August 23, 2021

TRD-202103324

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 24, 2021



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Rakah Inc. dba Quick Stop: SOAH Docket No. 582-21-3122; TCEQ Docket No. 2020-0598-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - September 23, 2021

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 160 770 1159

Password: Sept23TCEQ

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252 or (646) 828-7666

Meeting ID: 160 770 1159

Password: 2701342779

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed April 8, 2021 concerning assessing administrative penalties against and requiring certain actions of RAKAH INC. dba Quick Stop, for violations in Cooke County, Texas, of: Texas Water Code §26.3475(c)(1) and 30 Texas Administrative Code §334.50(b)(1)(A).

The hearing will allow RAKAH INC. dba Quick Stop, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford RAKAH INC. dba Quick Stop, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of RAKAH INC. dba Quick Stop to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** RAKAH INC. dba Quick Stop, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and Texas Water Code chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Casey Kurnath, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701.

When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: August 23, 2021

TRD-202103325

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 24, 2021



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Sunnys Rufe Snow Inc dba Sunny Shell: SOAH Docket No. 582-21-3123; TCEQ Docket No. 2020-0240-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - September 23, 2021

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 160 770 1159

Password: Sept23TCEQ

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252 or (646) 828-7666

Meeting ID: 160 770 1159

Password: 2701342779

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed March 19, 2021 concerning assessing administrative penalties against and requiring certain actions of Sunnys Rufe Snow Inc dba Sunny Shell, for violations in Tarrant County, Texas, of: Texas Health & Safety Code §382.085(b); Texas Water Code §26.3475(a), (c)(1), and (c)(2); 30 Texas Administrative Code §§115.225, 334.42(i), 334.50(b)(1)(A) and (b)(2), 334.51(b)(2)(C), and 334.603(b)(2); and TCEQ Agreed Order Docket No. 2016-1394-PST-E, Ordering Provision No. 2.a.

The hearing will allow Sunnys Rufe Snow Inc dba Sunny Shell, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Sunnys Rufe Snow Inc dba Sunny Shell, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an

evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Sunnys Rufe Snow Inc dba Sunny Shell to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Sunnys Rufe Snow Inc dba Sunny Shell, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26, Texas Health & Safety Code ch. 382, and 30 Texas Administrative Code chs. 70, 115, and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Judy Bohr, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWhorter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: August 23, 2021

TRD-202103326

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 24, 2021



Notice of Public Meeting for a Municipal Solid Waste Permit: Proposed Permit No. 2400

Application. The City of Waco, 501 Schroeder Drive, Waco, Texas 76710, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit to authorize the construction and operation of a new Type I Municipal Solid Waste (MSW) landfill. The facility is proposed to be located at 4730 T K Parkway, Axtell 76624 in McLennan and Limestone Counties, Texas. The TCEQ received Parts I and II of this application on August 8, 2018 and Parts III and IV of the complete

application on May 29, 2020; as such, this is a continuation of that application and not a new application. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/1irnev0>. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined that the application is administratively complete and is conducting a technical review of the application. After the technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. **Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.**

Public Comment/Public Meeting. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Response will be provided orally during the Informal Discussion Period. During the Formal Discussion Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all formal comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, September 23, 2021 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 847-880-883. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access must call (512) 239-1201 **at least one day prior** to the meeting to register for the meeting and to obtain information for participating telephonically. Members of the public who wish to **only listen** to the meeting may call, toll free, (415) 655-0052 and enter access code 240-069-391.

Additional information will be available on the agency calendar of events at the following link:

<https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

Information. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our website at

www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application is available for viewing and copying at the Waco-McLennan County Central Library, 1717 Austin Avenue, Waco, McLennan County, Texas 76701 and may be viewed online at: <https://www.waco-texas.com/landfill-application-process.asp>. Further information may also be obtained from the City of Waco at the address stated above or by calling Mr. Charles Dowdell, Director of Solid Waste, at (254) 750-1601.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issued Date: August 19, 2021

TRD-202103264

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 19, 2021



**Notice of Public Meeting for Municipal Solid Waste Permit:
Proposed Permit No. 2406**

Application. PC-II, LLC, 300 Concourse Blvd., Suite 101, Ridgeland, Madison County, Mississippi 39157, a Mississippi limited liability company, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit to authorize a new Municipal Solid Waste Type I Landfill. The facility is proposed to be located approximately six miles northwest of the intersection of US 59 and Business SH 105, in San Jacinto County, Texas. The TCEQ received Parts I and II of this application on August 28, 2019 and Parts III and IV of the complete application on September 16, 2020; as such, this is a continuation of that application and not a new application. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/08jO4L>. For the exact location, refer to the application.

