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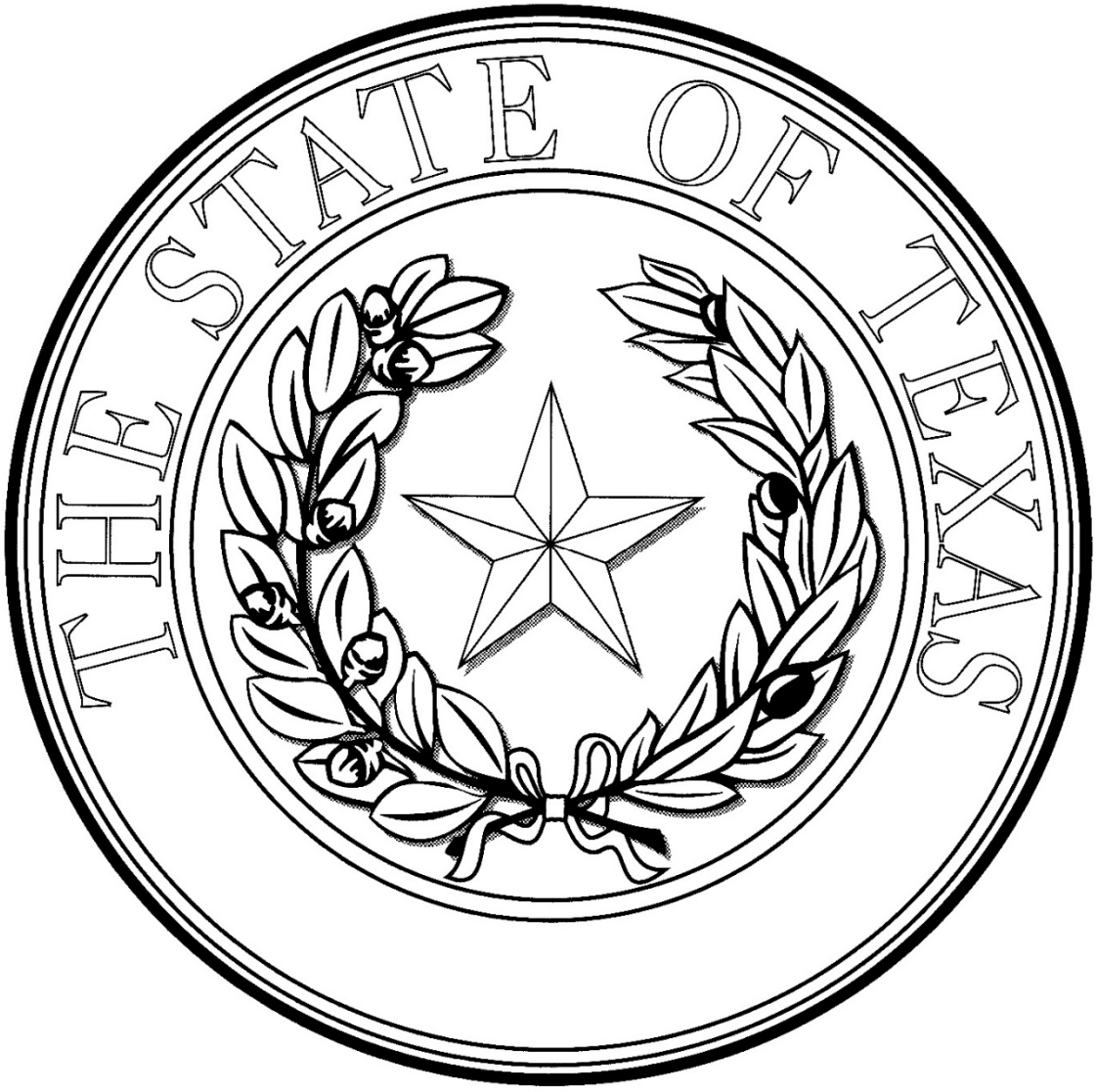

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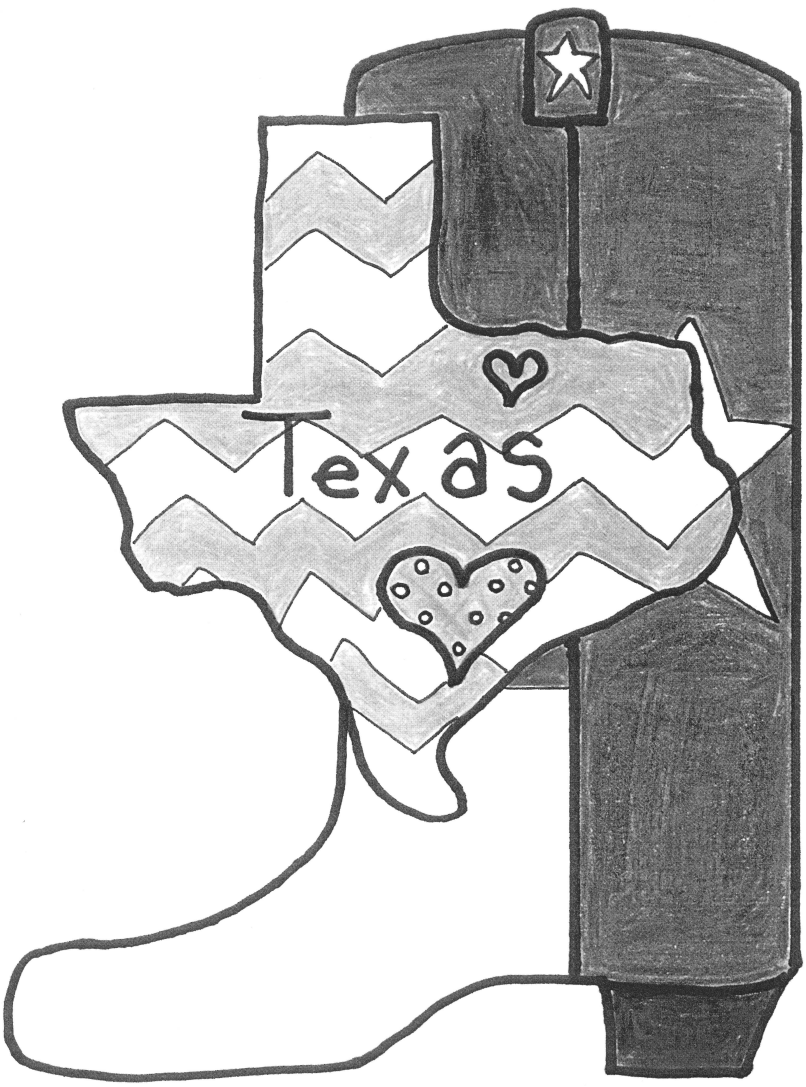
IN ADDITION


Texas

THE GOVERNOR

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

Proclamation 41-3979

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that the severe weather and tornadoes that began on June 14, 2023, and included severe storms, large hail, heavy rainfall, flash flooding, tornadoes, and hazardous wind gusts caused widespread and severe property damage, injury, or loss of life in Ochiltree and Cass counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto 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 16th day of June, 2023.

Greg Abbott, Governor

TRD-202302314

♦ ♦ ♦

Proclamation 41-3980

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on Friday, June 16, 2023, certifying the severe weather and tornadoes that began on June 14, 2023, and included severe storms, large hail, heavy rainfall, flash flooding, tornadoes, and hazardous wind gusts caused widespread and severe property damage, injury, or loss of life in Ochiltree and Cass counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in these additional counties: Franklin, Harrison, Marion, Upshur, and Wood counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto 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 17th day of June, 2023.

Greg Abbott, Governor

TRD-202302315

♦ ♦ ♦

Proclamation 41-3981

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on Friday, June 16, 2023, certifying the severe weather and tornadoes that began on June 14, 2023, and included severe storms, large hail, heavy rainfall, flash flooding, tornadoes, and hazardous wind gusts caused widespread and severe property damage, injury, or loss of life in Ochiltree and Cass counties; and

WHEREAS, on June 17, 2023, I amended that proclamation to also declare a disaster in Franklin, Harrison, Marion, Upshur, and Wood Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in these additional counties: Camp, Gregg, Hopkins, Panola, Smith, and Titus counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any

state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto 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 19th day of June, 2023.

Greg Abbott, Governor

TRD-202302316

♦ ♦ ♦

Proclamation 41-3982

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on Friday, June 16, 2023, certifying the severe weather and tornadoes that began on June 14, 2023, and included severe storms, large hail, heavy rainfall, flash flooding, tornadoes, and hazardous wind gusts caused widespread and severe property damage, injury, or loss of life in Ochiltree and Cass counties; and

WHEREAS, on June 17, 2023, I amended that proclamation to also declare a disaster in Franklin, Harrison, Marion, Upshur, and Wood Counties;

WHEREAS, on June 19, 2023, I amended that proclamation to also declare a disaster in Camp, Gregg, Hopkins, Panola, Smith, and Titus Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in these additional counties: Morris and Shelby Counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto 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 21st day of June, 2023.

Greg Abbott, Governor

TRD-202302317

♦ ♦ ♦

Proclamation 41-3983

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on Friday, June 16, 2023, certifying the severe weather and tornadoes that began on June 14, 2023, and included severe storms, large hail, heavy rainfall, flash flooding, tornadoes, and hazardous wind gusts caused widespread and severe property damage, injury, or loss of life in Ochiltree and Cass counties; and

WHEREAS, on June 17, 2023, I amended that proclamation to also declare a disaster in Franklin, Harrison, Marion, Upshur, and Wood counties;

WHEREAS, on June 19, 2023, I amended that proclamation to also declare a disaster in Camp, Gregg, Hopkins, Panola, Smith, and Titus counties;

WHEREAS, on June 21, 2023, I amended that proclamation to also declare a disaster in Morris and Shelby counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in these additional counties: Motley, Nolan, Fisher, Jones, Kent, and Stonewall counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto 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 22nd day of June, 2023.

Greg Abbott, Governor

TRD-202302318

♦ ♦ ♦

Proclamation 41-3984

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on Friday, June 16, 2023, certifying the severe weather and tornadoes that began on June 14, 2023, and included severe storms, large hail, heavy rainfall, flash flooding, tornadoes, and hazardous wind gusts that caused widespread and severe property damage, injury, or loss of life in Ochiltree and Cass counties; and

WHEREAS, on June 17, 2023, I amended that proclamation to also declare a disaster in Franklin, Harrison, Marion, Upshur, and Wood counties; and

WHEREAS, on June 19, 2023, I amended that proclamation to also declare a disaster in Camp, Gregg, Hopkins, Panola, Smith, and Titus counties; and

WHEREAS, on June 21, 2023, I amended that proclamation to also declare a disaster in Morris and Shelby counties; and

WHEREAS, on June 22, 2023, I amended that proclamation to also declare a disaster in Motley, Nolan, Fisher, Jones, Kent, and Stonewall counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in these additional counties: Montgomery and Leon counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

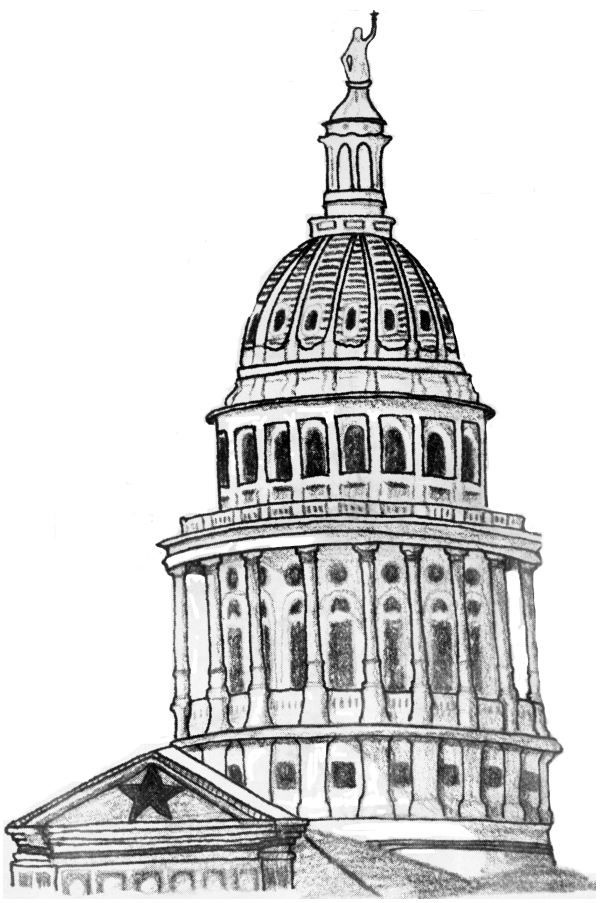
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto 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 23rd day of June, 2023.

Greg Abbott, Governor

TRD-202302319

♦ ♦ ♦



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.)

Opinions

♦ ♦ ♦

Opinion No. JS-0002

Mr. Mark Wolfe

Executive Director

Texas Historical Commission

Post Office Box 12276

Austin, Texas 78711-2276

Re: Questions related to the ownership of the Texas Revolution and Texas Civil War centennial markers and what state agency, if any, is responsible for the preservation and maintenance of the markers (RQ-0491-KP)

S U M M A R Y

Article III, sections 51 and 52 of the Texas Constitution prohibits a state agency from making an outright grant of state property. A state agency's conveyance of state property must be authorized by the Legislature. To the extent ownership of the historical markers commemorating the centennial of the Republic of Texas and the Civil War has not been lawfully transferred to another party, the markers remain the property of the State of Texas.

Pursuant to Government Code section 2165.001, the Texas Facilities Commission is the custodian of state property and responsible for the proper care and protection of such property. And under Government Code sections 2166.501 and 2166.502, the Facilities Commission has responsibility for certain monuments and memorials. As a result of those duties, a court would likely conclude the Texas Facilities Commission is charged with maintaining the historical markers commemorating the centennial of the Republic of Texas and the Civil War.

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

TRD-202302255
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: June 21, 2023

♦ ♦ ♦

Opinion No. JS-0003

The Honorable Stephanie Klick

Chair, House Committee on Public Health

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of school districts or educators to choose what disciplinary action to impose on a student because of race, ethnicity, sex, or gender of the student (RQ-0492-KP)

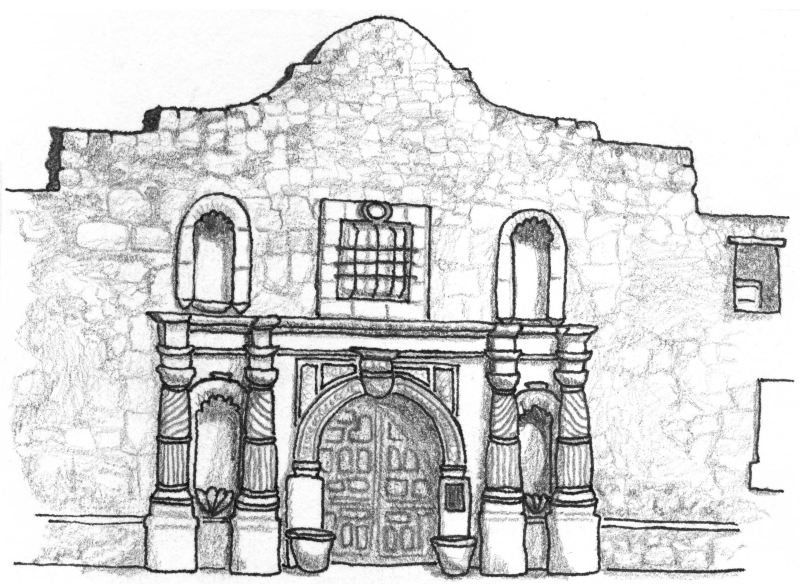
S U M M A R Y

Texas Equal Rights Amendment of the Texas Constitution provides that "[e]quality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin." In applying this provision, the Texas Supreme Court will not uphold a state action based on sex, race, color, creed, or national origin unless it is narrowly tailored to serve a compelling governmental interest. Thus, any race-based student disciplinary decision by an educator or school district, whether motivated by guidance from the Office for Civil Rights of the U.S. Department of Education or otherwise, violates state law unless it meets this standard. A court would likely conclude that avoiding a disparate impact cannot serve as a compelling governmental interest that justifies making a race-based student disciplinary decision.

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

TRD-202302331
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: June 27, 2023

♦ ♦ ♦



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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.112, concerning Attendant Compensation Rate Enhancement.

BACKGROUND AND PURPOSE

Title 42, Code of Federal Regulations (CFR), §441.301(c)(4)(i) - (v), requires home and community-based settings in programs authorized by §1915(c) of the Social Security Act to have certain qualities, including being integrated into and supporting full access of individuals to the greater community. HHSC adopted rules to implement individualized skills and socialization in the December 23, 2022, issue of the *Texas Register.*

The 2022-2023 General Appropriations Act (GAA), Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 23) authorized funding for the provision of individualized skills and socialization in the Home and Community-Based Services (HCS), Texas Home Living (TxHmL), and Deaf-Blind with Multiple Disabilities (DBMD) programs. HHSC adopted rates for individualized skills and socialization based on the available appropriations, effective January 1, 2023.

The proposal replaces day habilitation with individualized skills and socialization services for the purposes of the Attendant Compensation Rate Enhancement Program.

The proposed amendment clarifies that providers contracted with a managed care organization to provide attendant care services may participate in the Attendant Compensation Rate Enhancement Program through their managed care organizations. The amendment removes references to Community Based Alternatives (CBA)--Assisted Living/Residential Care (AL/RC) and CBA--Home and Community Support Services (HCSS). These programs were carved into managed care in 2015, and HHSC neither enrolls these providers in the Attendant Compensation Rate Enhancement Program nor determines spending requirements associated with the program.

The proposed amendment modifies several aspects of the Attendant Compensation Rate Enhancement Program. The proposed amendment changes requirements for participating providers to submit an attendant compensation report for determining spending requirements in the Attendant Compensation Rate Enhancement Program. The proposed amendment clarifies that if providers are required to submit a cost report for a rate year, HHSC will use the cost report as an attendant compensation report. For rate years in which participating providers are not required to submit a cost report, HHSC will require a subset of participating providers to submit an accountability report to serve as an attendant compensation report. These providers will be selected at random from the total number of participating contracts that are not required to submit a cost report for a rate year. The number selected will represent a statistically valid sample of participating providers. The proposed amendment modifies report submission requirements for contracts participating in the Attendant Compensation Rate Enhancement Program undergoing a change of ownership or a contract termination by relaxing the requirement that these providers must submit a report to HHSC. The proposed amendment removes provisions allowing limited providers to submit the request for revision report or request for recalculation while modifying parameters regarding limitations.