Additional Notice. TCEQ's Executive Director has determined that the application is administratively complete and is conducting a technical review of the application. After the technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. **Notice of the Application and Preliminary Decision will be published by the applicant in newspapers that meet the TCEQ requirements and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.**

Public Comment/Public Meeting. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Discussion Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all formal comments will be prepared by the Executive Director. All formal comments will be considered before a decision is

reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, September 28, 2021 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 695-776-027. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access must call (512) 239-1201 **at least one day prior** to the meeting to register for the meeting and to obtain information for participating telephonically. Members of the public who wish to **only listen** to the meeting may call, toll free, (914) 614-3221 and enter access code 365-674-558.

Additional information will be available on the agency calendar of events at the following link:

<https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

Information. Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application is available for viewing and copying at the Shepherd Public Library, 30 North Liberty Street, Shepherd, Texas 77371, and may be viewed online at <https://peachcreekep.com/resources/>. Further information may also be obtained from PC-II, LLC at the address stated above or by calling Mr. Jeffery Hobby, Project Manager at (601) 362-3333.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issued Date: August 24, 2021

TRD-202103343

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 24, 2021



TCEQ Seeks Stakeholder Input on Upcoming Rulemaking Related to On-Site Sewage Facilities

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct five virtual stakeholder meetings across the state in September and October 2021 to solicit informal comments on rulemaking for 30 Texas Administrative Code (TAC) Chapter 30, Occupational

Licenses and Registrations, and 30 TAC Chapter 285, On-Site Sewage Facilities.

These stakeholder meetings are the result of petitions approved at the December 16, 2020 (Non-Rule Project Number 2021-003-PET-NR), and April 30, 2021 (Non-Rule Project Number 2021-015-PET-NR), Commissioner's Agenda, respectively. The petitions seek to: amend Chapter 30 by adding language to easily identify Responsible Parties, including definitions of TCEQ licensed individuals, and by the creation of a new licensing/registration program for sludge pumpers; and amend Chapter 285 to better protect public health and the environment by revising regulations/statutes to create more consistency with industry terminology and standards.

Virtual Stakeholder Meetings

Stakeholder meetings are an opportunity for the public to provide informal comments to staff prior to the start of formal rulemaking. While staff will review all comments received, the TCEQ will not formally respond to any informal comments.

All Stakeholder meetings will be virtual, at the dates and times below. For members of the public who do not wish to provide informal comments but would like to view the meeting, they may do so at the link provided below for each meeting, at no cost:

Thursday, September 23, 2021, at 6:00 p.m.

https://teams.microsoft.com/l/meetup-join/19%3ameeting_M2FIM-WZmM2ItNGM1ZC00N2MwLWEzZWEtOTM5YzVlYzg4MmFI%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22bf237360-1655-4724-96f6-ba9493e841ba%22%2c%22IsBroadcastMeeting%22%3atrue%7d

Tuesday, September 28, 2021, at 6:00 p.m.

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZTljZT-gwYmEtZDZAzYi00NTc2LTgyMzEtNTQ5ZmMzNDBlZDA5%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22bf237360-1655-4724-96f6-ba9493e841ba%22%2c%22IsBroadcastMeeting%22%3atrue%7d

Thursday, September 30, 2021, at 6:00 p.m.

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZGJhO-GE0MmMtOGIzZi00MmMzLWJmOTUtNDEwMzg4MjlmMTdl%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22bf237360-1655-4724-96f6-ba9493e841ba%22%2c%22IsBroadcastMeeting%22%3atrue%7d

Tuesday, October 5, 2021, at 6:00 p.m.

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MjBm-MGEwODEtZjgyNC00YWY14LWE2ZGMtZDBhOWRmNDA2Mjly%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22bf237360-1655-4724-96f6-ba9493e841ba%22%2c%22IsBroadcastMeeting%22%3atrue%7d

Thursday, October 7, 2021, at 6:00 p.m.

https://teams.microsoft.com/l/meetup-join/19%3ameeting_NmI-wMTEzNzItMDg0ZC00OGJlLWlYxYmQrYzdlZmNhNWU5MTlj%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22bf237360-1655-4724-96f6-ba9493e841ba%22%2c%22IsBroadcastMeeting%22%3atrue%7d

Registration

The meetings will be conducted remotely using an internet meeting service. Individuals who plan to attend the scheduled meetings and want to provide informal oral comments **must register by September 15, 2021**. To register for a meeting and provide informal comments during the meeting, please email Rules@tceq.texas.gov and provide the following information: date of meeting you plan to attend, your name, your affiliation, your email address, and your phone number. Instructions for participating in the meeting will be sent two business days prior to the meeting to those who have registered to provide informal oral comments.

Persons who have special communication or other accommodation needs who are planning to register to provide informal comments should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible in order to allow adequate time to set up accommodations.

Written Stakeholder Comments

Written stakeholder comments may be submitted to Ms. Lee Bellware, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2021-030-285-CE. The comment period closes October 11, 2021. Please choose one form of submittal when submitting *written* stakeholder comments.

Information on On-Site Sewage Facilities, a link to the current TCEQ rules, and copies of the Commission's decision on the petitions can be found on the On-Site Sewage Facility Rule Petition page on the TCEQ's website at <https://www.tceq.texas.gov/permitting/ossf/on-site-sewage-facility-program>.

For additional information please contact Mr. Shannon W. Frazier, Program Support Section, at (512) 239-6313 or the Program Support Section's Main Line at (512) 239-0400.

TRD-202103341

Robert Martinez

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 24, 2021



Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance Amendment Effective October 1, 2021

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective October 1, 2021.

The purpose of the amendment is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

Ambulatory Surgical Centers / Hospital Based Ambulatory Surgical Centers; and

Physicians and Other Practitioners.

The proposed amendment is estimated to result in an annual aggregate savings of \$8,921 for federal fiscal year (FFY) 2022, consisting of \$5,562 in federal funds and \$3,359 in state general revenue. For FFY

2023, the estimated annual aggregate savings is \$8,770, consisting of \$5,332 in federal funds and \$3,438 in state general revenue. For FFY 2024, the estimated annual aggregate savings is \$8,620, consisting of \$5,241 in federal funds and \$3,379 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Provider Finance website under the proposed effective date at: <https://pfd.hhs.texas.gov/rate-packets>.

Rate Hearings. A rate hearing was conducted online on May 25, 2021, at 9:00 a.m. Information about the proposed rate changes and the hearing were published in the May 7, 2021, issue of the *Texas Register* (46 TexReg 3057). The notice of hearing can be found at <http://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendment. Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Kevin Niemeyer, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be available for review at the local county offices of HHSC, (which were formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments. Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W Guadalupe St

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFDAcuteCare@hhs.texas.gov

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible, for communication with HHSC related to this state plan amendment.

TRD-202103336

◆ ◆ ◆
Department of State Health Services

Withdrawal of a Practice Serving a Medically Underserved Population

The Texas Department of State Health Services (department) under Texas Occupations Code §157.051 may designate practices serving a medically underserved population. Under Texas Administrative Code Title 25, Part 1, Chapter 13, Subchapter C, §13.35, the department is required to verify a practice's continued eligibility for designation as a practice serving a medically underserved population no more than two years after its initial designation and within each two-year period thereafter.

PediPlace, located at 7989 Beltline Road, Dallas, Texas 75248, was designated as a site serving a medically underserved population on February 10, 2016 due to its disproportionate number of clients eligible for federal, state, or locally funded health care programs. PediPlace, located at 7989 Beltline Road, Dallas, Texas 75248, no longer meets the eligibility for designation and the designation has been withdrawn.

Oral and written comments on this withdrawal of designation may be directed to Anne Nordhaus, MA, Research Specialist, Health Professions Resource Center - Mail Code 1898, Center for Health Statistics, Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; (512) 776-3862 (phone); (512) 776-7344 (fax); or hprc@dshs.texas.gov (email). Comments will be accepted for 30 days from the publication date of this notice.