The proposed amendment implements some recommendations in HHSC's legislative report, *Rates: Intermediate Care Facilities and Certain Waiver Providers,* required by the 2022-2023 GAA, S.B. 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 30). The proposed amendment repeals the requirement that an attendant must perform attendant functions at least 80 percent of his or her total time worked to be considered an attendant for determining spending requirements in the Attendant Compensation Rate Enhancement Program or for calculating the attendant compensation rate component. The amendment provides that any staff who performs attendant functions to prevent a break in service will be considered an attendant.

The proposed amendment modifies the methodology HHSC uses to calculate the attendant compensation rate component for each attendant service. HHSC proposes to calculate the attendant compensation rate component by calculating a median of attendant compensation cost center data weighted by each attendant service units of service from the most recent Medicaid cost report database. The attendant compensation cost component will be inflated using HHSC's inflation methodology from the cost reporting period to the prospective rate period and limited to available levels of state and federal appropriations.

SECTION-BY-SECTION SUMMARY

The proposed amendment removes references to CBA--AL/RC and CBA--HCSS throughout the rule. The amendment adds new subsection (b), which provides that providers contracted with a managed care organization to provide attendant care ser-

vices may participate in the Attendant Compensation Rate Enhancement Program through their managed care organizations. The amendment removes references to CBA--AL/RC and CBA--HCSS as these programs were carved into managed care in 2015, and HHSC neither enrolls these providers in the Attendant Compensation Rate Enhancement Program nor determines spending requirements associated with the program. All following subsections are renumbered.

The proposed amendment deletes current §355.112(b)(1) to repeal the requirement that an attendant must perform attendant functions at least 80 percent of his or her total time worked to be considered an attendant to determine spending requirements in the Attendant Compensation Rate Enhancement Program or for calculating the attendant compensation rate component.

The proposed amendment replaces references to day habilitation with individualized skills and socialization for the DBMD, HCS, and TxHmL programs throughout the rule.

The proposed amendment to current subsection (e) provides that open enrollment ends on the next business day if the last day of open enrollment falls on a weekend day or state or national holiday.

The proposed amendment to current subsection (h) defines an attendant compensation report as a report reflecting the provider's activities while delivering contracted services from the first day of the rate year through the last day of the rate year or provider's fiscal period while participating in the Attendant Compensation Rate Enhancement Program. The proposed amendment specifies that both cost and accountability reports are considered attendant compensation reports.

New subsection (i)(2) specifies HHSC will require a subset of participating contracted providers to submit an annual attendant compensation report. If a provider is required to submit a cost report for a rate year, HHSC will use the cost report as an attendant compensation report. For providers not required to submit a cost report for a rate year, HHSC will select a subset of these providers at random to submit an accountability report serving as their attendant compensation report. The number of selected providers will represent a statistically valid sample of participating providers for the rate year. The proposed amendment also relaxes the requirement that participating providers who terminate their contracts or undergo a change of ownership must submit an attendant compensation report to HHSC.

The proposed amendment to current subsection (l) modifies the methodology HHSC uses to calculate the attendant compensation rate component for each attendant service. HHSC proposes to calculate the attendant compensation rate component by calculating a median of attendant compensation cost center data weighted by each attendant service units of service from the most recent Medicaid cost report database. The attendant compensation cost components will be inflated using HHSC's inflation methodology from the cost reporting period to the prospective rate period and limited to available levels of state and federal appropriations.

The proposed amendment deletes current §355.112(s)(4), as §355.727 is being repealed through a different proposed amendment.

The proposed amendment to current subsection (t) deletes paragraph (2) as HHSC no longer performs requests for recalculation.

The proposed amendment to current subsection (u) deletes paragraph (2) to remove the option for participating providers to submit a request for revision report to overturn a limitation.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed. Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rule is in effect is an estimated cost of $5,970,073 in General Revenue (GR) ($17,170,185 All Funds (AF)) in fiscal year (FY) 2023, $10,868,693 GR ($27,260,328 AF) in FY 2024, $10,865,942 GR ($27,267,107 AF) in FY 2025, $10,865,942 GR ($27,267,107 AF) in FY 2026, $10,865,942 GR ($27,267,107 AF) in FY 2027. This fiscal note represents only costs associated with direct care rate components, including attendant compensation and other direct care cost areas.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will limit an existing rule;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is amended to reduce the burden or responsibilities imposed on regulated persons by the rule.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public benefit will be reduced administrative burden on providers partic-

ipating in the Attendant Compensation Rate Enhancement Program.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because it is a voluntary program and does not impose a cost to comply on participating providers.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to PFD-LTSS@hhs.texas.gov.

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R040" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§355.112. Attendant Compensation Rate Enhancement.

(a) Eligible programs. Providers contracted in the following programs are eligible to participate in the attendant compensation rate enhancement:

~~[(1) Community Based Alternatives (CBA)--Assisted Living/Residential Care (AL/RC);]~~

~~[(2) CBA--Home and Community Support Services (HCSS);]~~

(1) [~~(3)~~] Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA);

(2) [~~(4)~~] Day Activity and Health Services (DAHS);

(3) [~~(5)~~] Deaf-Blind with Multiple Disabilities Waiver (DBMD);

(4) [~~(6)~~] Home and Community-based Services (HCS);

(5) [~~(7)~~] Intermediate Care Facilities for Individuals with Intellectual Disability or Related Conditions (ICF/IID) ("Related Conditions" has the same meaning as in 26 TAC §261.203 [~~40 TAC §9.203~~] (relating to Definitions));

(6) [~~(8)~~] Primary Home Care (PHC);

(7) [~~(9)~~] Residential Care (RC) [~~RC~~]; and

(8) [~~(10)~~] Texas Home Living (TxHmL).

(b) Managed Care Providers. A provider contracted with a managed care organization (MCO) to provide attendant care services may participate in any Attendant Compensation Rate Enhancement Program through the MCO with whom it is contracted, as provided by the MCO's managed care contract with HHSC. Each MCO is responsible for managing any Attendant Compensation Rate Enhancement Program for its contracted providers, including provider enrollment and compliance with the program's spending requirements or any spending requirements imposed under state or federal law.

(c) [~~(b)~~] Definition of attendant. For the purposes of the Attendant Compensation Rate Enhancement Program [~~attendant compensation rate enhancement,~~] under this section, an attendant is an [~~the~~] unlicensed caregiver providing direct assistance to individuals with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL).

~~[(1) For the ICF/IID, DAHS, RC, and CBA AL/RC programs and the HCS supervised living (SL)/residential support services (RSS) and HCS and TxHmL day habilitation (DH) settings, the attendant may perform some nonattendant functions. In such cases, the attendant must perform attendant functions at least 80% of his or her total time worked. Staff in these settings not providing attendant services at least 80% of their total time worked are not considered attendants. Time studies must be performed in accordance with §355.105(b)(2)(B)(i) of this subchapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures) for staff in the ICF/IID, DAHS, RC, and CBA AL/RC programs and the HCS SL/RSS and HCS and TxHmL DH settings that are not full-time attendants but perform attendant functions to determine if a staff member meets this 80% requirement. Failure to perform the time studies for these staff will result in the staff not being considered attendants. Staff performing attendant functions in both the HCS SL/RSS and HCS and TxHmL DH settings that combine to equal at least 80% of their total hours worked would be included in this designation.]~~

(1) [~~(2)~~] Attendants do not include the director, administrator, assistant director, assistant administrator, clerical and secretarial staff, professional staff, other administrative staff, licensed staff, attendant supervisors, cooks and kitchen staff, maintenance and groundskeeping staff, activity director, DBMD Interveners I, II or III, Qualified Intellectual Disability Professionals (QIDPs) or assistant QIDPs, direct care worker supervisors, direct care trainer supervisors, job coach supervisors, foster care providers, and laundry and housekeeping staff. Staff [~~In the ease of HCS supported home living (SHL) and HCS Community First Choice Personal Assistance Services/Habilitation (CFC PAS HAB), TxHmL community support services (CSS), and TxHmL CSS/CFC PAS HAB, PHC, CLASS, CBA--HCSS, and DBMD, staff~~] other than attendants may deliver attendant services and be considered an attendant if they must perform attendant services that cannot be delivered by another attendant to prevent a break in service.

(2) [(3)] An attendant also includes the following:

(A) a driver who is transporting individuals in the [CBA AL/RC,] DAHS, ICF/IID, and RC programs and the HCS SL/RSS and HCS and TxHmL individualized skills and socialization [DH] settings;

(B) a medication aide in the HCS SL/RSS setting, [and the CBA AL/RC,] ICF/IID, and RC programs; and

(C) direct care workers, direct care trainers, job coaches, employment assistance direct care workers, and supported employment direct care workers.

(d) [(c)] Attendant compensation cost center. This cost center will include employee compensation, contract labor costs, and personal vehicle mileage reimbursement for attendants as defined in subsection (c) [(b)] of this section.

(1) Attendant compensation is the allowable compensation for attendants defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) and required to be reported as either salaries and/or wages, including payroll taxes and workers' compensation, or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title to be reported as costs applicable to specific cost report line items, except as noted in paragraph (3) of this subsection, are not to be included in this cost center. For ICF/IID, attendant compensation is also subject to the requirements detailed in §355.457 of this title (relating to Cost Finding Methodology). For HCS and TxHmL, attendant compensation is also subject to the requirements detailed in §355.722 of this title (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(2) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes, such as FICA, Medicare, and federal and state unemployment insurance, and who perform tasks routinely performed by employees where allowed by program rules.

(3) Mileage reimbursement paid to the attendant for the use of his or her personal vehicle and which is not subject to payroll taxes is considered compensation for this cost center.

(e) [(d)] Rate year. The rate year begins on the first day of September and ends on the last day of August of the following year.

(f) [(e)] Open enrollment. Open enrollment begins on the first day of July and ends on the last day of that same July preceding the rate year for which payments are being determined. The Texas Health and Human Services Commission (HHSC) notifies providers of open enrollment via email sent to an authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC by the last day of the open enrollment period through HHSC's enrollment portal or another method designated by HHSC. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. If open enrollment has been postponed or cancelled, HHSC will notify providers by email before the first day of July. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(g) [(f)] Enrollment contract amendment.

(1) For [CBA--HCSS and AL/RC,] CLASS--DSA, DBMD, DAHS, RC and PHC, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate and a preferred participation level.

[(A)] For the PHC program, the participating provider must also specify whether the attendant compensation rate enhancement should apply to the provider's provision of priority, nonpriority, or both priority and nonpriority services.]

[(B) For providers delivering both RC and CBA AL/RC services in the same facility, participation includes both the RC and CBA AL/RC programs.]

(2) For ICF/IID, HCS and TxHmL, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each component code a desire to participate or not to participate and a preferred participation level. All contracts of a component code within a specific program must either participate at the same level or not participate.

(A) For the ICF/IID program, the participating provider must also specify the services the provider wishes to have participate in the attendant compensation rate enhancement. Eligible services are residential services and day habilitation services. The participating provider must specify whether the provider wishes to participate for residential services only, day habilitation services only or both residential services and day habilitation services.

(B) For the HCS and TxHmL programs, eligible services are divided into three categories. The three categories of services eligible for rate enhancement are the following:

(i) non-individualized skills and socialization [non-day habilitation] services:

(I) SHL/CFC PAS HAB/CSS;

(II) in-home respite (IHR) and out-of-home respite (OHR);

(III) supported employment (SE); and

(IV) employment assistance (EA);

(ii) individualized skills and socialization [day habilitation] services; and

(iii) residential services:

(I) SL; and

(II) RSS.

(C) The participating provider must specify which combination of the three categories of services the attendant compensation rate enhancement will apply to. For providers delivering services in both the HCS and TxHmL programs, the selected categories must be the same for their HCS and TxHmL programs, except for residential services which are only available in the HCS program.

(3) After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period as follows:

(A) a nonparticipant can request to become a participant;

(B) a participant can request to become a nonparticipant; or

(C) a participant can request to change its participation level.

(4) Providers whose prior year enrollment was limited by subsection (v) [(u)] of this section who request to increase their enrollment levels will be limited to increases of three or fewer enhancement levels during the first open enrollment period after the limitation. Providers that were subject to an enrollment limitation may request to participate at any level during open enrollment beginning two years after limitation.

(5) Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC [Rate Analysis] by the last day of the open enrollment period as per subsection (f) [(e)] of this section. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted.

(6) For PHC, DAHS, RC, and CLASS--DSA [, CBA--HCSS, DBMD, and CBA--AL/RC,] providers from which HHSC [Rate Analysis] has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds until the provider notifies HHSC in accordance with subsection (y) [(x)] of this section that it no longer wishes to participate or until the provider's enrollment is limited in accordance with subsection (v) [(u)] of this section.

[(7) For ICF/IID, HCS, and TxHmL, all participating and nonparticipating providers must request to modify their enrollment status during the 2021 enrollment period.]

[(A) A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; and a participant can request to change its participation level.]

[(B) This request to modify enrollment status will constitute a revised enrollment. Providers who have not submitted to HHSC Rate Analysis an acceptable revised enrollment by the last day of the open enrollment period will become non-participating providers.]

[(C) Once the revised enrollment has been completed, providers will continue to participate at the level of participation in effect during the last open enrollment period within available funds until the provider notifies HHSC in accordance with subsection (x) of this section that it no longer wishes to participate or until the provider's enrollment is limited in accordance with subsection (u) of this section.]

(7) [(8)] To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative as per HHSC's signature authority designation form applicable to the provider's contract or ownership type, and legible.

(h) [(g)] Enrollment of new [New] contracts. For the purposes of this section, for each rate year a new contract is defined as a contract or component code whose effective date is on or after the first day of the open enrollment period, as defined in subsection (f) [(e)] of this section, for that rate year. Contracts that underwent a contract assignment or change of ownership and new contracts that are part of an existing component code are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative as per HHSC's signature authority designation form applicable to the provider's contract or ownership type, and received by HHSC [Rate Analysis] within 30 days of notification to the provider that such an enrollment contract amendment must be submitted. If the 30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (m) [(l)] of this section with no enhancements. For new contracts specifying their desire to participate in the attendant compensation rate enhancement on an acceptable enrollment contract amendment, the attendant compensation rate is adjusted as specified in subsection (s) [(r)] of this section, effective on the first day of the month following receipt by HHSC of an acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited by subsection (q)(2)(B) [(p)(2)(B)] of this section during the most recent enrollment, enrollment for new contracts will be subject to that same limitation. If the most recent enrollment was cancelled by subsection (f) [(e)] of this section, new contracts will not be permitted to be enrolled.

(i) [(h)] Attendant Compensation Report [submittal requirements].

(1) Definition of [Annual] Attendant Compensation Report. An attendant compensation report is a report reflecting the provider's activities while delivering contracted services from the first day of the rate year through the last day of the rate year or provider's cost report year while participating in the attendant compensation rate enhancement program. This report is used as the basis for determining compliance with the spending requirements as described in subsection (t) of this section. Cost and accountability reports requested by HHSC are considered attendant compensation reports, and preparers must complete mandatory training requirements per §355.102(d) of this subchapter (relating to General Principles of Allowable and Unallowable Costs).

(2) Providers must file Attendant Compensation Reports as follows. HHSC will require a subset of [All] participating contracted providers to submit an annual Attendant Compensation Report to [will provide] HHSC [Rate Analysis,] in a method specified by HHSC. [Rate Analysis, an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year.]

(A) Cost reports serving as Attendant Compensation Reports. If HHSC requires a participating provider to file a cost report for a rate year, HHSC will use that provider's cost report as an Attendant Compensation Report as the basis for determining compliance with the spending requirements as described in subsection (t) of this section.

(B) Accountability reports serving as Attendant Compensation Reports. HHSC will require a select number of participating providers who are not required to submit a cost report for a rate year to submit an accountability report, which will serve as an Attendant Compensation Report as the basis for determining compliance with the spending requirements as described in subsection (t) of this section. These providers will be selected at random from the total number of participating contracts that are not required to submit a cost report for a rate year. The number selected must represent a statistically valid sample of participating providers.

(C) The Attendant Compensation Report [This report] must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the rate year within one program of the provider. A participating contract that has been terminated in accordance with subsection (w) [(v)] of this section or that has undergone a contract assignment in accordance with subsection (x) [(w)] of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. [This report will be used as the basis for determining compliance

with the spending requirements and recoupment amounts as described in subsection (s) of this section.]

(D) If required to submit a report by HHSC, contracted [Contracted] providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC [Rate Analysis].

(E) [(A)] When a participating provider changes ownership through a contract assignment, the prior owner may be required to [must] submit an Attendant Compensation Report covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by HHSC, or its designee. If required, this [This] report will be used as the basis for determining any recoupment amounts as described in subsection (t) [(s)] of this section. The new owner may [will] be required to submit an Attendant Compensation Report covering the period from the day after the date recognized by HHSC, or its designee, as the contract-assignment effective date to the end of the rate year.

(F) [(B)] Participating providers whose contracts are terminated voluntarily or involuntarily may be required to [must] submit an Attendant Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. If required, this [This] report will be used as the basis for determining recoupment as described in subsection (t) [(s)] of this section.

(G) [(C)] Participating providers who voluntarily withdraw from participation, as described in subsection (y) [(x)] of this section, may be required to [must] submit an Attendant Compensation Report within 60 days from the date of withdrawal as determined by HHSC. If required, this [This] report must cover the period from the beginning of the rate year through the date of withdrawal as determined by HHSC and will be used as the basis for determining any recoupment amounts as described in subsection (t) [(s)] of this section.

(H) [(D)] Participating providers whose cost report year, as defined in §355.105(b)(5) of this subchapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures), coincides with the state of Texas fiscal year, are exempt from the requirement to submit a separate Attendant Compensation Report. For these contracts, their cost report will be considered their Attendant Compensation Report.

(3) [(2)] Cost Reports. Cost reports as described in §355.105(b) - (c) of this subchapter will serve as the Attendant Compensation Report with the following exceptions. [:]

(A) When a participating provider changes ownership through a contract assignment or change of ownership, the previous owner may be required to [must] submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract-assignment or ownership-change effective date. If required, this [This] report will be used as the basis for determining any recoupment amounts as described in subsection (t) [(s)] of this section. The new owner may be required to [must] submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the contract-assignment or ownership-change effective date to the end of the provider's fiscal year.

(B) When one or more contracts or, for the ICF/IID, HCS, and TxHmL programs, component codes of a participating provider are terminated, either voluntarily or involuntarily, the provider may be required to [must] submit an Attendant Compensation Report for the terminated contract(s) or component code(s) covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract or component code termination date. This report will be used as the basis for determining any recoupment amounts as described in subsection (t) [(s)] of this section.