TRD-202103342
Scott A. Merchant
Interim General Counsel
Department of State Health Services
Filed: August 24, 2021

◆ ◆ ◆
Texas Lottery Commission

Correction of Error

The Texas Lottery Commission published the game procedure for Scratch Ticket Game Number 2356 "SUPER TICKET™ 777" in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5287). Due to an error by the Texas Register, the name of the scratch ticket game is incorrectly listed in the second paragraph of the notice.

The affected paragraph should have read as follows:

A. The name of Scratch Ticket Game No. 2356 is "SUPER TICKET™ 777". The play style is "multiple games".

TRD-202103333

◆ ◆ ◆
Scratch Ticket Game Number 2358 "\$1,000,000 ULTIMATE"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2358 is "\$1,000,000 ULTIMATE". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2358 shall be \$50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2358.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, ARMORED CAR SYMBOL, BANK SYMBOL, CLOVER SYMBOL, COIN SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, HEART SYMBOL, NECKLACE SYMBOL, POT OF GOLD SYMBOL, RING SYMBOL, SAFE SYMBOL, SILVER SYMBOL, STAR SYMBOL, MONEY BAG SYMBOL, \$\$ SYMBOL, 20X SYMBOL, \$50.00, \$75.00, \$100, \$150, \$200, \$250, \$500, \$2,500, \$25,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2358 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFO
26	TWSX

27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR

55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
61	SXON
62	SXTO
63	SXTH
64	SXFR
65	SXFV
66	SXSX
67	SXSV
68	SXET
69	SXNI
70	SVTY
71	SVON
72	SVTO
73	SVTH
74	SVFR
75	SVFV
76	SVSX
77	SVSV
78	SVET
79	SVNI
ARMORED CAR SYMBOL	ARMCAR
BANK SYMBOL	BANK
CLOVER SYMBOL	CLOVER

COIN SYMBOL	COIN
CROWN SYMBOL	CROWN
DIAMOND SYMBOL	DIAMND
GOLD BAR SYMBOL	GOLD
HEART SYMBOL	HEART
NECKLACE SYMBOL	NECKLACE
POT OF GOLD SYMBOL	POTGOLD
RING SYMBOL	RING
SAFE SYMBOL	SAFE
SILVER SYMBOL	SILVER
STAR SYMBOL	STAR
MONEY BAG SYMBOL	WIN\$
\$\$ SYMBOL	DBL
20X SYMBOL	WINX20
\$50.00	FFTY\$
\$75.00	SVFV\$
\$100	ONHN
\$150	ONFF
\$200	TOHN
\$250	TOFF
\$500	FVHN
\$2,500	25HN
\$25,000	25TH
\$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2358), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2358-0000001-001.

H. Pack - A Pack of the "\$1,000,000 ULTIMATE" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 020 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$1,000,000 ULTIMATE" Scratch Ticket Game No. 2358.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "\$1,000,000 ULTIMATE" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-six (76) Play Symbols. If the player reveals 2 matching Play Symbols in the same \$200 BONUS SPOT, the player wins \$200. If the player reveals 2 matching Play Symbols in the same \$500 BONUS SPOT, the player wins \$500. If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "\$\$" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly seventy-six (76) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly seventy-six (76) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the seventy-six (76) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the seventy-six (76) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to thirty-four (34) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. The \$50 Prize Symbol will only appear on winning Tickets in which the \$50 prize is part of a winning pattern.

E. Each Ticket will have eight (8) different WINNING NUMBERS Play Symbols.

F. Non-winning YOUR NUMBERS Play Symbols will all be different.

G. Non-winning Prize Symbols will never appear more than five (5) times.

H. The "MONEY BAG" (WIN\$), "\$\$" (DBL) and "20X" (WINX20) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

I. The "\$\$" (DBL) and "20X" (WINX20) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

J. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

K. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 75 and \$75).

L. \$200/\$500 BONUS SPOTS: If none of the \$200 BONUS SPOT and \$500 BONUS SPOT play areas are winners, all eight (8) Play Symbols used among the eight (8) play spots will be different.