(C) When one or more contracts or, for the ICF/IID, HCS and TxHmL programs, component codes of a participating provider are voluntarily withdrawn from participation as per subsection (y) [(x)] of this section, the provider may be required to [must] submit an Attendant Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the provider's cost reporting period to the date of withdrawal as determined by HHSC. If required, this [This] report will be used as the basis for determining any recoupment amounts as described in subsection (t) [(s)] of this section. These providers may [must] still be required to submit a cost report covering the entire cost reporting period. The cost report will [not] be used for determining any recoupment amounts.

(D) For new contracts as defined in subsection (h) [(g)] of this section, the cost reporting period will begin with the effective date of participation in the enhancement.

(E) Existing providers who become participants in the enhancement as a result of the open enrollment process described in subsection (f) [(e)] of this section on any day other than the first day of their fiscal year may be required to [must] submit an Attendant Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the provider's fiscal year. If required, this [This] report will be used as the basis for determining any recoupment amounts as described in subsection (t) [(s)] of this section. These providers may [must] still be required to submit a cost report covering the entire cost reporting period. The cost report will [not] be used for determining any recoupment amounts.

(F) A participating provider that is required to submit a cost report or Attendant Compensation Report under this paragraph will be excused from the requirement to submit a report if the provider did not provide any billable attendant services to HHSC recipients during the reporting period.

(4) [(3)] Other reports. HHSC may require other reports from all contracts as needed.

(5) [(4)] Vendor hold. HHSC, or its designee, will place on hold the vendor payments for any participating provider who does not submit a timely report as described in paragraph (2) [(1)] of this subsection completed in accordance with all applicable rules and instructions. This vendor hold will remain in effect until HHSC [Rate Analysis] receives an acceptable report.

(A) Participating contracts or, for the ICF/IID, HCS and TxHmL programs, component codes may be required to submit an Attendant and Compensation Report. Participating facilities required to submit an Attendant and Compensation Report that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this subchapter will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the contractor for services provided during the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsection (t) [(s)] of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become perma-

nent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(B) Participating contracts or, for the ICF/IID, HCS, and TxHmL programs, component codes that have terminated or undergone a contract assignment or ownership-change from one legal entity to a different legal entity may be required to submit an Attendant and Compensation Report. Participating facilities required to submit an Attendant and Compensation Report that [~~and~~] do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the contract assignment, ownership-change, or termination effective date will become nonparticipants retroactive to the first day of the reporting period in question. These contracts or component codes will remain nonparticipants, and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment under subsection (t) [~~(s)~~] of this section. If an acceptable report is not received within 365 days of the contract assignment, ownership-change, or termination effective date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(6) [~~(5)~~] Provider-initiated amended Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports. Reports must be received before the date the provider is notified of compliance with spending requirements for the report in question in accordance with subsection (t) [~~(s)~~] of this section.

(j) [~~(i)~~] Report contents. Each Attendant Compensation Report and cost report functioning as an Attendant Compensation Report will include any information required by HHSC to implement this attendant compensation rate enhancement.

(k) [~~(j)~~] Completion of compensation reports. All Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this subchapter (relating to General Principles of Allowable and Unallowable Costs; Specifications for Allowable and Unallowable Costs; Revenues; and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this subchapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). All Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed by preparers who have attended the required cost report training for the applicable program under §355.102(d) of this subchapter. For the ICF/IID program, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.456 of this chapter (relating to Reimbursement Methodology). For the HCS and TxHmL programs, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.722 of this chapter (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(l) [~~(k)~~] Enrollment. Providers choosing to participate in the attendant compensation rate enhancement must submit to HHSC a signed enrollment contract amendment as described in subsection (g) [~~(f)~~] of this section. Participation is determined separately for each program specified in subsection (a) of this section, except that [~~for providers delivering both RC and CBA AL/RC services in the same facility, participation includes both the RC and CBA AL/RC programs and~~] for providers delivering both HCS and TxHmL services, participation includes both the HCS and TxHmL programs. For PHC, participation is also determined separately for priority and nonpriority services. For ICF/IID, participation is also determined separately for residential services and day habilitation services. For HCS and TxHmL, participation is also determined separately for the non-individualized skills and socialization services, individualized skills and socialization services, and residential services categories [~~non-day habilitation services category and the day habilitation services category~~] as defined in subsection (g)(2)(B) [~~(f)(2)(B)~~] of this section. Participation will remain in effect, subject to availability of funds, until the provider notifies HHSC, in accordance with subsection (y) [~~(x)~~] of this section, that it no longer wishes to participate or until HHSC excludes the contract from participation for reasons outlined in subsection (v) [~~(u)~~] of this section. Contracts or component codes voluntarily withdrawing from participation will have their participation end effective with the date of withdrawal as determined by HHSC. Contracts or components codes excluded from participation will have their participation end effective on the date determined by HHSC.

(m) [~~(l)~~] Determination of attendant compensation rate component for nonparticipating contracts.

(1) For CLASS--DSA; DAHS; DBMD; PHC; RC; STAR+PLUS AL; STAR+PLUS HCBS and Non-HCBS programs, HHSC will calculate an attendant compensation rate component for nonparticipating contracts by calculating a median of attendant compensation cost center data as defined in subsection (d) of this section for each applicable attendant service, weighted by the applicable attendant service's units of service from the most recently examined cost report database for each program, and adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 (related to Determination of Inflation Indices).

(A) The weighted median cost component is multiplied by 1.044 for CLASS--DSA, DBMD, PHC, STAR+PLUS HCBS, and Non-HCBS; and by 1.07 for DAHS, RC and STAR+PLUS AL. The result is the attendant compensation rate component for nonparticipating contracts.

(B) If HHSC has insufficient cost data, the attendant compensation rate component will be established through a pro forma costing approach as defined in §355.105(h) of this subchapter.

[~~(1) For the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; DBMD; and CBA--AL/RC programs, HHSC will calculate an attendant compensation rate component for nonparticipating contracts as follows.~~]

[~~(A) Determine for each contract included in the cost report database used in determination of rates in effect on September 1, 1999, the attendant compensation cost center from subsection (c) of this section.~~]

[~~(B) Adjust the cost center data from subparagraph (A) of this paragraph in order to account for inflation utilizing the inflation factors used in the determination of the September 1, 1999 rates.~~]

[~~(C) For each contract included in the cost report database used to determine rates in effect on September 1, 1999, divide the result from subparagraph (B) of this paragraph by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS, the median cost per unit of service is selected. For all other programs, the units of service are summed until the median unit of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied by 1.044 for PHC, CLASS--DSA, CBA--HCSS, and DBMD; and by 1.07 for RC, CBA--AL/RC, and DAHS. The result is~~

the attendant compensation rate component for nonparticipating contracts.]

[(D) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.]

(2) For ICF/IID DH, ICF/IID residential services, HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each service by calculating a median of attendant compensation cost center data as defined in subsection (d) of this section for each DH and Residential services, weighted by ICF/IID units of service from the most recently examined ICF/IID cost report database, and adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 (related to Determination of Inflation Indices).

(A) The weighted median attendant cost component is adjusted by modeled direct care hours to unit ratios to determine attendant compensation rate components for each level of need (LON).

(B) The weighted median cost component is multiplied by 1.07 for both ICF/IID DH and residential services.

(C) If HHSC has insufficient cost data, the attendant compensation rate component will be established through a pro forma costing analysis as defined in §355.105(h) of this subchapter.

[(2) For ICF/IID DH, ICF/IID residential services, HCS SL/RSS, HCS DH, HCS SHL/CFC PAS HAB, HCS respite, HCS supported employment, HCS employment assistance, TxHmL DH, TxHmL CSS and CFC PAS HAB, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance, for each level of need (LON), HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each service as follows:]

[(A) For each service, for each LON, determine the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants. For ICF/IID, the fully-funded model is the model as calculated under §355.456(d) of this chapter (relating to Reimbursement Methodology) before any adjustments made in accordance with §355.101 of this subchapter (relating to Introduction) and §355.109 of this subchapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs). For HCS and TxHmL, the fully-funded model is the model as calculated under §355.723(d) of this chapter (relating to Reimbursement Methodology for Home and Community-based Services and Texas Home Living Programs) before any adjustments made in accordance with §355.101 and §355.109 of this subchapter for the rate period.]

[(B) For each service, for each LON, multiply the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants from subparagraph (A) of this paragraph by the total adopted reimbursement rate for that service in effect on August 31, 2010. Effective September 1, 2019, the result is multiplied by 1.044 for HCS SHL/CFC PAS HAB, HCS respite, HCS supported employment, HCS employment assistance, TxHmL CSS and CFC/PAS HAB, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance and by 1.07 for HCS SL/RSS, HCS DH, TxHmL DH and ICF Residential and ICF DH. The result is the attendant compensation rate component for that service for nonparticipating contracts.]

[(C) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature; and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.]

[(D) Effective July 1, 2017, the attendant compensation rate component for nonparticipating contracts for HCS SHL/CFC PAS HAB and TxHmL CSS and CFC PAS HAB is equal to $14.52 per hour.]

[(E) Effective September 1, 2019, the attendant compensation rate component for nonparticipating contracts for HCS SHL/CFC PAS HAB is calculated using cost data from the most recently audited cost report multiplied by 1.044.]

[(F) Effective January 1, 2020, the attendant compensation rate component for nonparticipating contracts for HCS SL/RSS is calculated using cost data from the most recently audited cost report multiplied by 1.07.]

(3) For HCS and TxHmL programs, HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each service by calculating a median of attendant compensation cost center data as defined in subsection (d) of this section for each applicable attendant service, weighted by the applicable attendant service's units of service from the most recently examined HCS/TxHmL cost report database, and adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 (related to Determination of Inflation Indices).

(A) The weighted median cost component is multiplied by 1.044 for the following services:

(i) EA;

(ii) IHR;

(iii) OHR in a camp;

(iv) OHR in a respite facility;

(v) OHR in a setting where host home / companion care (HH/CC) is provided;

(vi) OHR in a setting that is not listed; and

(vii) SE;

(B) The weighted median cost component is multiplied by 1.07 for the following services:

(i) individualized skills and socialization services;

(ii) OHR in an individualized skills and socialization facility;

(iii) OHR in a setting with SL or RSS is provided;

(vi) RSS; and

(v) SL.

(C) For services with rates that are variable by LON as specified in §355.723(b) of this chapter (relating to Reimbursement Methodology for Home and Community-based Services and Texas Home Living Programs), the weighted median attendant cost component is adjusted by modeled direct care hours to unit or direct care staff to individual ratios to determine attendant compensation rate components for each LON.

(D) If HHSC has insufficient cost data, the attendant compensation rate component will be established through a pro forma costing analysis as defined in §355.105(h) of this subchapter.

[(3) Effective upon service claims being made billable through the Texas Medicaid & Healthcare Partnership, HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each of the following services per subparagraphs (A) and (B) of this paragraph: HCS in-home DH, HCS out-of-home DH, HCS in-home respite (HCS IHR), HCS out-of-home respite (HCS OHR) in a respite facility, HCS OHR in a setting where HCS SL/RSS is provided, HCS OHR in a setting where host home (HH)/companion care (CC) services are provided, HCS OHR in a camp, HCS OHR in a DH facility, HCS OHR in another setting not listed above, TxHmL in-home DH, TxHmL out-of-home DH, TxHmL IHR, TxHmL OHR in a respite facility, TxHmL OHR in a setting where HCS SL/RSS is provided, TxHmL OHR in a setting where HH/CC services are provided, TxHmL OHR in a camp, TxHmL OHR in a DH facility, and TxHmL out-of-home respite in another setting not listed above.]

[(A) For each service, for each LON, determine the percent of the fully-funded model rate in effect on August 31, 2019 for that service accruing from attendants. For HCS and TxHmL, the fully-funded model is the model as calculated under §355.723(d) of this chapter before any adjustments made in accordance with §355.101 and §355.109 of this subchapter for the rate period.]

[(B) For each service, for each LON, multiply the percent of the fully-funded model rate in effect on August 31, 2019 for that service accruing from attendants from subparagraph (A) of this paragraph by the total adopted reimbursement rate for that service in effect on August 31, 2019.]

[(i) The result is multiplied by 1.044 for HCS in-home DH, HCS IHR, HCS OHR in a respite facility, HCS OHR in a setting where HH/CC services are provided, HCS OHR in a camp, and HCS OHR in another setting.]

[(ii) The result is multiplied by 1.07 for HCS out-of-home DH, HCS OHR in a DH facility, and HCS OHR in a setting where HCS SL/RSS is provided.]

(4) The attendant compensation rate component for nonparticipating contracts will be limited to available levels of appropriated state and federal funds as specified in §355.201 of this chapter (relating to Establishment and Adjustment of Reimbursement Rates for Medicaid).

(n) [(m)] Determination of attendant compensation base rate for participating contracts.

[(1)] For each of the programs identified in subsection (a) of this section [except for CBA AL/RC], the attendant compensation base rate is equal to the attendant compensation rate component for nonparticipating contracts from subsection (m) [(l)] of this section.

[(2) For CBA AL/RC, the attendant compensation base rate will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints.]

(o) [(n)] Determination of attendant compensation rate enhancements. HHSC will determine a per diem add-on payment for each enhanced attendant compensation level using data from sources such as cost reports, surveys, and/or other relevant sources and taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement add-ons will be determined on a per-unit-of-service basis applicable to each program or service. Add-on payments may vary by enhancement level.

(p) [(o)] Enhanced attendant compensation. Contracts or component codes desiring to participate in the enhanced attendant compensation rate may request attendant compensation levels from an array of enhanced attendant compensation options and associated add-on payments determined in subsection (o) [(n)] of this section during open enrollment.

(1) ICF/IID providers must select a single attendant compensation level for all contracts within a component code for the day habilitation and/or residential services they have selected for participation.

(2) HCS and TxHmL must select a single attendant compensation level for all contracts within a component code for the non-individualized skills and socialization services and/or individualized skills and socialization services and/or residential services [non-day habilitation and/or day habilitation services] they have selected for participation.

(q) [(p)] Granting attendant compensation rate enhancements. Eligible programs are divided into two populations for purposes of granting attendant compensation rate enhancements. The first population includes the PHC; DAHS; RC; CLASS--DSA; [CBA--HCSS;] and DBMD [; CBA--AL/RC; and ICM AL/RC] programs, and the second population includes the ICF/IID; HCS; and TxHmL programs. Enhancements for the two populations are funded separately; funds intended for enhancements for the first population of programs will never be used for enhancements for the second population, and funds intended for enhancements for the second population of programs will never be used for enhancements for the first population. For each population of programs, HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (v) [(u)] of this section, into two groups: pre-existing enhancements, which providers request to carry over from the prior year, and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by providers who were nonparticipants in the prior year or by providers who were participants in the prior year who seek additional enhancements. Using the process described herein separately for each population of programs, HHSC first determines the distribution of carry-over enhancements. If funds are available after the distribution of carry-over enhancements, HHSC determines the distribution of newly-requested enhancements. HHSC may not distribute newly-requested enhancements to providers owing funds identified for recoupment under subsection (t) [(s)] of this section.

(1) For all programs and levels [except for CBA AL/RC Level 1], HHSC determines projected units of service for contracts and/or component codes requesting each enhancement level and multiplies this number by the enhancement rate add-on amount associated with that enhancement level as determined in subsection (o) [(n)] of this section. [For CBA AL/RC Level 1, HHSC determines projected units of service for CBA AL/RC contracts requesting Level 1 and multiplies this number by the sum of the difference between the base rate and the nonparticipant rate and the enhancement add-on amount associated with enhancement Level 1 as follows: (Base Rate - Nonparticipant Rate) + Level 1 add-on amount.]

(2) HHSC compares the sum of the products from paragraph (1) of this subsection to available funds.

(A) If the sum of the products is less than or equal to available funds, all requested enhancements are granted.

(B) If the sum of the products is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing compensation levels and compensa-

tion needs, HHSC may grant certain enhancement options priority for distribution.

(r) [~~(q)~~] Notification of granting of enhancements. Participating contracts and component codes are notified, in a manner determined by HHSC, as to the disposition of their request for attendant compensation rate enhancements.

(s) [~~(r)~~] Total attendant compensation rate for participating providers. Each participating provider's total attendant compensation rate will be equal to the attendant compensation base rate from subsection (n) [~~(m)~~] of this section plus any add-on payments associated with enhanced attendant compensation levels selected by and awarded to the provider during open enrollment.

(t) [~~(s)~~] Spending requirements for participating contracts and component codes. HHSC will determine from the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report, as specified in subsection (i) [~~(h)~~] of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The provider's compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for each participating contract or component code. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for [~~providers delivering both RC and CBA AL/RC services in the same facility whose compliance is determined by combining both programs and~~] providers delivering services in both the HCS and TxHmL programs whose compliance is determined by combining both programs. HHSC will calculate recoupment, if any, as follows.

(1) The accrued attendant compensation revenue per unit of service is multiplied by 0.90 to determine the spending requirement per unit of service. The accrued attendant compensation spending per unit of service will be subtracted from the spending requirement per unit of service to determine the amount to be recouped. If the accrued attendant compensation spending per unit of service is greater than or equal to the spending requirement per unit of service, there is no recoupment.

(2) The amount paid for attendant compensation per unit of service after adjustments for recoupment must not be less than the amount determined for nonparticipating contracts or component codes in subsection (k) [~~(l)~~] of this section.

(3) In cases where more than one enhancement level is in effect during the reporting period, the spending requirement will be based on the weighted average enhancement level in effect during the reporting period calculated as follows. [~~:~~]

(A) Multiply the first enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the first enhancement level was in effect.

(B) Multiply the second enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the second enhancement level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid units of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

[~~(4) Effective January 1, 2020, the recoupment for participating providers reporting HCS RSS/SL services will be determined pursuant to §355.727(f) of this chapter (relating to Add-on Payment Methodology for Home and Community-Based Services Supervised Living and Residential Support Services).~~]

(u) [~~(t)~~] Notification of recoupment [~~and request for recalculation~~].

[~~(1)~~] [~~Notification of recoupment.~~] The estimated amount to be recouped is indicated in the State of Texas Automated Information Reporting System (STAIRS), the online application for submitting cost reports and Attendant Compensation reports. STAIRS will generate an email to the entity contact, indicating that the provider's estimated recoupment is available for review. The entity contact is the provider's authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. If a subsequent review by HHSC or audit results in adjustments to the Attendant Compensation Report or cost reporting, as described in subsection (i) [~~(h)~~] of this section, that change the amount to be repaid, the provider will be notified by email to the entity contact that the adjustments and the adjusted amount to be repaid are available in STAIRS for review. HHSC, or its designee, will recoup any amount owed from a provider's vendor payment(s) following the date of the initial or subsequent notification. For the HCS and TxHmL programs, if HHSC, or its designee, is unable to recoup owed funds in an automated fashion, the requirements detailed under subsection (dd) of this section apply.