M. \$200/\$500 BONUS SPOTS: In the two (2) \$200 BONUS SPOT play areas, there will never be two (2) matching Play Symbols among the four (4) play spots, unless one (1) of the \$200 BONUS SPOT play areas is a winner, and those two (2) matching Play Symbols appear in the same \$200 BONUS SPOT play area.

N. \$200/\$500 BONUS SPOTS: In the two (2) BONUS SPOT play areas, there will never be two (2) matching Play Symbols among the four (4) play spots, unless one (1) of the \$500 BONUS SPOT play areas is a winner, and those two (2) matching Play Symbols appear in the same \$500 BONUS SPOT play area.

O. \$200/\$500 BONUS SPOTS: Winning plays in the two (2) \$200 BONUS SPOT and the two (2) \$500 BONUS SPOT play areas will only appear on winning Tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$1,000,000 ULTIMATE" Scratch Ticket Game prize of \$75.00, \$100, \$150, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$75.00, \$100, \$150, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$1,000,000 ULTIMATE" Scratch Ticket Game prize of \$2,500, \$25,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event

that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$1,000,000 ULTIMATE" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$1,000,000 ULTIMATE" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$1,000,000 ULTIMATE" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto.

Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2358. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2358 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$75.00	600,000	10.00
\$100	450,000	13.33
\$150	225,000	26.67
\$200	300,000	20.00
\$500	81,000	74.07
\$2,500	1,550	3,870.97
\$25,000	75	80,000.00
\$1,000,000	4	1,500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.62. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2358 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2358, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the

State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202103323

Bob Biard

General Counsel

Texas Lottery Commission

Filed: August 24, 2021



Scratch Ticket Game Number 2362 "WINTER WORDS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2362 is "WINTER WORDS". The play style is "other".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2362 shall be \$3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2362.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except

for dual-image games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100, \$300 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The letter Play Symbols do not have captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2362 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	

Z	
\$3.00	THR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$300	THHN
\$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2362), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2362-0000001-001.

H. Pack - A Pack of the "WINTER WORDS" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). There will be 2 fanfold configurations for this game. Configuration A will show the front of Ticket 001 and the back of Ticket 125. Configuration B will show the back of Ticket 001 and the front of Ticket 125.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "WINTER WORDS" Scratch Ticket Game No. 2362.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly

ninety-one (91) Play Symbols. A prize winner in the "WINTER WORDS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: The player completely scratches all the YOUR 20 LETTERS Play Symbols. The player then scratches all the letters found in GAMES 1 through 12 that exactly match the YOUR 20 LETTERS Play Symbols. If a player matches all the letters in the same GAME with the YOUR 20 LETTERS Play Symbols, the player wins the PRIZE for that GAME. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly ninety-one (91) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption. The letter Play Symbols do not have captions;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly ninety-one (91) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the ninety-one (91) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the ninety-one (91) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. A Ticket can win up to twelve (12) times in accordance with the approved prize structure.
- B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.
- C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.
- D. Each Ticket consists of a YOUR 20 LETTERS play area and GAMES 1 - 12 play area.

E. Each letter will only appear once per Ticket in the YOUR 20 LETTERS play area.

F. Each word will appear only once per Ticket in GAMES 1 - 12.

G. There will be a minimum of three (3) vowels in the YOUR 20 LETTERS play area. Vowels are A, E, I, O and U.

H. The length of the words found in GAMES 1 - 12 will range from three (3) to eight (8) letters, as shown on the artwork.

I. The \$3 and \$5 Prize Symbols will only appear in GAMES 3 - 12. The \$100 and \$300 Prize Symbols will only appear in GAMES 1 - 7. The \$30,000 Prize Symbol will only appear in GAMES 1 - 4.

J. Only words from the approved word list (TX_Winter_Approved_Vers.1.042021.docx) will appear in GAMES 1 - 12.

K. None of the words from the TX_Prohibited_Words_Vers.1.042021.docx that contain three (3) or more letters will appear vertically or diagonally (in any direction) in GAMES 1 - 12.

L. None of the words from the TX_Prohibited_Words_Vers.1.042021.docx that contain three (3) or more letters will appear horizontally, vertically or diagonally (in any direction) in the YOUR 20 LETTERS play area.

M. A player will never find a word horizontally (in any direction), vertically (in any direction) or diagonally (in any direction) in the YOUR 20 LETTERS play area that matches a word in GAMES 1 - 12.

N. A minimum of fourteen (14) YOUR 20 LETTERS will open at least one (1) letter in GAMES 1 - 12.

2.3 Procedure for Claiming Prizes.

A. To claim a "WINTER WORDS" Scratch Ticket Game prize of \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100 or \$300, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100 or \$300 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WINTER WORDS" Scratch Ticket Game prize of \$30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WINTER WORDS" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social

Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "WINTER WORDS" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "WINTER WORDS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2362. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2362 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$3.00	624,000	9.62
\$5.00	336,000	17.86
\$10.00	288,000	20.83
\$15.00	144,000	41.67
\$20.00	60,000	100.00
\$30.00	24,000	250.00
\$50.00	12,500	480.00
\$100	4,000	1,500.00
\$300	750	8,000.00
\$30,000	4	1,500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.02. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2362 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2362, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202103297

Bob Biard

General Counsel

Texas Lottery Commission

Filed: August 23, 2021



North Central Texas Council of Governments

Request for Proposals for the Denton County Transit Planning Study

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firms for the Denton County Transit Planning Study. The purpose of this project is to develop a comprehensive approach for planning and strategic implementation of transit services focusing on internal and regional connection, increased transportation options and innovation, people movement, feasible funding options, and private sector participation in Denton County.

Proposals must be received no later than 5:00 p.m., Central Time, on Friday, October 1, 2021, to Andrew Pagano, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to TransRFPs@nctcog.org. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on Friday, September 3, 2021.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202103311

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: August 23, 2021



Texas Water Development Board

Applications Received in July

Applications July 2021:

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #21795 a request from the Sabine-Neches Navigation District, 8180 Anchor Drive, Port Arthur, Texas 77642-8288, received on July 1, 2021, for \$150,000,000 in financing from the Texas Water Development Fund for a basin deepening project.

Project ID #62911, a request from the Meeker Municipal Water District, 807 North Meeker Road, Beaumont, Texas 77713, received on July 20, 2021, for \$6,925,000 in financing from the Drinking Water State Revolving Fund for a proposed groundwater well project.

Project ID #21796, a request from the Greater Texoma Utility Authority on behalf of the City of Valley View, 5100 Airport Drive, Denison, Texas 75020, received on July 20, 2021, for \$700,000 from the Texas Water Development Fund for a wastewater system improvement project.

Project ID #62912, a request from the City of Crockett, 200 North 5th Street, Crockett, Texas 75835, received on July 27, 2021, for \$3,480,000 in financing from the Drinking Water State Revolving Fund for a water line rehabilitation project.

Project ID #73912, a request from the City of Moran, 340 Fisher Avenue, Moran, Texas 76464, received on July 28, 2021, for \$500,000 in financing from the Clean Water State Revolving Fund for a sewer system improvement project.

Project ID #62913, a request from the City of Breckenridge, 105 North Rose Avenue, Breckenridge, Texas 76424, received on July 29, 2021, for \$3,640,350 in financing from the Drinking Water State Revolving Fund for the Breckenridge water system improvement project.

Project ID #62914, a request from the City of Lexington, 604 Wheatley Street, Lexington, Texas 78947, received on July 28, 2021, for

\$2,450,000 in financing from the Drinking Water State Revolving Fund for a new water well project.

Project ID #73913, a request from the City of Shenandoah, 29955 Interstate Highway 45, Shenandoah, Texas 77380, received on July 29, 2021, for \$6,500,000 in financing from Clean Water State Revolving Fund for updates to existing wastewater treatment plant.

Project ID #73914, a request from the City of China, 425 Broadway Street, China, Texas 77613, received on July 29, 2021, for \$10,220,000 in financing from the Clean Water State Revolving Fund for wastewater treatment plant improvement project.

Project ID #62916, a request from the City of Daingerfield, 108 Coffey Street, Daingerfield, Texas 75638, received on July 29, 2021, for \$3,351,000 in financing from the Drinking Water State Revolving Fund for water system upgrade improvement project.