[~~(2) Request for recalculation. Providers notified of a recoupment based on an Attendant Compensation Report described in subsection (h)(2)(A) or (h)(2)(F) of this section may request that HHSC recalculate their recoupment after combining the Attendant Compensation Report with the provider's most recently available, audited full-year cost report. The request must be received by HHSC Rate Analysis no later than 30 days after the date on the email notification of recoupment. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the request will be accepted.~~]

[~~(A) The request must be made by email to the email address specified in STAIRS, hand delivery, United States (U.S.) mail, or special mail delivery. An email request must be typed on the provider's letterhead, signed by a person indicated in subparagraph (B) of this paragraph, then scanned and sent by email to HHSC.~~]

[~~(B) The request must be signed by an individual legally responsible for the conduct of the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable signature authority designation form for the provider at the time of the request, or a legal representative for the provider. The administrator or director of a facility or program is not authorized to sign the request unless the administrator or director holds one of these positions. HHSC will not accept a request that is not signed by an individual responsible for the conduct of the provider.~~]

(v) [~~(u)~~] Enrollment limitations. A provider will not be enrolled in the attendant compensation rate enhancement at a level higher than the level it achieved on its most recently available [~~,~~] audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report. HHSC will notify a provider of its enrollment limitations after HHSC has completed a financial examination of the report in accordance with §355.106 of this title (concerning Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). [~~(if any) prior to the first day of the open enrollment period.~~]

(1) Notification of enrollment limitations. The enrollment limitation level is indicated in STAIRS. STAIRS will generate an

e-mail to the entity contact, indicating that the provider's enrollment limitation level is available for review.

[(2) Requests for revision. A provider may request a revision of its enrollment limitation if the provider's most recently available audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report does not represent its current attendant compensation levels.]

[(A) A request for revision of enrollment limitation must include the documentation specified in subparagraph (B) of this paragraph and must be received by HHSC [Rate Analysis] no later than the deadline indicated in the notification of open enrollment specified in subsection (e) of this section. A request for revision that is not received by the stated deadline will not be accepted, and the enrollment limitation specified in STAIRS will apply.]

[(B) A provider that requests a revision of its enrollment limitation must submit documentation that shows that, for the period beginning September 1 of the current rate year and ending April 30 of the current rate year, the provider met a higher attendant compensation level than STAIRS indicates. In such cases, the provider's enrollment limitation will be established at the level supported by its request for revision documentation. It is the responsibility of the provider to render all required documentation at the time of its request for revision. Requests that fail to support an attendant compensation level different from what is indicated STAIRS will result in a rejection of the request, and the enrollment limitation specified in STAIRS will apply.]

[(C) A request for revision must be signed by an individual legally responsible for the conduct of the provider or legally authorized to bind the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS signature authority designation form for the interested party on file at the time of the request, or a legal representative for the interested party. A request for revision that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted, and the enrollment limitation specified in STAIRS will apply.]

[(D) If the provider's Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for the rate year that included the open enrollment period described in subsection (e) of this section shows the provider compensated attendants below the level it presented in its request for revision, HHSC will immediately recoup all enhancement payments associated with the request for revision documents, and the provider will be limited to the level supported by the report for the remainder of the rate year.]

(2) [(3)] Informal reviews and formal appeals. The filing of a request for an informal review or formal appeal relating to a provider's most recently available [,] audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report under §355.110 of this title (relating to Informal Reviews and Formal Appeals) does not stay or delay implementation of an enrollment limitation applied in accordance with the requirements of this subsection. If an informal review or formal appeal relating to a provider's most recently available [,] audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report is pending at the time the enrollment limitation is applied, the result of the informal review or formal appeal shall be applied to the provider's enrollment retroactively to the beginning of the rate year to which the enrollment limitation was originally applied.

(3) [(4)] New owners after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity. Enhancement levels for a new owner after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity will be determined in accordance with subsection (i) [(w)] of this section. A new owner after a contract assignment or change of ownership that is an ownership-change from one legal entity to a different legal entity will not be subject to enrollment limitations based upon the prior owner's performance.

(4) [(5)] New providers. A new provider's enrollment will be determined in accordance with subsection (h) [(g)] of this section.

(w) [(v)] Contract terminations. For contracted providers or component codes required to submit an Attendant Compensation Report due to a termination as described in subsection (i) [(h)] of this section, HHSC, or its designee, will place a vendor hold on the payments of the contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (i) [(h)] of this section, and funds identified for recoupment from subsection (t) [(s)] of this section are repaid to HHSC [,] or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (dd) [(cc)] of this section will be jointly and severally liable for any additional payment due to HHSC [,] or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other HHSC [and/or DADS] contracts controlled by the responsible entity, placement of a vendor hold on all HHSC [and/or DADS] contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC [and/or DADS] until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (u) [(t)] of this section prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contracts.

(x) [(w)] Contract assignments. The following applies to contract assignments.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Assignee--A legal entity that assumes a Community Care contract through a legal assignment of the contract from the contracting entity as provided in 40 TAC §49.210 (relating to Contractor Change of Ownership or Legal Entity).

(B) Assignor--A legal entity that assigns its Community Care contract to another legal entity as provided in 40 TAC §49.210.

(C) Contract assignment--The transfer of a contract by one legal entity to another legal entity as provided in 40 TAC §49.210.

(i) Type One Contract Assignment--A contract assignment by which the assignee is an existing Community Care contract.

(ii) Type Two Contract Assignment--A contract assignment by which the assignee is a new Community Care contract.

(2) Participation after a contract assignment. Participation after a contract assignment is determined as follows:

(A) Type One Contract Assignments. For Type One contract assignments, the assignee's level of participation remains the same while the assignor's level of participation changes to the assignee's.

(B) Type Two Contract Assignments. For Type Two contract assignments, the level of participation of the assignor contract(s) will continue unchanged under the assignee contract(s).

(3) Reporting requirements. The assignee is responsible for the reporting requirements in subsection (i) [~~(h)~~] of this section for any reporting period days occurring after the contract assignment effective date. If the contract assignment occurs during an open enrollment period as defined in subsection (f) [~~(e)~~] of this section, the owner recognized by HHSC, or its designee, on the last day of the enrollment period may request to modify the enrollment status of the contract in accordance with subsection (g) [~~(f)~~] of this section.

(4) Vendor holds. For contracted providers required to submit an Attendant Compensation Report due to contract assignment, as described in subsection (i) [~~(h)~~] of this section, HHSC, or its designee, will place a vendor hold on the payments of the existing contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (i) [~~(h)~~] of this section, and until funds identified for recoupment from subsection (t) [~~(s)~~] of this section are repaid to HHSC [~~,~~] or its designee. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (dd) [~~(ee)~~] of this section will be jointly and severally liable for any additional payment due to HHSC [~~,~~] or its designee. Failure to repay the amount due within 60 days of notification will result in the recoupment of the owed funds from other HHSC [~~and/or DADS~~] contracts controlled by the responsible entity, placement of a vendor hold on all HHSC [~~and/or DADS~~] contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC [~~and/or DADS~~] until repayment is made in full. The responsible entity for these contracts will be notified, as described in subsection (u) [~~(t)~~] of this section, prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contract.

(y) [~~(x)~~] Voluntary withdrawal. Participating contracts or component codes wishing to withdraw from the attendant compensation rate enhancement must notify HHSC [~~Rate Analysis~~] in writing by certified mail and the request must be signed by an authorized representative as designated per the HHSC [~~DADS~~] signature authority designation form applicable to the provider's contract or ownership type. The requests will be effective the first of the month following the receipt of the request. Contracts or component codes voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Providers whose contracts are participating as part of a component code must request withdrawal of all the contracts in the component code.

(z) [~~(y)~~] Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to HHSC [~~Rate Analysis~~] by certified mail, and the request must be signed by an authorized representative as designated per the HHSC [~~DADS~~] signature authority designation form applicable to the provider's contract or ownership type. These requests will be effective the first of the month following the receipt of the request. Providers whose contracts are participating as part of a component code must request the same reduction for all of the contracts in the component code.

(aa) [~~(z)~~] All other rate components. All other rate components will continue to be calculated as specified in the program-specific reimbursement methodology and will be uniform for all providers.

(bb) [~~(aa)~~] Failure to document spending. Undocumented attendant compensation expenses will be disallowed and will not be used in the determination of the attendant compensation spending per unit of service in subsection (t) [~~(s)~~] of this section.

(cc) [~~(bb)~~] Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110 of this title.

(dd) [~~(ee)~~] Responsible entities. The contracted provider, owner, or legal entity which received the attendant compensation rate enhancement is responsible for the repayment of the recoupment amount.

(1) HCS and TxHmL providers required to repay enhancement funds will be jointly and severally liable for any repayment.

(2) Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in placement of a vendor hold on all HHSC [~~or DADS~~] contracts controlled by the responsible entity.

(ee) [~~(dd)~~] Manual Repayment. For the HCS and TxHmL programs, if HHSC, or its designee, is unable to recoup owed funds using an automated system, providers will be required to repay some or all of the enhancement funds to be recouped through a check, money order, or other non-automated method. Providers will be required to submit the required repayment amount within 60 days of notification.

(ff) [~~(ee)~~] Determination of compliance with spending requirements in the aggregate.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

(B) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(C) Combined entity--one or more commonly owned corporations and one or more limited partnerships where the general partner is controlled by the same identical persons as the commonly owned corporation(s).

(D) Control--greater than 50 percent ownership by the entity.

(2) Aggregation. For an entity, for two or more commonly owned corporations, or for a combined entity that controls more than one participating contract or component code in a program (with [~~RC and CBA AL/RC considered a single program, and~~] HCS and TxHmL considered a single program), compliance with the spending requirements detailed in subsection (t) [~~(s)~~] of this section can be determined in the aggregate for all participating contracts or component codes in the program controlled by the entity, commonly owned corporations, or combined entity at the end of the rate year, the effective date of the change of ownership of its last participating contract or component code in the program, or the effective date of the termination of its last participating contract or component code in the program rather than requiring each contract or component code to meet its spending requirement individually. Corporations that do not meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) Aggregation Request. To exercise aggregation, the entity, combined entity, or commonly owned corporations must submit an aggregation request [~~,~~] in a manner prescribed by HHSC [~~,~~] at the time each Attendant Compensation Report or cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make

this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(B) Frequency of Aggregation Requests. The entity, combined entity, or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(C) Ownership changes or terminations. For the ICF/IID, HCS, TxHmL, DAHS, RC, and DBMD [, ~~CBA--AL/RC~~] programs, contracts or component codes that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (t) [~~(s)~~] of this section, are excluded from all aggregate spending calculations. These contracts' or component codes' compliance with spending requirements will be determined on an individual basis, and the costs and revenues will not be included in the aggregate spending calculation.

(gg) [~~(ff)~~] Conditions of participation for ICF/IID day habilitation and HCS/TxHmL individualized skills and socialization services. The following conditions of participation apply to each ICF/IID, HCS, and TxHmL provider specifying its wish to have day habilitation services or individualized skills and socialization services participate in the attendant compensation rate enhancement.

(1) A provider who provides day habilitation or individualized skills and socialization services in-house or who contracts with a related party to provide day habilitation or individualized skills and socialization services will report job trainer and job coach compensation and hours on the required cost report items (e.g., hours, salaries and wages, payroll taxes, employee benefits/insurance/workers' compensation, contract labor costs, and personal vehicle mileage reimbursement). Day habilitation costs cannot be combined and reported in one cost report item.

(2) A provider who contracts with a non-related party to provide day habilitation or individualized skills and socialization services will report its payments to the contractor in a single cost report item as directed in the instructions for the cost report or Attendant Compensation Report as described in subsection (i)(3) and (4) [~~(h)(2) and (3)~~] of this section. HHSC will allocate 50 percent of reported payments to the attendant compensation cost area for inclusion with other allowable day habilitation or individualized skills and socialization services attendant costs in order to determine the total attendant compensation spending for day habilitation or individualized skills and socialization services as described in subsection (t) [~~(s)~~] of this section.

(3) The provider must ensure access to any and all records necessary to verify information submitted to HHSC on Attendant Compensation Reports and cost reports functioning as an Attendant Compensation Report.

(4) HHSC will require each ICF/IID, HCS, and TxHmL provider specifying their wish to have day habilitation or individualized skills and socialization services participate in the attendant compensation rate enhancement to certify during the enrollment process that it will comply with the requirements of paragraphs (1) - (3) of this subsection.

(hh) [~~(gg)~~] New contracts within existing component codes. For ICF/IID, HCS, and TxHmL, new contracts within existing component codes will be assigned a level of participation equal to the existing component code's level of participation effective on the start date of the contract as recognized by HHSC or its designee.

(ii) [~~(hh)~~] Disclaimer. Nothing in these rules should be construed as preventing providers from compensating attendants at a level above that funded by the enhanced attendant compensation rate.

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 June 26, 2023.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 6, 2023
For further information, please call: (512) 867-7817

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SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.304, §355.308

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §355.304, concerning Direct Care Staff Spending Requirement on or after September 1, 2023 and proposes an amendment to §355.308, concerning Direct Care Staff Rate Component.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement the 2024-25 General Appropriations Act (GAA), House Bill 1, 88th Legislature, Regular Session, 2023 (Article II, Health and Human Services Commission, Rider 24). Rider 24 provides appropriations for rate increases for nursing facilities. Nursing facilities must report to HHSC on their biennial cost report information regarding the use of these funds, including information related to efforts to improve or maintain client care and quality of services, and to demonstrate that at least 90 percent of the funds were expended for the purpose of direct care staff wages or benefits. This proposed new rule operationalizes the rider requirements to enable nursing facilities to receive increased reimbursement rates.

The proposal also proposes an amendment to §355.308 related to the Direct Care Staff Rate Component. The proposed amendment modifies the spending requirement in the direct care staff enhancement program by changing the direct care spending floor to 90 percent of direct care revenues from the current 85 percent requirement. HHSC proposes to make this change to align spending requirements related to the direct care rate increases in new §355.304 and the direct care staff enhancement program in §355.308. The proposed amendment removes provisions allowing limited providers to submit the request for revision report or request for recalculation. The amendment also removes references to reinvestment as this section is no longer applicable. The proposed amendment makes clarifying edits throughout.

SECTION-BY-SECTION SUMMARY

Proposed new §355.304(a), (b), and (c) introduce the rate increases for direct care reimbursement, including definitions used in the new rule, and outline eligibility criteria for the increases. Subsection (d) specifies the methodology HHSC will use to establish the rate increases. Subsection (e) outlines the spending requirements and circumstances in which payments will be recouped if spending requirements are not met. Subsection (f) details reporting requirements nursing facility providers must comply with to provide direct care revenues and spending information used to demonstrate compliance with spending requirements.

Subsection (g) specifies how HHSC will notify providers of any recoupment, the appeals process, and repayment requirements. Subsection (h) specifies reporting requirements for a provider undergoing a change of ownership. Subsection (i) specifies the circumstances where providers will be placed on vendor hold for failing to meet reporting requirements. Subsection (j) allows a controlling entity to aggregate spending of multiple contracts to meet program requirements.

The proposed amendment to §355.308 updates Texas Administrative Code (TAC) references in Title 40 to Title 26 and updates references to "Department of Aging and Disability Services" to "HHSC." References to "Rate Analysis" are also deleted as the department has been renamed. The proposed amendment deletes §355.308(i)(2) which allows limited providers to submit the request for revision report. Subsection (k) is amended to modify the methodology HHSC uses to calculate the recommended direct care base rate. HHSC proposes to calculate the direct care base rate using from the most recent Medicaid cost report database. The recommended direct care base rate will be inflated using HHSC's inflation methodology from the cost reporting period to the prospective rate period and limited to available levels of state and federal appropriations.

The proposed amendment to subsection (o) modifies the spending requirement for the direct care enhancement program. HHSC proposes to calculate a spending floor by multiplying accrued Medicaid fee-for-service and managed care direct care staff revenues (net any staffing recoupments or recoupments associated with new proposed 355.304) by 0.90.

The amendment to subsection (s) deletes subparagraph (2) as HHSC no longer accepts requests for recalculation because the process was made obsolete by technology upgrades. Subsection (cc) is deleted as reinvestment is no longer applicable to the direct care staff enhancement program.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed. Enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of $158,955,883 in General Revenue (GR) ($398,585,464 All Funds (AF)) in fiscal year (FY) 2024, $165,736,789 GR ($413,102,665 AF) in FY 2025, $186,606,102 GR ($468,271,272 AF) in FY 2026, $186,606,102 GR ($468,271,272 AF) in FY 2027, $186,606,102 GR ($468,271,272 AF) in FY 2028.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Trey Wood has also determined that there could be adverse economic effect on small businesses, micro-businesses, or rural communities. The new rule may impose additional costs on small businesses, micro-businesses, or rural communities; however, these costs may be offset by the rate increases provided.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of the Provider Finance Department, has determined that for each year of the first five years the rules are in effect, the public benefit will be to stabilize the direct care workforce in nursing facilities and increase the quality of resident care.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because rate increases are anticipated to offset any economic costs to comply with the rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to PFD-LTSS@hhs.texas.gov.

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R041" in the subject line.

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's

duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendment and new section affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

§355.304. Direct Care Staff Spending Requirement on or after September 1, 2023.

(a) Introduction. The Texas Health and Human Services Commission (HHSC) uses the methodology described in this section to establish rate increases to the direct care staff component base rate for nursing facility services while limiting the use of funds received by the provider through these increases. This section describes the spending requirements associated with receiving the rate increases and circumstances in which recoupments will be necessary for a provider's failure to meet those requirements.

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

(1) Direct care staff base rate--The direct care staff base rate is calculated in accordance with §355.308(k) of this chapter (relating to Direct Care Staff Rate Component).

(2) Direct care staff cost center--This cost center will include compensation for employee and contract labor Registered Nurses (RNs), including Directors of Nursing (DONs) and Assistant Directors of Nursing (ADONs); Licensed Vocational Nurses (LVNs), including DONs and ADONs; medication aides; and nurse aides performing nursing-related duties for Medicaid contracted beds.

(3) Rate year--The standard rate year begins on the first day of September and ends on the last day of August of the following year.

(4) Responsible entity--The contracted provider, owner, or legal entity that received the revenue to be recouped or the new owner following a change of ownership is responsible for the repayment of any recoupment amount.

(c) Eligibility. To receive and retain rate increases under this section, the provider must be contracted with HHSC or a managed care organization (MCO) to provide nursing facility services through the Medicaid program.

(d) Direct Care Staff Base Rate Increase. Effective September 1, 2023, HHSC will increase the direct care staff base rate for nursing facility services for each Resource Utilization Group (RUG), Version III (RUG-III) case-mix group by an amount that is proportional to the level of the direct care staff base rate for each RUG-III case-mix group in effect on August 31, 2023. The direct care staff base rate increases will be limited to available state and federal appropriated amounts provided for the direct care base rate increase. The direct care rate increase will be applied proportionally to the level of each nursing component payer group under the Texas-specific patient driven payment methodology once that methodology is implemented.

(e) Spending Requirements for providers. Providers are subject to a direct care staff cost center spending requirement with recoupment calculated as follows.

(1) At the end of the rate year, HHSC will calculate a direct care staff base rate spending floor by multiplying accrued Medicaid fee-for-service and managed care direct care staff revenues proportional to the direct care base rates effective on August 31, 2023, for each provider.

(2) Accrued allowable Medicaid direct care staff expenses for the rate year will be compared to the base rate spending floor from paragraph (1) of this subsection. If the base rate spending floor is less than the accrued allowable Medicaid direct care staff expenses, HHSC or its designee will notify the provider as specified in subsection (g) of this section. There will be no recoupment associated with a provider's failure to meet the direct care base rate spending floor specified in this paragraph.

(3) At the end of the rate year, HHSC will calculate the direct care spending floor by multiplying accrued Medicaid fee-for-service and managed care direct care staff revenues proportional to the direct care staff rate increases specified under subsection (d) of this section and the direct care staff base rate spending floor as specified in paragraph (1) of this subsection by 0.90.

(4) Accrued allowable Medicaid direct care staff expenses for the rate year will be compared to the total direct care staff spending floor from paragraph (3) of this subsection. If the direct care spending floor is less than the accrued allowable Medicaid direct care staff expenses, HHSC or its designee will recoup the difference between the direct care spending floor and the accrued allowable Medicaid direct care staff expenses from providers whose Medicaid direct care staff spending is less than their direct care spending floor.

(5) At no time will a provider's direct care rates after recoupment be less than the direct care base rates in effect prior to the direct care staff base rate increase established under this section.

(6) For participants in the direct care staff enhancement program. HHSC will calculate spending requirement as specified under §355.308 of this subchapter.

(f) Reporting Requirements. Providers receiving the direct care rate increases established under this section must report their direct care revenues and spending to HHSC or its designee in a manner and frequency prescribed by HHSC. HHSC will use cost reports or staffing and compensation reports (accountability reports) requested to comply with the direct care staff enhancement program as specified in §355.308 of this subchapter to meet the requirements of this section if applicable. Providers must also report information related to the use of funds, including information related to efforts to improve or maintain client care and quality of services on their biennial cost reports, as specified by HHSC. All reports must be completed in accordance with the provisions of §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this chapter (relating to Revenues), and §355.105 of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this chapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). All reports must be completed by preparers who have attended the required nursing facility cost report training, as per §355.102(d) of this chapter.

(g) Notification of recoupment, appeals, and repayment requirements.

(1) The estimated amount to be recouped for a provider's failure to meet spending requirements as specified under subsection (d) of this section will be indicated in the State of Texas Automated Infor-

mation and Reporting System (STAIRS) or successor system. STAIRS will generate an email to the entity contact, indicating that the facility's estimated recoupment is available for review. If a subsequent review by HHSC results in additional adjustments to the report, as described in subsection (e) of this section, that results in a revised recoupment amount, HHSC will notify the provider's entity contact via email of both the report adjustments and revised recoupment amount are available in STAIRS for review.

(2) Informal reviews and formal appeals relating to these reporting requirements in subsection (f) of this section are governed by §355.110 of this chapter (relating to Informal Reviews and Formal Appeals).

(3) HHSC or its designee will recoup any amount owed from the facility's vendor payments that are being held following the initial or subsequent notification date. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (b) of this section will be jointly and severally liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the responsible entity, placement of a vendor hold on all Medicaid contracts controlled by the responsible entity, and barring of new contracts. The vendor hold will bar the responsible entity from receiving any new contracts with HHSC or its designees until repayment is made in full. The responsible entity for these contracts will be notified as described in paragraph (1) of this subsection prior to the recoupment of owed funds, placement of vendor hold, and barring of new contracts.

(h) Change of ownership. When there is a change of ownership before the end of a rate year, the new owner may be responsible for the reporting requirements in subsection (f) of this section for any reporting period days after the change as specified by HHSC or its designee.

(i) Vendor hold. HHSC or its designee will place on hold the vendor payments for any participating facility that does not submit a timely report as described in subsection (f) of this section in accordance with §355.403 of this subchapter (relating to Vendor Hold).

(j) Aggregation. For an entity, commonly owned corporation, or combined entity that controls more than one participating nursing facility contract, compliance with the spending requirements detailed in subsection (e) of this section can be determined in the aggregate for all nursing facility contracts controlled by the entity, commonly owned corporations, or combined entity in accordance with aggregation requirements specified in §355.308(aa) of this subchapter.

§355.308. Direct Care Staff Rate Component.

(a) Direct care staff cost center. This cost center will include compensation for employee and contract labor Registered Nurses (RNs), including Directors of Nursing (DONs) and Assistant Directors of Nursing (ADONs); Licensed Vocational Nurses (LVNs), including DONs and ADONs; medication aides; and nurse aides performing nursing-related duties for Medicaid contracted beds.

(1) Compensation to be included for these employee staff types is the allowable compensation defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) that is reported as either salaries and/or wages (including payroll taxes and workers' compensation) or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title to be reported as costs applicable to specific cost report line items are not to be included in this cost center.

(2) Direct care staff who also have administrative duties not related to nursing must properly direct charge their compensation to each type of function performed based upon daily time sheets maintained throughout the entire reporting period.

(3) Nurse aides must meet the qualifications enumerated under 26 TAC §556.3 (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements) [~~40 TAC §19.1903 (relating to Required Training of Nurse Aides)~~] to be included in this cost center. Nurse aides include certified nurse aides and nurse aides in training [~~as per 40 TAC §94.3(k) (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements)~~].

(4) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes (such as FICA, Medicare, and federal and state unemployment insurance) and who perform tasks routinely performed by employees. Allowable contract labor costs are defined in §355.103(b)(3) of this title.

(5) For facilities receiving supplemental reimbursement for children with tracheostomies requiring daily care as described in §355.307(b)(3)(F) of this title (relating to Reimbursement Setting Methodology), staff required by 26 TAC §554.901(15)(C)(iii) [~~40 TAC §19.901(14)(C)(iii)~~] (relating to Quality of Care) performing nursing-related duties for Medicaid contracted beds are included in the direct care staff cost center.

(6) For facilities receiving supplemental reimbursement for qualifying ventilator-dependent residents as described in §355.307(b)(3)(E) of this title, Registered Respiratory Therapists and Certified Respiratory Therapy Technicians are included in the direct care staff cost center.

(7) Nursing facility administrators and assistant administrators are not included in the direct care staff cost center.

(8) Staff members performing more than one function in a facility without a differential in pay between functions are categorized at the highest level of licensure or certification they possess. If this highest level of licensure or certification is not that of an RN, LVN, medication aide, or certified nurse aide, the staff member is not to be included in the direct care staff cost center but rather in the cost center where staff members with that licensure or certification status are typically reported.

(9) Paid feeding assistants are not included in the direct care staff cost center and are not to be counted toward the staffing requirements described in subsection (j) of this section. Paid feeding assistants are intended to supplement certified nurse aides, not to be a substitute for certified or licensed nursing staff.

(b) Rate year. The standard rate year begins on the first day of September and ends on the last day of August of the following year.

(c) Open enrollment. Open enrollment for the enhanced direct care staff rates will begin on the first day of July and end on the last day of that same July preceding the rate year for which payments are being determined. HHSC notifies providers of open enrollment by electronic mail (e-mail) to an authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. If open enrollment has been postponed or cancelled, the Texas Health and Human Services Commission (HHSC) will notify providers by e-mail prior to the first day of July. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(d) Enrollment contract amendment. An initial enrollment contract amendment is required from each facility choosing to participate in the enhanced direct care staff rate. Participating and nonparticipating facilities may request to modify their enrollment status (i.e., a nonparticipant can request to become a participant, a

participant can request to become a nonparticipant, a participant can request to change its enhancement level) during any open enrollment period. Nonparticipants and participants requesting to increase their enrollment levels will be limited to requesting increases of three or fewer enhancement levels during any single open enrollment period unless such limits are waived by HHSC. Requests to modify a facility's enrollment status during an open enrollment period must be received by HHSC [~~Rate Analysis~~] by the last day of the open enrollment period as per subsection (c) of this section. If the last day of the open enrollment period falls on a weekend, a national holiday, or a state holiday, then the first business day following the last day of the open enrollment period is the final day the receipt of the enrollment contract amendment will be accepted. An enrollment contract amendment that is not received by the stated deadline will not be accepted. A facility from which HHSC [~~Rate Analysis~~] has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds until the facility notifies HHSC in accordance with subsection (r) of this section that it no longer wishes to participate or until the facility's enrollment is limited in accordance with subsection (i) of this section. If HHSC determines that funds are not available to continue participation at the level of participation in effect during the open enrollment period, facilities will be notified as per subsection (dd) [~~(ee)~~] of this section. To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative as per the HHSC [~~Texas Department of Aging and Disabilities Services (DADS)~~] signature authority designation form applicable to the provider's contract or ownership type, and be legible.

(e) New facilities. For purposes of this section, for each rate year a new facility is defined as a facility delivering its first day of service to a Medicaid recipient after the first day of the open enrollment period, as defined in subsection (c) of this section, for that rate year. Facilities that underwent an ownership change are not considered new facilities. For purposes of this subsection, an acceptable enrollment contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative as per the HHSC [~~DADS~~] signature authority designation form applicable to the provider's contract or ownership type, and received by HHSC within 30 days of the notification to the facility by HHSC that such an enrollment contract amendment must be submitted. New facilities will receive the direct care staff base rate as determined in subsection (k) of this section with no enhancements. For new facilities specifying their desire to participate on an acceptable enrollment contract amendment, the direct care staff rate is adjusted as specified in subsection (l) of this section, effective on the first day of the month following receipt by HHSC of the acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited as per subsection (j)(3) of this section during the most recent enrollment, enrollment for new facilities will be subject to that same limitation.

(f) Staffing and Compensation Report submittal requirements.

(1) Annual Staffing and Compensation Report. For services delivered on or before August 31, 2009, providers must file Staffing and Compensation Reports as follows. All participating facilities will provide HHSC, in a method specified by HHSC, an Annual Staffing and Compensation Report reflecting the activities of the facility while delivering contracted services from the first day of the rate year through the last day of the rate year. This report will be used as the basis for determining compliance with the staffing requirements and recoupment amounts as described in subsection (n) of this section, and as the basis for determining the spending requirements and recoupment amounts as described in subsection (o) of this section. Participating facilities failing to submit an acceptable Annual Staffing and Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC.

(A) When a participating facility changes ownership, the prior owner must submit a Staffing and Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. The new owner will be required to submit a Staffing and Compensation Report covering the period from the day after the date recognized by HHSC or its designee as the ownership-change effective date to the end of the rate year.

(B) Participating facilities whose contracts are terminated either voluntarily or involuntarily must submit a Staffing and Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(C) Participating facilities who voluntarily withdraw from participation as per subsection (r) of this section must submit a Staffing and Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the rate year to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(D) Participating facilities whose cost report year coincides with the state of Texas fiscal year as per §355.105(b)(5) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures) are exempt from the requirement to submit a separate Annual Staffing and Compensation Report. For these facilities, their cost report will be considered their Annual Staffing and Compensation Report.

(2) For services delivered on September 1, 2009, and thereafter, cost reports as described in §355.105(b) of this title will replace the Staffing and Compensation Report with the following exceptions:

(A) For services delivered from September 1, 2009, to August 31, 2010, participating facilities may be required to submit Transition Staffing and Compensation Reports in addition to required cost reports. The Transition Staffing and Compensation Report reporting period will include those days in calendar years 2009 and 2010 not included in either the 2009 Staffing and Compensation report or the facility's 2010 cost report.

(B) When a participating facility changes ownership, the prior owner must submit a Staffing and Compensation Report covering the period from the beginning of the facility's cost reporting period to the date recognized by HHSC or its designee as the ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the ownership-change effective date to the end of the facility's fiscal year.

(C) Participating facilities whose contracts are terminated either voluntarily or involuntarily must submit a Staffing and Compensation Report covering the period from the beginning of the facility's cost reporting period to the date recognized by HHSC or its

designee as the contract termination date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(D) Participating facilities who voluntarily withdraw from participation as per subsection (r) of this section must submit a Staffing and Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the facility's cost reporting period to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. These facilities must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(E) For new facilities as defined in subsection (e) of this section, the cost reporting period will begin with the effective date of participation in enhancement.

(F) Existing facilities which become participants in the enhancement as a result of the open enrollment process described in subsection (c) of this section on any day other than the first day of their fiscal year are required to submit a Staffing and Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the facility's fiscal year. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. These facilities must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(G) A participating provider that is required to submit a cost report or Attendant Compensation Report under this paragraph will be excused from the requirement to submit a report if the provider did not provide any billable services to DADS recipients during the reporting period.

(3) Other reports. HHSC may require other Staffing and Compensation Reports from all facilities as needed.

(4) Vendor hold. HHSC or its designee will place on hold the vendor payments for any participating facility that does not submit a timely report as described in paragraph (1) of this subsection, or for services delivered on or after September 1, 2009, a timely report as described in paragraph (2) of this subsection completed in accordance with all applicable rules and instructions. This vendor hold will remain in effect until HHSC receives an acceptable report.

(A) Participating facilities that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this title, will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released.

(B) Participating facilities with an ownership change or contract termination that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the change in ownership or contract termination will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the change of ownership or contract termination date, the recoupment will become permanent and if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released.

(5) Provider-initiated amended accountability reports and cost reports functioning as Staffing and Compensation Reports. Reports must be received prior to the date the provider is notified of compliance with spending and/or staffing requirements for the report in question as per subsections (n) and/or (o) of this section.

(g) Report contents. Annual Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports will include any information required by HHSC to implement this enhanced direct care staff rate.

(h) Completion of Reports. All Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs; Specifications for Allowable and Unallowable Costs; Revenues; and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the state fiscal year 2002 report, all Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports must be completed by preparers who have attended the required nursing facility cost report training as per §355.102(d) of this title.

(i) Enrollment limitations. A facility will not be enrolled in the enhanced direct care staff rate at a level higher than the level it achieved on its most recently available, audited Staffing and Compensation Report or cost report functioning as its Staffing and Compensation Report. HHSC will notify a facility of its enrollment limitations (if any) prior to the first day of the open enrollment period.

(1) Notification of enrollment limitations. The enrollment limitation level is indicated in the State of Texas Automated Information Reporting System (STAIRS), the online application for submitting cost reports and accountability reports. STAIRS will generate an e-mail to the entity contact, indicating that the facility's enrollment limitation level is available for review. The entity contact is the provider's authorized representative per the signature authority designation form applicable to the provider's contract or ownership type.

~~[(2) Requests for revision. A facility may request a revision of its enrollment limitation if the facility's most recently available, audited Staffing and Compensation Report or cost report functioning as its Staffing and Compensation Report does not represent its current staffing levels.]~~

~~[(A) A request for revision of enrollment limitation must include the documentation specified in subparagraph (B) of this paragraph and must be received by HHSC Rate Analysis no later than the deadline indicated in the notification of open enrollment specified in subsection (c). A request for revision that is not received by the~~

~~stated deadline will not be accepted and the enrollment limitation specified in STAIRS will apply.]~~

~~[(B) A facility that requests a revision of its enrollment limitation must submit documentation that shows that, for the period beginning September 1 of the current rate year and ending April 30 of the current rate year, the facility met a higher staffing level than STAIRS indicates. In such cases, the facility's enrollment limitation will be established at the level supported by its request for revision documentation. It is the responsibility of the provider to render all required documentation at the time of its request for revision. Requests that fail to support a staffing level different than indicated in STAIRS will result in a rejection of the request and the enrollment limitation specified in STAIRS will apply.]~~

~~[(C) A request for revision must be signed by an individual legally responsible for the conduct of the provider or legally authorized to bind the facility, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS signature authority designation form for the interested party on file at the time of the request, or a legal representative for the interested party. A request for revision that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted and the enrollment limitation specified in STAIRS will apply.]~~

~~[(D) If the facility's Staffing and Compensation Report or cost report functioning as its Staffing and Compensation Report for the rate year that included the open enrollment period described in subsection (d) of this section shows the facility staffed below the level it presented in its request for revision, HHSC will immediately recoup all enhancement payments associated with the request for revision documents and the facility will be limited to the level supported by the report for the remainder of the rate year.]~~

(2) [~~(E)~~] At no time will a facility be allowed to enroll in the enhancement program at a level higher than its current level of enrollment plus three additional levels unless otherwise instructed by HHSC [~~Rate Analysis~~].

(3) New owners after a change of ownership. Enhancement levels for a new owner after a change of ownership will be determined in accordance with subsection (y) of this section. A new owner will not be subject to enrollment limitations based upon the prior owner's performance. This exemption from enrollment limitations does not apply in cases where HHSC or its designee has approved a successor-liability-agreement that transfers responsibility from the former owner to the new owner.

(4) New facilities. A new facility's enrollment will be determined in accordance with subsection (e) of this section.

(j) Determination of staffing requirements for participants. Facilities choosing to participate in the enhanced direct care staff rate agree to maintain certain direct care staffing levels above the minimum staffing levels described in paragraph (1) of this subsection. In order to permit facilities the flexibility to substitute RN, LVN and aide (Medication Aide and nurse aide) staff resources and, at the same time, comply with an overall nursing staff requirement, total nursing staff requirements are expressed in terms of LVN equivalent minutes. Conversion factors to convert RN and aide minutes into LVN equivalent minutes are based upon most recently available, reliable relative compensation levels for the different staff types.

(1) Minimum staffing levels. HHSC determines, for each participating facility, minimum LVN equivalent staffing levels as follows.

(A) Determine minimum required LVN equivalent minutes per resident day of service for various types of residents using time study data, cost report information, and other appropriate data sources.

(i) Determine LVN equivalent minutes associated with Medicare residents based on the data sources from this subparagraph adjusted for estimated acuity differences between Medicare and Medicaid residents.