Project ID #62915, a request from Tom Green County Fresh Water Supply District No. 2, 508 Anson, Christoval, Texas 76953, received on July 29, 2021, for \$300,000 in financing from the Drinking Water State Revolving Fund for a water well rehabilitation and emergency generator project

Project ID #62917, a request from East Texas Municipal Utility District, 12162 TX-155 North, Tyler, Texas 75708, received on July 30, 2021, for \$2,083,455 in financing from the Drinking Water State Revolving Fund for a water system improvement project.

Project ID #73916, a request from the Greater Texoma Utility Authority on behalf of City of Whitewright, 5100 Airport Drive, Denison, Texas 75020, received on July 30, 2021, for \$7,145,000 in financing from the Clean Water State Revolving Fund for a wastewater treatment plant improvement project

Project ID #62918, a request from the City of Dilley, 101 South Commerce Street, Dilley, Texas 78017, received on July 30, 2021, for \$746,000 in financing from the Drinking Water State Revolving Fund for a water system improvement project.

TRD-202103288

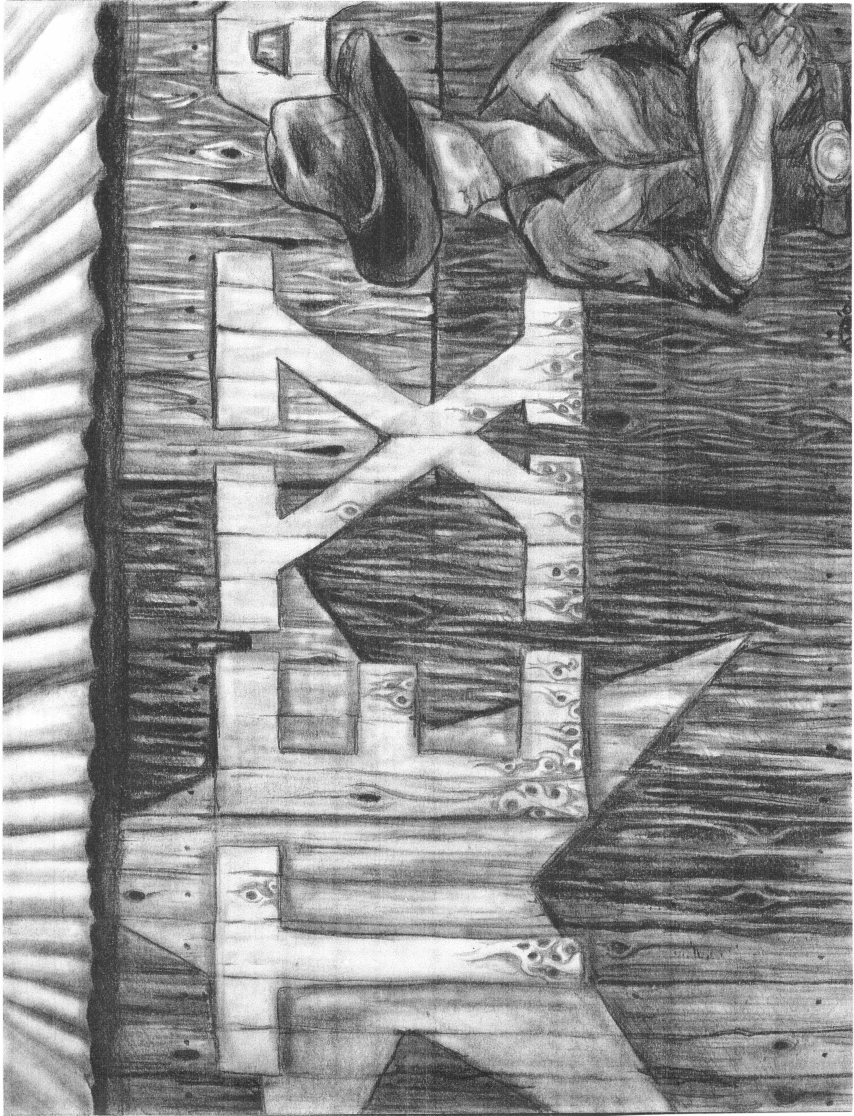
Ashley Harden

General Counsel

Texas Water Development Board

Filed: August 23, 2021





How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 46 (2021) is cited as follows: 46 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “46 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 46 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC.

The TAC volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the TAC, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s TAC number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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