(ii) Determine minimum required LVN equivalent minutes per resident day of service associated with each Resource Utilization Group (RUG-III) case mix group and additional minimum required minutes for Medicaid residents reimbursed under the RUG-III system who also qualify for supplemental reimbursement for ventilator care or pediatric tracheostomy care as described in §355.307 of this title (relating to Reimbursement Setting Methodology) based on the data sources from this subparagraph adjusted for acuity differences between Medicare and Medicaid residents and other factors.

(B) Based on most recently available, reliable utilization data, determine for each facility the total days of service by RUG-III group, days of service provided to Medicaid residents qualifying for Medicaid supplemental reimbursement for ventilator or tracheostomy care, total days of service for Medicare Part A residents in Medicaid-contracted beds, and total days of service for all other residents in Medicaid-contracted beds.

(C) Multiply the minimum required LVN equivalent minutes for each RUG-III group and supplemental reimbursement group from subparagraph (A) of this paragraph by the facility's Medicaid days of service in each RUG-III group and supplemental reimbursement group from subparagraph (B) of this paragraph and sum the products.

(D) Multiply the minimum required LVN equivalent minutes for Medicare residents by the facility's Medicare Part A days of service in Medicaid-contracted beds.

(E) Divide the sum from subparagraph (C) of this paragraph by the facility's total Medicaid days of service, with a day of service for a Medicaid RUG-III recipient who also qualifies for a supplemental reimbursement counted as one day of service, compare this result to the minimum required LVN-equivalent minutes for a RUG-III PD1 and multiply the lower of the two figures by the facility's other resident days of service in Medicaid-contracted beds.

(F) Sum the results of subparagraphs (C), (D) and (E) of this paragraph, divide the sum by the facility's total days of service in Medicaid-contracted beds, with a day of service for a Medicaid recipient who also qualifies for a supplemental reimbursement counted as one day of service. The results of these calculations are the minimum LVN equivalent minutes per resident day a participating facility must provide.

(G) In cases where the minimum required LVN-equivalent minutes per resident day of service associated with a RUG-III case mix group or supplemental reimbursement group change during the reporting period, the minimum required LVN-equivalent minutes for the RUG-III case mix group or supplemental reimbursement group for the reporting period will be equal to the weighted average LVN-equivalent minutes in effect during the reporting period for that group calculated as follows:

(i) Multiply the first minimum required LVN equivalent minutes per resident day of service associated with the RUG-III case mix group or supplemental reimbursement group in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the first minimum required LVN equivalent minutes were in effect.

(ii) Multiply the second minimum required LVN equivalent minutes per resident day of service associated with the RUG-III case mix group or supplemental reimbursement group in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the second minimum required LVN equivalent minutes were in effect.

(iii) Sum the products from clauses (i) and (ii) of this subparagraph.

(iv) Divide the sum from clause (iii) of this subparagraph by the sum of the most recently available, reliable Medicaid days of service utilization data for the entire reporting period used in clauses (i) and (ii) of this subparagraph.

(2) Enhanced staffing levels. Facilities desiring to participate in the enhanced direct care staff rate are required to staff above the minimum requirements from paragraph (1) of this subsection. These facilities may request LVN-equivalent staffing enhancements from an array of LVN-equivalent enhanced staffing options and associated add-on payments during open enrollment under subsection (d) of this section.

(3) Granting of staffing enhancements. HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (i) of this section, into two groups: pre-existing enhancements that facilities request to carry over from the prior year and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by facilities that were nonparticipants in the prior year or by facilities that were participants in the prior year desiring to be granted additional enhancements. Using the process described herein, HHSC first determines the distribution of carry-over enhancements. If HHSC determines that funds are not available to carry over some or all pre-existing enhancements, facilities will be notified as per subsection (dd) [~~(ee)~~] of this section. If funds are available after the distribution of carry-over enhancements, HHSC then determines the distribution of newly requested enhancements. HHSC may not distribute newly requested enhancements to facilities owing funds identified for recoupment from subsections (n) and/or (o) of this section.

(A) HHSC determines projected Medicaid units of service for facilities requesting each enhancement option[~~,~~] and multiplies this number by the rate add-on associated with that enhancement option as determined in subsection (l) of this section.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to available funds.

(i) If the product is less than or equal to available funds, all requested enhancements are granted.

(ii) If the product is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing staffing levels and staffing needs, HHSC may grant certain enhancement options priority for distribution.

(4) Notification of granting of enhancements. Participating facilities are notified, in a manner determined by HHSC, as to the disposition of their request for staffing enhancements.

(5) In cases where more than one enhanced staffing level is in effect during the reporting period, the staffing requirement will be based on the weighted average enhanced staffing level in effect during the reporting period calculated as follows:

(A) Multiply the first enhanced staffing level in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the first enhanced staffing level was in effect.

(B) Multiply the second enhanced staffing level in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the second enhanced staffing level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid days of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

(k) Determination of direct care staff base rate.

(1) Determine the sum of recipient care costs from the direct care staff cost center in subsection (a) of this section in all nursing facilities included in the most recently available Texas Nursing Facility Cost Report database [~~used to determine the nursing facility rates in effect on January 1, 2000~~] (hereinafter referred to as the initial database).

(2) Adjust the sum from paragraph (1) of this subsection as specified in §355.108 of this title (relating to Determination of Inflation Indices) to inflate the costs to the prospective rate year.

(3) Divide the result from paragraph (2) of this subsection by the sum of recipient days of service in all facilities in the initial database and multiply the result by 1.07. The result is the average direct care staff base rate component for all facilities.

(4) For rates effective September 1, 2009 and thereafter, to calculate the direct care staff per diem base rate component for all facilities for each of the RUG-III case mix groups and for the default groups, divide each RUG-III index from §355.307(b)(3)(C) of this title (relating to Reimbursement Setting Methodology) by 0.9908, which is the weighted average Texas Index for Level of Effort (TILE) case mix index associated with the initial database, and then multiply each of the resulting quotients by the average direct care staff base rate component from paragraph (3) of this subsection.

(5) The direct care staff per diem base rates will be limited to available levels of appropriated state and federal funds as specified in §355.201 of this chapter [~~will remain constant except for adjustments for inflation from paragraph (2) of this subsection~~]. HHSC may also recommend adjustments to the rates in accordance with §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(l) Determine each participating facility's total direct care staff rate. Each participating facility's total direct care staff rate will be equal to the direct care staff base rate from subsection (k) of this section plus any add-on payments associated with enhanced staffing levels selected by and awarded to the facility during open enrollment. HHSC will determine a per diem add-on payment for each enhanced staffing level taking into consideration the most recently available, reliable data relating to LVN equivalent compensation levels.

(m) Staffing requirements for participating facilities. Each participating facility will be required to maintain adjusted LVN-equivalent minutes equal to those determined in subsection (j) of this section. Each participating facility's adjusted LVN-equivalent minutes maintained during the reporting period will be determined as follows.

(1) Determine unadjusted LVN-equivalent minutes maintained. Upon receipt of the staffing and spending information described in subsection (f) of this section, HHSC will determine the unadjusted

LVN-equivalent minutes maintained by each facility during the reporting period.

(2) Determine adjusted LVN-equivalent minutes maintained. Compare the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection to the LVN-equivalent minutes required of the facility as determined in subsection (j) of this section. The adjusted LVN-equivalent minutes are determined as follows:

(A) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is greater than or equal to the number of LVN-equivalent minutes required for the facility or less than the minimum LVN-equivalent minutes required for participation as determined in subsection (j)(1) of this section; the facility's adjusted LVN-equivalent minutes maintained is equal to its unadjusted LVN-equivalent minutes; or

(B) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is less than the number of LVN-equivalent minutes required of the facility, but greater than or equal to the minimum LVN-equivalent minutes required for participation as determined in subsection (j)(1) of this section, the following steps are performed.

(i) Determine what the facility's accrued Medicaid fee-for-service direct care revenue for the reporting period would have been if their staffing requirement had been set at a level consistent with the highest LVN-equivalent minutes that the facility actually maintained, as defined in subsection (j) of this section.

(ii) Determine the facility's adjusted accrued direct care revenue by multiplying the accrued direct care revenue from clause (i) of this subparagraph by 0.85.

(iii) Determine the facility's accrued allowable Medicaid fee-for-service direct care staff expenses for the rate year.

(iv) Determine the facility's direct care spending surplus for the reporting period by subtracting the facility's adjusted accrued direct care revenue from clause (ii) of this subparagraph from the facility's accrued allowable direct care expenses from clause (iii) of this subparagraph.

(v) If the facility's direct care spending surplus from clause (iv) of this subparagraph is less than or equal to zero, the facility's adjusted LVN-equivalent minutes maintained is equal to the unadjusted LVN-equivalent minutes maintained as calculated in paragraph (1) of this subsection.

(vi) If the facility's direct care spending surplus from clause (iv) of this subparagraph is greater than zero, the adjusted LVN-equivalent minutes maintained by the facility during the reporting period is set equal to the facility's direct care spending surplus from clause (iv) of this subparagraph divided by the per diem enhancement add-on as determined in subsection (l) of this section plus the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection according to the following formula: (Direct Care Spending Surplus/Per Diem Enhancement Add-on for One LVN-equivalent Minute) + Unadjusted LVN-equivalent Minutes.

(C) For adjusted LVN-equivalent minutes calculated on or after March 1, 2004, requirements relating to the minimum LVN-equivalent minutes required for participation in subparagraphs (A) and (B) of this paragraph do not apply.

(n) Staffing accountability. Participating facilities will be responsible for maintaining the staffing levels determined in subsection (j) of this section. HHSC will determine the adjusted LVN-equivalent minutes maintained by each facility during the reporting period by the method described in subsection (m) of this section. HHSC or its designee will recoup all direct care staff revenues associated with unmet staffing goals from participating facilities that fail to meet their staffing requirements during the reporting period.

(o) Spending requirements for participants. Participating facilities are subject to a direct care staff spending requirement with recoupment calculated as follows.[:]

(1) Effective September 1, 2023, HHSC will complete calculations associated with the direct care rate increases and spending requirements in accordance with §355.304 of this subchapter (relating to Direct Care Staff Spending Requirement on or after September 1, 2023).

(2) [~~(1)~~] At the end of the rate year, a spending floor will be calculated by multiplying accrued Medicaid fee-for-service and managed care direct care staff revenues [~~(net of revenues recouped by HHSC or its designee due to the failure of the facility to meet a staffing requirement as per subsection (n) of this section)~~] by 0.90 [~~0.85~~].

(3) [~~(2)~~] Accrued allowable Medicaid direct care staff fee-for-service expenses for the rate year will be compared to the spending floor from paragraph (2) [~~(1)~~] of this subsection. HHSC or its designee will recoup the difference between the spending floor and accrued allowable Medicaid direct care staff fee-for-service expenses from facilities whose Medicaid direct care staff spending is less than their spending floor.

(4) [~~(3)~~] At no time will a participating facility's direct care rates after spending recoupment be less than the direct care base rates.

(p) Dietary and Fixed Capital Mitigation. Recoupment of funds described in subsection (o) of this section may be mitigated by high dietary and/or fixed capital expenses as follows.

(1) Calculate dietary cost deficit. At the end of the facility's rate year, accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If costs are greater than revenues, the dietary per diem cost deficit will be equal to the difference between accrued, allowable Medicaid dietary per diem costs and accrued Medicaid dietary per diem revenues. If costs are less than revenues, the dietary cost deficit will be equal to zero.

(2) Calculate dietary revenue surplus. At the end of the facility's rate, accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If revenues are greater than costs, the dietary per diem revenue surplus will be equal to the difference between accrued Medicaid dietary per diem revenues and accrued, allowable Medicaid dietary per diem costs. If revenues are less than costs, the dietary revenue surplus will be equal to zero.

(3) Calculate fixed capital cost deficit. At the end of the facility's rate year, accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in §355.306(b)(2)(A) of this title (relating to Cost Finding Methodology). If costs are greater than revenues, the fixed capital cost per diem deficit will be equal to the difference between accrued, allowable Medicaid fixed capital per diem costs and accrued Medicaid fixed capital per diem revenues. If costs are less than revenues, the fixed capital cost deficit will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year.

(4) Calculate fixed capital revenue surplus. At the end of the facility's rate year, accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in §355.306(b)(2)(A) of this title. If revenues are greater than costs, the fixed capital revenue per diem surplus will be equal to the difference between accrued Medicaid fixed capital per diem revenues and accrued, allowable Medicaid fixed capital per diem costs. If revenues are less than costs, the fixed capital revenue surplus will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year.

(5) Facilities with a dietary per diem cost deficit will have their dietary per diem cost deficit reduced by their fixed capital per diem revenue surplus, if any. Any remaining dietary per diem cost deficit will be capped at $2.00 per diem.

(6) Facilities with a fixed capital cost per diem deficit will have their fixed capital cost per diem deficit reduced by their dietary revenue per diem surplus, if any. Any remaining fixed capital per diem cost deficit will be capped at $2.00 per diem.

(7) Each facility's recoupment, as calculated in subsection (o) of this section, will be reduced by the sum of that facility's dietary per diem cost deficit as calculated in paragraph (5) of this subsection and its fixed capital per diem cost deficit as calculated in paragraph (6) of this subsection.

(q) Adjusting staffing requirements. Facilities that determine that they will not be able to meet their staffing requirements from subsection (m) of this section may request a reduction in their staffing requirements and associated rate add-on. These requests will be effective on the first day of the month following approval of the request.

(r) Voluntary withdrawal. Facilities wishing to withdraw from participation must notify HHSC in writing by certified mail and the request must be signed by an authorized representative as designated per the HHSC [~~DADS~~] signature authority designation form applicable to the provider's contract or ownership type. Facilities voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Facilities that voluntarily withdraw from participation will have their participation end effective on the date of the withdrawal, as determined by HHSC.

(s) Notification of recoupment based on Annual Staffing and Compensation Report or cost report [~~and request for recalculation~~].

[~~(1)~~] [~~Notification of recoupment.~~] The estimated amount to be recouped is indicated in STAIRS. STAIRS will generate an e-mail to the entity contact, indicating that the facility's estimated recoupment is available for review. If a subsequent review by HHSC or audit results in adjustments to the Annual Staffing and Compensation Report or cost report as described in subsection (f) of this section that changes the amount to be repaid to HHSC or its designee, the facility will be notified by e-mail to the entity contact that the adjustments and the adjusted amount to be repaid are available in STAIRS for review. HHSC or its designee will recoup any amount owed from a facility's vendor payment(s) following the date of the initial or subsequent notification.]

[~~(2) Request for recalculation. Providers notified of a recoupment based on an Annual Staffing and Compensation Report described in subsection (f)(2)(A) or (f)(2)(F) of this section may request that HHSC recalculate their recoupment after combining the Annual Staffing and Compensation Report with the provider's next cost report or Staffing and Compensation Report, as appropriate. The request must be received by HHSC Rate Analysis no later than 30 days after the date on the e-mail notification of recoupment. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the request will be accepted.~~]

[~~(A) The request must be made by e-mail to the e-mail address specified in STAIRS, by hand delivery, United States (U.S.) mail, or special mail delivery. An e-mail request must be typed on the provider's letterhead, signed by a person indicated in subparagraph (B) of this paragraph, then scanned and sent by e-mail to HHSC.~~]

[~~(B) The request must be signed by an individual legally responsible for the conduct of the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable signature authority designation form for the provider at the time of the request, or a legal representative for the provider. The administrator or director of a facility or program is not authorized to sign the request unless the administrator or director holds one of these positions. HHSC will not accept a request that is not signed by an individual responsible for the conduct of the provider.~~]

(t) Change of ownership and contract terminations. Facilities required to submit a Staffing and Compensation Report due to a change of ownership or contract termination as described in subsection (f) of this section will have funds held as per 26 TAC §554.210 (relating to Change of Ownership and Notice of Changes) [~~40 TAC §19.2308 (relating to Change of Ownership)~~] until an acceptable Staffing and Compensation Report is received by HHSC and funds identified for recoupment from subsections (n) and/or (o) of this section are repaid to HHSC or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title (relating to Informal Reviews and Formal Appeals). HHSC or its designee will recoup any amount owed from the facility's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (x) of this section will be jointly and severally liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the responsible entity, placement of a vendor hold on all Medicaid contracts controlled by the responsible entity and will bar the responsible entity from receiving any new contracts with HHSC or its designees until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (s) of this section prior to the recoupment of owed funds, placement of vendor hold and barring of new contracts.

(u) Failure to document staff time and spending. Undocumented direct care staff and contract labor time and compensation costs will be disallowed and will not be used in the determination of direct care staff time and costs per unit of service.

(v) All other rate components. All other rate components will be calculated as specified in §355.307 of this title (relating to Reimbursement Setting Methodology) and will be uniform for all providers.

(w) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110(a)(3) of this title (relating to Informal Reviews and Formal Appeals).

(x) Responsible entities. The contracted provider, owner, or legal entity that received the revenue to be recouped upon is responsible for the repayment of any recoupment amount.

(y) Change of ownership. Participation in the enhanced direct care staff rate confers to the new owner as defined in 26 TAC §554.210 (relating to Change of Ownership and Notice of Changes) [~~40 TAC §19.2308 (relating to Change of Ownership)~~] when there is a change

of ownership. The new owner is responsible for the reporting requirements in subsection (f) of this section for any reporting period days occurring after the change. If the change of ownership occurs during an open enrollment period as defined in subsection (c) of this section, then the owner recognized by HHSC or its designee on the last day of the enrollment period may request to modify the enrollment status of the facility in accordance with subsection (d) of this section.

(z) Contract cancellations. If a facility's Medicaid contract is cancelled before the first day of an open enrollment period as defined in subsection (c) of this section and the facility is not granted a new contract until after the last day of the open enrollment period, participation in the enhanced direct care staff rate as it existed prior to the date when the facility's contract was cancelled will be reinstated when the facility is granted a new contract, if it remains under the same ownership, subject to the availability of funding. Any enrollment limitations from subsection (i) of this section that would have applied to the cancelled contract will apply to the new contract.

(aa) Determination of compliance with spending requirements in the aggregate.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts control greater than 50 percent of the total voting power in each corporation.

(B) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(C) Combined entity--one or more commonly owned corporations and one or more limited partnerships where the general partner is controlled by the same person(s) as the commonly owned corporation(s).

(D) Control--greater than 50 percent ownership by the entity.

(2) Aggregation. For an entity, commonly owned corporation, or combined entity that controls more than one participating nursing facility contract, compliance with the spending requirements detailed in subsection (o) of this section can be determined in the aggregate for all participating nursing facility contracts controlled by the entity, commonly owned corporations, or combined entity at the end of the rate year, the effective date of the change of ownership of its last participating NF contract, or the effective date of the termination of its last participating NF contract rather than requiring each contract to meet its spending requirement individually. Corporations that do not meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) Aggregation Request. To exercise aggregation, the entity, combined entity, or commonly owned corporations must submit an aggregation request, in a manner prescribed by HHSC, at the time each Staffing and Compensation Report or cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(B) Frequency of Aggregation Requests. The entity, combined entity, or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(C) Ownership changes or terminations. Nursing facility contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (o) of this section, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(bb) Medicaid Swing Bed Program for Rural Hospitals. When a rural hospital participating in the Medicaid swing bed program furnishes NF nursing care to a Medicaid recipient under 26 TAC §554.2326 [~~40 TAC §19.2326~~] (relating to Medicaid Swing Bed Program for Rural Hospitals), HHSC or its designee makes payment to the hospital using the same procedures, the same case-mix methodology, and the same RUG-III rates that HHSC authorizes for reimbursing NFs receiving the direct care staff base rate with no enhancement levels. These hospitals are not subject to the staffing and spending requirements detailed in this section.

~~[(cc) Reinvestment. For services delivered on or before August 31, 2009, HHSC will reinvest recouped funds in the enhanced direct care staff rate program, to the extent that there are qualifying facilities. For services delivered beginning September 1, 2009, and thereafter, HHSC will not reinvest recouped enhanced direct care staff rate funds.]~~

~~[(1) Identify qualifying facilities. Facilities meeting the following criteria during the most recent completed reporting period are qualifying facilities for reinvestment purposes.]~~

~~[(A) The facility was a participant in the enhanced direct care staff rate or, for state fiscal years 2004 and 2005 only, had been a participant at level 0 in state fiscal year 2003 and was reclassified as a nonparticipant due to the elimination of level 0 in state fiscal year 2004.]~~

~~[(B) The facility's unadjusted LVN-equivalent minutes as determined in subsection (m)(1) of this section were greater than the number of LVN-minutes required of the facility as determined in subsection (j) of this section.]~~

~~[(C) The facility met its spending requirement as determined in subsection (o) of this section.]~~

~~[(D) An acceptable Annual Staffing and Compensation Report for the reporting period was received by HHSC Rate Analysis at least 30 days prior to the date distribution of available reinvestment funds was determined.]~~

~~[(E) The Medicaid contract that was in effect for the facility during the reinvestment reporting period is still in effect as an active contract when reinvestment is determined or, in cases where a change of ownership has occurred, HHSC or its designee has approved a Successor Liability Agreement between the contract in effect during the reinvestment reporting period and the contract in effect when reinvestment is determined.]~~

~~[(2) Distribution of available reinvestment funds. Available funds are distributed as described below.]~~

~~[(A) HHSC determines units of service provided during the most recent completed reporting period by each qualifying facility achieving, with unadjusted LVN-equivalent minutes as determined in subsection (m)(1) of this section, each enhancement option above the enhancement option awarded to the facility during the reporting period and multiplies this number by the rate add-on associated with that enhancement in effect during the reporting period.]~~

~~[(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to funds available for reinvestment.]~~

~~*[(i)* If the product is less than or equal to available funds, all achieved enhancements for qualifying facilities are retroactively awarded for the reporting period.]~~

~~*[(ii)* If the product is greater than available funds, retroactive enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until achieved enhancements are granted within available funds.]~~

~~[(3) All retroactive enhancements are subject to spending requirements detailed in subsection (o) of this section. Revenue from retroactive enhancements is not eligible for mitigation of spending recoupment as described in subsection (p) of this section.]~~

~~[(4) Retroactively awarded enhancements do not qualify as pre-existing enhancements for enrollment purposes.]~~

~~[(5) Notification of reinvested enhancements. Qualifying facilities are notified in a manner determined by HHSC, as to the award of reinvested enhancements.]~~

(cc) [~~(dd)~~] Disclaimer. Nothing in these rules should be construed as preventing facilities from adding direct care staff in addition to those funded by the enhanced direct care staff rate.

(dd) [~~(ee)~~] Notification of lack of available funds. If HHSC determines that funds are not available to continue participation for facilities from which it has not received an acceptable request to modify their enrollment by the last day of an enrollment period as per subsection (d) of this section or to fund carry-over enhancements as per subsection (j)(3) of this section, HHSC will notify providers in a manner determined by HHSC that such funds are not available.

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 June 26, 2023.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 6, 2023
For further information, please call: (512) 867-7817

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SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.513

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.513, concerning Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program.

BACKGROUND AND PURPOSE

Title 42, Code of Federal Regulations, §441.301(c)(4)(i) - (v), requires home and community-based settings in programs authorized by §1915(c) of the Social Security Act to have certain qualities, including being integrated into and supporting full access of individuals to the greater community. HHSC adopted rules in Title 26 Texas Administrative Code (TAC) Chapter 260 to implement individualized skills and socialization effective January 1, 2023.

The 2022 - 2023 General Appropriations Act (GAA), Senate Bill 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 23) authorized funding for the provision of individualized skills and socialization in the Home and Community-Based Services (HCS), Texas Home Living (TxHmL), and Deaf-Blind with Multiple Disabilities (DBMD) Programs. HHSC adopted rates for individualized skills and socialization based on the available appropriations, effective January 1, 2023.

The purpose of the proposal is to amend the reimbursement methodology for the DBMD Program to remove day habilitation services and establish rate methodologies for individualized skills and socialization services. The proposal also clarifies the rate methodology for residential habilitation transportation, chore, and intervener services by replacing the "other direct care" cost area with an administration and facility cost area to align waiver rate methodology with other similar services.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.513(c)(4) replaces day habilitation with individualized skills and socialization services.

The proposed amendment to §355.513(c)(7) clarifies the rate methodology for residential habilitation transportation, chore, and intervener services by replacing the "other direct care" cost area with an administration and facility cost area to align waiver rate methodology with other similar services.

The proposed amendment to §355.513 adds new subsection (d) establishing the methodology for individualized skills and socialization services in the DBMD program to equal the individualized skills and socialization payment rate for individuals with a level of need 9 in the HCS waiver program as specified in 1 TAC §355.723, concerning Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.

The proposed amendment to §355.513 also renumbers current subsections (d) - (f) to subsections (e) - (g).

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed. Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rule is in effect is an estimated cost of $20,665 in General Revenue (GR) ($59,434 All Funds (AF)) in fiscal year (FY) 2023, $35,544 GR ($89,149 AF) in FY 2024, $35,526 GR ($89,149 AF) in FY 2025, $35,526 GR ($89,149 AF) in FY 2026, $35,526 GR ($89,149 AF) in FY 2027. This fiscal note represents only costs associated with non-direct care rate components, including facility, operations, indirect care, and administrative cost areas. The attendant portion of the rate is discussed in 1 TAC §355.112, concerning Attendant Compensation Rate Enhancement.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The proposed rule establishes the rate methodology for individualized skills and socialization services in the DBMD program. Individualized skills and socialization services are supported by appropriations by the 2022 - 2023 GAA, Senate Bill 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 23).

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and the rule is necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public benefit will be establishing the rate methodology for individualized skills and socialization services in Deaf-Blind with Multiple Disabilities Waiver Program.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not impose costs on regulated persons.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to PFD-LTSS@hhs.texas.gov.

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R042" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§355.513. Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program.

(a) General information. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction). Providers are reimbursed for waiver services provided to individuals who are deaf-blind with multiple disabilities.

(b) Other sources of cost information. If HHSC has determined that there is not sufficient reliable cost report data from which to set reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using rates for similar services from other Medicaid programs; data from surveys; cost report data from other similar programs; consultation with other service providers or professionals experienced in delivering contracted services; and other sources.

(c) Waiver rate determination methodology. If HHSC deems it appropriate to require contracted providers to submit a cost report, recommended reimbursements for waiver services will be determined on a fee-for-service basis in the following manner for each of the services provided:

(1) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report.

(2) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(3) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Medicare Contributions, Workers' Compensation In-

surance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(4) Allowable administrative and overall facility/operations costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's service units reported to the amount of total waiver service units reported. Service-specific facility and operations costs for out-of-home respite, and individualized skills and socialization [~~day habilitation,~~] services will be directly charged to the specific waiver service.

(5) For nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, speech/language therapy, behavioral support services, audiology services, dietary services, employment assistance, and supported employment, an allowable cost per unit of service is calculated for each contracted provider cost report in accordance with paragraphs (1) - (4) of this subsection. The allowable costs per unit of service for each contracted provider cost report is multiplied by 1.044. This adjusted allowable costs per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

(6) Requisition fees are reimbursements paid to the Deaf-Blind with Multiple Disabilities (DBMD) Waiver contracted providers for their efforts in acquiring adaptive aids, medical supplies, dental services, and minor home modifications for DBMD participants. Reimbursement for adaptive aids, medical supplies, dental services, and minor home modifications will vary based on the actual cost of the adaptive aid, medical supply, dental service, and minor home modification. Reimbursements are determined using a method based on modeled projected expenses[,] which are developed by using data from surveys, cost report data from similar programs, consultation with other service providers or professionals experienced in delivering contracted services, or other sources.

(7) For [~~day habilitation,~~] residential habilitation transportation, chore, and intervener (excluding Interveners I, II, and III), services, two cost areas are created:

(A) The attendant cost area, which includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(B) An administration and facility [~~"other direct care"~~] cost area, which includes costs for services not included in subparagraph (A) of this paragraph as determined in paragraphs (1) - (4) of this subsection. An allowable cost per unit of service is determined for each contracted provider cost report for the administration and facility [~~other direct care~~] cost area. The allowable costs per unit of service for each contracted provider cost report are arrayed. The units of service for each contracted provider cost report in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044.

(C) The attendant cost area, and the administration and facility [~~other direct care~~] cost area are summed to determine the cost per unit of service.

(8) For Interveners I, II, and III, payment rates are developed based on rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma approach in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). Interveners I, II, and III are not considered attendants for purposes of the Attendant Compensation Rate Enhancement described in §355.112 of this title, and providers are not eligible to receive direct care add-ons to the Intervener I, II, or III rates.

(9) Assisted living services payment rates are determined using a pro forma approach in accordance with §355.105(h) of this title. The rates are adjusted periodically for inflation. The room and board payments for waiver clients receiving assisted living services are covered in the reimbursement for these services and will be paid to providers from the client's Supplemental Security Income, less a personal needs allowance.

(10) Pre-enrollment assessment services and case management services payment rates are determined by modeling the salary for a Case Manager staff position. This rate is periodically updated for inflation.

(11) The orientation and mobility services payment rate is determined by modeling the salary for an Orientation and Mobility Specialist staff position. This rate is updated periodically for inflation.

(12) HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(d) The individualized skills and socialization services payment rate is equal to the individualized skills and socialization services payment rate for an individual with a Level of Need 9 in the Home and Community-based Services waiver program as specified in §355.723 of this chapter (relating to Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs).

(e) [~~(d)~~] Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title.

(f) [~~(e)~~] Reporting of cost.

(1) Cost-reporting guidelines. If HHSC requires a cost report for any waiver service in this program, providers must follow the cost-reporting guidelines as specified in §355.105 of this title.

(2) Excused from submission of cost reports. If required by HHSC, a contracted provider must submit a cost report unless the provider meets one or more of the conditions in §355.105(b)(4)(D) of this title.

(3) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost-report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers[~~, in order~~] to ensure the database reflects costs and other information necessary for the provision of services and is consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(4) Allowable and unallowable costs. Providers must follow the guidelines specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs and Specifications for Allowable and Unallowable Costs) in determining whether a cost is allowable or unallowable. In addition, providers must adhere to the following principles:

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids, medical supplies, dental services, and minor home modifications is not allowable for cost-reporting purposes. Allowable labor costs associated with acquiring adaptive aids, medical supplies, dental services, and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable. Refer to §355.103(b)(20)(K) of this title.

(g) [~~(f)~~] Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(h) [~~(g)~~] Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of field audits are determined by HHSC staff to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

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 June 26, 2023.

TRD-202302300
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 6, 2023
For further information, please call: (512) 867-7817

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SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.723

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.723, concerning Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.

BACKGROUND AND PURPOSE

Title 42, Code of Federal Regulations, §441.301(c)(4)(i) - (v), requires home and community-based settings in programs authorized by §1915(c) of the Social Security Act to have certain qualities, including being integrated into and supporting full access of individuals to the greater community. HHSC adopted rules in Title 26 Texas Administrative Code (TAC) Chapters 262 and 263 to implement individualized skills and socialization effective January 1, 2023.

The 2022-2023 General Appropriations Act (GAA), Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 23) authorized funding for the provision of individualized skills and socialization in the Home and Community-Based Services (HCS), Texas Home Living (TxHmL), and Deaf-Blind with Multiple Disabilities Programs. HHSC adopted rates for individualized skills and socialization based on the available appropriations, effective January 1, 2023.

The purpose of the proposal is to amend the reimbursement methodology for the HCS and TxHmL Programs to remove day habilitation and establish rate methodologies for individualized skills and socialization. The proposal also clarifies the rate methodology for each HCS and TxHmL waiver service and implements some recommendations in HHSC's legislative report, *Rates: Intermediate Care Facilities and Certain Waiver Providers,* required by the 2022-2023 GAA, S.B. 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 30).

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.723 makes changes in subsection (b)(1) to replace day habilitation with individualized skills and socialization in the list of rates that are variable by level of need (LON).

The proposed amendment to §355.723 makes changes in subsection (b)(2) to add in-home and out-of-home respite, as these service rates do not vary by LON, and deletes references to high medical needs, as these are not currently waiver services. The proposed amendment also removes TxHmL day habilitation from the list of rates that do not vary by LON.

The proposed amendment to §355.723 removes subsection (c)(1) and (2) and replaces them with proposed new subsection (c)(1) - (6) to describe each of the cost areas HHSC calculates to support recommended methodological rates for HCS and TxHmL services. Proposed new subsection (c)(1) describes the methodology used to calculate the attendant compensation cost area. Proposed new subsection (c)(2) describes the methodology used to calculate the other direct care cost area. Proposed new subsection (c)(3) incorporates the methodology used to calculate the administration and operations cost area currently in subsection (d)(1). The proposed amendment to subsection (c)(5) and (6) describes the methodology used to calculate the facility cost area.

The proposed amendment to §355.723 removes subsection (d) and replaces it with a new proposed subsection (d) to detail the methodology HHSC uses to calculate recommended rates for each waiver service.

The proposed amendment to §355.723 adds a new subsection (e) to clarify that HHSC uses a pro forma modeling approach to calculate recommended rates for any waiver service where reliable provider cost data is unavailable.

The proposed amendment to §355.723 reformats subsection (e) to subsection (f) due to other formatting changes and adds new language to clarify that recommended rates are limited to available appropriations.

The proposed amendment to §355.723 removes current subsection (f) related to the total Medicaid spending requirement as this provision is no longer applicable.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed. Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rule is in effect is an estimated cost of $1,885,286 in General Revenue (GR) ($5,422,163 All Funds (AF)) in fiscal year (FY) 2023, $3,432,219 GR ($8,608,525 AF) in FY 2024, $3,431,350 GR ($8,610,665 AF) in FY 2025, $3,431,350 GR ($8,610,665 AF) in FY 2026, $3,431,350 GR ($8,610,665 AF) in FY 2027. This fiscal note represents only costs associated with non-direct care rate components, including facility, operations, transportation, indirect care, and administrative cost areas. The attendant portion of the rate is discussed in 1 TAC §355.112.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule establishes rate methodology for individualized skills and socialization services in HCS and TxHmL programs. Individualized skills and socialization services are supported by appropriations by the 2022-2023 GAA, Senate Bill 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 23).

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated people and the rule is necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public benefit will be establishing rate methodology for individualized skills and socialization services in the HCS and TxHmL Programs and clarifying the rate methodologies for other waiver services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not impose costs on regulated persons.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to PFD-LTSS@hhs.texas.gov.

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R043" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

§355.723. Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.

(a) Prospective payment rates. The Texas Health and Human Services Commission (HHSC) sets payment rates to be paid prospectively to Home and Community-based Services (HCS) and Texas Home Living (TxHmL) providers.

(b) Levels of need.

(1) Variable rates. Rates vary by level of need (LON) for the following services:

~~[(A) HCS day habilitation (DH);]~~

(A) [~~(B)~~] host home/companion care (HH/CC) [~~host home (HH)/companion care (CC)~~];

(B) individualized skills and socialization;

(C) residential support services (RSS); and

(D) supervised living (SL).[~~; and~~]

~~[(E) effective upon service claims being made billable through the Texas Medicaid & Healthcare Partnership (TMHP).]~~

~~*[(i)* HCS in-home DH;]~~

~~*[(ii)* HCS out-of-home DH;]~~

~~*[(iii)* HCS out-of-home respite (HCS OHR) in a DH facility;]~~

~~*[(iv)* HCS OHR in a setting where SL or RSS is provided; and]~~

~~*[(v)* HCS OHR in a setting where HH/CC is provided.]~~

(2) Non-variable rates. Rates do not vary by LON for the following services:

(A) audiology;

(B) behavioral support;

(C) cognitive rehabilitative therapy (CRT);

(D) community first choice personal assistance services/habilitation (CFC PAS/HAB);

(E) [~~(D)~~] community support services transportation (CSS);

(F) [~~(E)~~] dietary;

(G) [~~(F)~~] employment assistance (EA);

~~[(G) high medical needs licensed vocational nurse (LVN);]~~

~~[(H) high medical needs registered nurse (RN);]~~

~~[(I) high medical needs support;]~~

(H) in-home respite;

(I) [~~(J)~~] licensed vocational nurse (LVN) [~~LVN~~];

(J) [~~(K)~~] occupational therapy (OT);

(K) out-of-home respite (OHR);

(L) physical therapy (PT);

(M) registered nurse (RN) [~~RN~~];

~~[(N) respite;]~~

(N) [~~(O)~~] social work;

(O) [~~(P)~~] speech therapy;

(P) [~~(Q)~~] supported employment (SE); and

(Q) [~~(R)~~] supported home living transportation (SHL).[~~; and~~]

~~[(S) effective upon service claims being made billable through TMHP:]~~

~~*[(i)* HCS in-home respite (IHR);]~~

~~*[(ii)* HCS OHR in a camp;]~~

~~*[(iii)* HCS OHR in a respite facility;]~~

~~*[(iv)* TxHmL in-home DH;]~~

~~*[(v)* TxHmL out-of-home DH;]~~

~~*[(vi)* TxHmL OHR in a DH facility;]~~

~~*[(vii)* TxHmL OHR in a setting where HH/CC is provided;]~~

~~*[(viii)* TxHmL OHR in a setting where SL or RSS is provided; and]~~

~~*[(ix)* HCS and TxHmL OHR in a setting that is not listed above.]~~

(c) Recommended rates. The recommended payment rates are determined for each HCS and TxHmL service listed in subsections (b)(1) and (2) of this section by type and, for services listed in subsection (b)(1) of this section, by LON to include the following cost areas.

(1) Attendant compensation cost area. The determination of the attendant compensation cost area is calculated as specified in §355.112 of this chapter (relating to Attendant Compensation Rate Enhancement). The attendant compensation cost area includes personal attendant staffing costs (wages, benefits, modeled staffing ratios for attendant staff, direct care trainers, and job coaches).

(2) Other direct care cost area. The other direct care cost area includes other direct service staffing costs (wages and benefits for direct care and attendant supervisors). The other direct care cost area is determined by calculating a median from allowable other direct care costs for each service, weighed by units of service for the applicable service from the most recently examined HCS/TxHmL cost report adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 of this chapter (relating to Determination of Inflation Indices).

(A) For the following services, multiply the other direct care cost area as specified in this paragraph by 1.044:

(i) EA;

(ii) in-home respite;

(iii) OHR in a camp;

(iv) OHR in a respite facility;

(v) OHR in a setting where HH/CC is provided;

(vi) OHR in a setting that is not listed; and

(vii) SE.

(B) For the following services, multiply the other direct care cost area as specified in this paragraph by 1.07:

(i) individualized skills and socialization;

(ii) in-home and out-of-home individualized skills and socialization;

(iii) OHR in an individualized skills and socialization facility;

(iv) OHR in a setting with SL or RSS is provided;

(v) RSS; and

(vi) SL.

(3) Administration and operations cost area. The administration and operation cost area includes:

(A) administration and operation costs; and

(B) professional consultation and program support costs, including:

(i) allowable costs for required case management and service coordination activities; and

(ii) service-specific transportation costs.

(4) Projected costs. Projected costs are determined by allowable administrative and operations costs from the most recently audited cost report adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 of this chapter. The steps to determine projected costs are as follows.

(A) Step 1. Determine total projected administration and operation costs and projected units of service by service type using cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(B) Step 2. Determine the HH/CC coordinator component of the HH/CC rate as follows: This component is determined by summing total reported HH/CC coordinator wages and allocated payroll taxes and benefits from the most recently available audited HCS cost report, inflating those costs to the rate period, and dividing the resulting product by the total number of host home units of service reported on that cost report.

(C) Step 3. Determine total HH/CC coordinator dollars as follows. Multiply the HH/CC coordinator component of the HH/CC rate from subparagraph (B) of this paragraph by the total number of HH/CC units of service reported on the most recently available, reliable audited HCS cost report database.

(D) Step 4. Determine total projected administration and operation costs after offsetting total HH/CC coordinator dollars as follows. Subtract the total HH/CC coordinator dollars from subparagraph (C) of this paragraph from the total projected administration and operation costs from subparagraph (A) of this paragraph.

(E) Step 5. Determine projected weighted units of service for each HCS and TxHmL service type as follows.

(i) SL and RSS in HCS. Projected weighted units of service for SL and RSS equal projected SL and RSS units of service times a weight of 1.00.

(ii) Individualized skills and socialization in HCS and TxHmL. Projected weighted units of service for individualized skills and socialization equal projected individualized skills and socialization units of service times a weight of 0.25.

(iii) HH/CC in HCS. Projected weighted units of service for HH/CC equal projected HH/CC units of service times a weight of 0.50.

(iv) SHL in HCS, high medical needs support in HCS, and CSS in TxHmL. For each service, projected weighted units of service equal projected units of service times a weight of 0.30.

(v) Respite in HCS and TxHmL. Projected weighted units of service for respite equal projected respite units of service times a weight of 0.20.

(vi) SE in HCS and TxHmL. Projected weighted units of service for SE equal projected units of service times a weight of 0.25.

(vii) Behavioral support in HCS and TxHmL. Projected weighted units of service for behavioral support equal projected behavioral support units of service times a weight of 0.18.

(viii) Audiology, CRT, OT, PT, and speech therapy in HCS and TxHmL. Projected weighted units of service for audiology, CRT, OT, PT, and speech therapy equal projected audiology, CRT, OT, PT, and speech therapy units of service times a weight of 0.18.

(ix) Social work in HCS. Projected weighted units of service for social work equal projected social work units of service times a weight of 0.18.

(x) Nursing in HCS and TxHmL and high medical needs nursing in HCS. Projected weighted units of service for nursing and high medical needs nursing equal projected nursing and high medical needs nursing units of service times a weight of 0.25.

(xi) EA in HCS and TxHmL. Projected weighted units of service for EA equal projected EA units of service times a weight of 0.25.

(xii) Dietary in HCS and TxHmL. Projected weighted units of service for dietary equal projected dietary units of service times a weight of 0.18.

(F) Step 6. Calculate the total projected weighted units of service by summing the projected weighted units of service from subparagraph (E) of this paragraph.

(G) Step 7. Calculate the percent of total administration and operation costs to be allocated to the service type by dividing the projected weighted units for the service type from subparagraph (E) of this paragraph by the total projected weighted units of service from subparagraph (F) of this paragraph.

(H) Step 8. Calculate the total administration and operation cost to be allocated to the service type by multiplying the percent of total administration and operation costs allocated to the service type from subparagraph (G) of this paragraph by the total administration and operation costs after offsetting total HH/CC coordinator dollars from subparagraph (D) of this paragraph.

(I) Step 9. Calculate the administration and operation cost component per unit of service for each HCS and TxHmL service type by dividing the total administration and operation cost to be allocated to that service type from subparagraph (H) of this paragraph by the projected units of service for that service type from subparagraph (A) of this paragraph.

(J) Step 10. The final recommended administration and operation cost area per unit of service for each HCS and TxHmL service type is calculated as follows.

(i) For the following services, multiply the administration and operation cost area from this subparagraph by 1.044:

(I) CFC PAS/HAB;

(II) CSS;

(III) EA;

(IV) in-home individualized skills and socialization;

(V) in-home respite;

(VI) OHR in a camp;

(VII) OHR in a respite facility;

(VIII) OHR in a setting where HH/CC is provided;

(IX) OHR in a setting that is not listed;

(X) SE; and

(XI) SHL.

(ii) For the following services, multiply the administration and operation cost area from this subparagraph by 1.07:

(I) individualized skills and socialization;

(II) in-home and out-of-home individualized skills and socialization;

(III) OHR in an individualized skills and socialization facility;

(IV) RSS; and

(V) SL.

(5) The facility cost area. The facility cost area includes the following:

(A) room and board costs, including rent, mortgage interest, depreciation expenses, property taxes, property insurance, and food costs as defined in §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs), unless excluded if unallowable under Federal Medicaid rules; and

(B) non-room and board costs not already reimbursed through the monthly amount collected from the individual receiving services as defined in 26 TAC §565.27(a).

(6) The facility cost area is determined by calculating a median cost for each service using allowable facility costs, weighted by units of service for the applicable service from the most recently audited cost report, adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108.

(A) For the following services, multiply the facility cost component by 1.044:

(i) HH/CC;

(ii) OHR in a camp;

(iii) OHR in a respite facility; and

(iv) OHR in a setting where HH/CC is provided.

(B) For the following services, multiply the facility cost component by 1.07:

(i) individualized skills and socialization;

(ii) in-home and out-of-home DH;

(iii) OHR in a DH or individualized skills and socialization facility;

(iv) OHR in a setting where SL or RSS are provided;

(v) RSS; and

(vi) SL.

~~[(c) Recommended rates.~~

~~[(1) Rate models. The recommended modeled rates are determined for each HCS and TxHmL service listed in subsection (b)(1) - (2) of this section by type and, for services listed in subsection (b)(1) of this section, by LON to include the following cost components: direct care worker staffing costs (wages, benefits, modeled staffing ratios for direct care workers, direct care trainers and job coaches), other direct service staffing costs (wages for direct care supervisors, benefits, modeled staffing ratios); facility costs (for respite care only); room and board costs for overnight, OHR care; administration and operation costs; and professional consultation and program support costs. The determination of all components except for the direct care worker staffing costs component is based on cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers). The determination of the direct care worker staffing costs component is calculated as specified in §355.112 of this chapter (relating to Attendant Compensation Rate Enhancement).~~]

~~[(2) SHL and CSS.~~]

~~[(A) Effective July 1, 2017, the recommended modeled rates for HCS SHL and TxHmL CSS include the following cost components: direct care worker staffing costs, and administration and operation costs. The modeled rates for these two services do not include a cost component for other direct service staffing costs. The determination of the administration and operation cost component is calculated as specified in subsection (d)(10) of this section. The determination of the direct care worker staffing costs component is calculated as specified in §355.112 of this chapter.~~]

~~[(B) Effective September 1, 2019, the recommended modeled rate for HCS SHL is calculated as specified in subsection (c)(1) and subsection (d) of this section.~~]

~~[(C) Effective September 1, 2019, the recommended modeled rate for TxHmL CSS is equal to the rate that was in effect for these services on August 31, 2019.~~]

~~[(3) High medical needs support. Payment rates for high medical needs support are developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures).~~]

(d) Recommended payment rates are determined for each service by the following.

(1) CFC PAS/HAB. The recommended payment rate is calculated by summing the attendant compensation cost area and the administration and operations cost area as defined in subsection (c) of this section. The recommended rate for CFC PAS/HAB does not include a cost component for other direct care staffing costs.

(2) CRT. The recommended payment rate is developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(3) HH/CC. The recommended payment rate is determined by summing the direct care worker component, HH/CC coordinator

cost area, administration and operations component, and facility cost area. The direct care worker component is calculated using the median of allowable direct care worker costs, weighted by HH/CC units of service from the most recently examined cost report database. The result is adjusted for each LON. The HH/CC coordinator cost area and administration and operations components are calculated as determined in subsection (c) of this section. The facility cost area is calculated as determined in subsection (c) of this section but does not include room and board costs as defined in subparagraph (c)(5)(A) of this section. If HHSC lacks reliable cost report data, the rate is developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter.

(4) In-home respite. The recommended payment rate is calculated by summing the attendant compensation cost area and the administration and operations component as defined in subsection (c) of this section.

(5) Individualized skills and socialization. The recommended payment cost areas are adjusted using modeled staffing ratios to establish recommended rates for on-site and off-site rates by LON. The recommended rates are calculated by summing the attendant compensation cost area, other direct care cost area, the administration and operations component, and the facility cost component as defined in subsection (c) of this section. Transportation costs are calculated as a standalone component separate from the administration and operations component for off-site services. The enhanced staffing level one rate is equal to the LON 8 individualized skills and socialization off-site recommended rate. The enhanced staffing level two rate is modeled and assumes a one-staff-to-one-individual staffing ratio.

(6) Nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech/language therapy, behavioral support services, audiology services, dietary services, EA, SE, and transition assistance services are determined based on §355.725 of this subchapter (relating to Reimbursement Methodology for Common Waiver Services in Home and Community-based Services (HCS) and Texas Home Living (TxHmL)).

(7) OHR. The recommended payment cost areas may be adjusted using modeled direct care worker hour-per-unit ratios for similar services to calculate OHR rates that vary by setting where the service is provided. The recommended payment rates are calculated by summing the attendant compensation cost area, other direct care cost area, the administration and operations component, and the facility cost component as defined in subsection (c) of this section.

(8) SHL and CSS. The recommended payment rates for SHL and CSS are calculated by summing the attendant compensation cost area and the administration and operations cost area as defined in subsection (c) of this section.

(9) SL and RSS. The recommended payment cost areas are adjusted using modeled direct care worker hour-per-unit ratios updated by actual hours reported on the most recently audited cost report to calculate variable rates by LON. The recommended rates are calculated by summing the attendant compensation cost area, other direct care cost area, and the administration and operations component as defined in subsection (c) of this section. The facility cost area is calculated as determined in subsection (c) of this section but does not include room and board costs defined in subsection (c)(5)(A) of this section.

(10) Social work. The recommended payment rate is calculated using the weighted median social worker hourly cost from the most recently audited cost report, and the administration and operations cost component as determined in subsection (c) of this section. If HHSC lacks reliable cost report data, the rate is developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter.

~~[(d) Administration and operation cost component. The administration and operation cost component included in the recommended rates described in subsection (c) of this section for each HCS and TxHmL service type is determined as follows.]~~

~~[(1) Step 1. Determine total projected administration and operation costs and projected units of service by service type using cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter.]~~

~~[(2) Step 2. Determine the HH/CC coordinator component of the HH/CC rate as follows:]~~

~~[(A) For fiscal years 2010 through 2013, the HH/CC coordinator component of the HH/CC rate was modeled using the weighted average HH/CC coordinator wage as reported on the most recently available and reliable audited HCS cost report plus 10.25 percent for payroll taxes and benefits inflated to the rate period and a consumer to HH/CC coordinator ratio of 1:15.]~~

~~[(B) For fiscal years 2012 and 2013, the HH/CC coordinator component of the HH/CC rate was remodeled using a consumer to HH/CC coordinator ratio of 1:20.]~~

~~[(C) For fiscal years 2014 and thereafter, this] component is determined by summing total reported HH/CC coordinator wages and allocated payroll taxes and benefits from the most recently available audited HCS cost report, inflating those costs to the rate period, and dividing the resulting product by the total number of host home units of service reported on that cost report.]~~

~~[(3) Step 3. Determine total HH/CC coordinator dollars as follows. Multiply the HH/CC coordinator component of the HH/CC rate from paragraph (2) of this subsection by the total number of HH/CC units of service reported on the most recently available, reliable audited HCS cost report database.]~~

~~[(4) Step 4. Determine total projected administration and operation costs after offsetting total HH/CC coordinator dollars as follows. Subtract the total HH/CC coordinator dollars from paragraph (3) of this subsection from the total projected administration and operation costs from paragraph (1) of this subsection.]~~

~~[(5) Step 5. Determine projected weighted units of service for each HCS and TxHmL service type as follows.]~~

~~[(A) SL and RSS in HCS. Projected weighted units of service for SL and RSS equal projected SL and RSS units of service times a weight of 1.00.]~~

~~[(B) DH in HCS and TxHmL. Projected weighted units of service for DH equal projected DH units of service times a weight of 0.25.]~~

~~[(C) HH/CC in HCS. Projected weighted units of service for HH/CC equal projected HH/CC units of service times a weight of 0.50.]~~

~~[(D) SHL in HCS, high medical needs support in HCS, and CSS in TxHmL. For each service, projected weighted units of service equal projected units of service times a weight of 0.30.]~~

[(E) Respite in HCS and TxHmL. Projected weighted units of service for respite equal projected respite units of service times a weight of 0.20.]

[(F) SE in HCS and TxHmL. Projected weighted units of service for SE equal projected units of service times a weight of 0.25.]

[(G) Behavioral support in HCS and TxHmL. Projected weighted units of service for behavioral support equal projected behavioral support units of service times a weight of 0.18.]

[(H) Audiology, CRT, OT, PT, and speech therapy in HCS and TxHmL. Projected weighted units of service for audiology, CRT, OT, PT, and speech therapy equal projected audiology, CRT, OT, PT, and speech therapy units of service times a weight of 0.18.]

[(I) Social work in HCS. Projected weighted units of service for social work equal projected social work units of service times a weight of 0.18.]

[(J) Nursing in HCS and TxHmL and high medical needs nursing in HCS. Projected weighted units of service for nursing and high medical needs nursing equal projected nursing and high medical needs nursing units of service times a weight of 0.25.]

[(K) EA in HCS and TxHmL. Projected weighted units of service for EA equal projected EA units of service times a weight of 0.25.]

[(L) Dietary in HCS and TxHmL. Projected weighted units of service for dietary equal projected dietary units of service times a weight of 0.18.]

[(6) Step 6. Calculate total projected weighted units of service by summing the projected weighted units of service from paragraph (5)(A) - (L) of this subsection.]

[(7) Step 7. Calculate the percent of total administration and operation costs to be allocated to the service type by dividing the projected weighted units for the service type from paragraph (5) of this subsection by the total projected weighted units of service from paragraph (6) of this subsection.]

[(8) Step 8. Calculate the total administration and operation cost to be allocated to that service type by multiplying the percent of total administration and operation costs allocated to the service type from paragraph (7) of this subsection by the total administration and operation costs after offsetting total host home/companion care coordinator dollars from paragraph (4) of this subsection.]

[(9) Step 9. Calculate the administration and operation cost component per unit of service for each HCS and TxHmL service type by dividing the total administration and operation cost to be allocated to that service type from paragraph (8) of this subsection by the projected units of service for that service type from paragraph (1) of this subsection.]

[(10) Step 10. The final recommended administration and operation cost component per unit of service for each HCS and TxHmL service type is calculated as follows.]

[(A) For the following services, multiply the administration and operation cost component from paragraph (9) of this subsection by 1.044:]

[(i) CSS;]

[(ii) EA;]

[(iii) SE;]

[(iv) SHL; and]

[(v) effective upon service claims being made billable through TMHP:]

[(I) in-home DH;]

[(II) HCS OHR in a camp;]

[(III) HCS OHR in a respite facility;]

[(IV) HCS OHR in a setting where HH/CC is provided; and]

[(V) HCS OHR in a setting that is not listed.]

[(B) For the following services, multiply the administration and operation cost component from paragraph (9) of this subsection by 1.07:]

[(i) RSS;]

[(ii) SL; and]

[(iii) effective upon service claims being made billable through TMHP:]

[(I) out-of-home DH;]

[(II) HCS OHR in a DH facility; and]

[(III) HCS OHR in a setting where SL or RSS is provided.]

[(11) Step 11. Effective July 1, 2017, the final recommended administration and operation cost component per unit of service for SHL in HCS, CSS in TxHmL, and high medical needs support in HCS is equal to the administrative and facility cost component of habilitation services in the Community Living Assistance and Support Services program as specified in §355.505 of this chapter (relating to Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program).]

[(12) Step 12. Effective September 1, 2019, the recommended modeled rates for all TxHmL services except TxHmL CSS are equal to the rates that were in effect for these services on August 31, 2019. The recommended modeled rate for TxHmL CSS is calculated as specified in subsection (e)(2)(C) of this section.]

(e) Other sources of cost information. If HHSC has determined that there is not sufficient reliable cost report data from which to set reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using rates for similar services from other Medicaid programs, data from surveys, cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services, and similar sources. If HHSC has insufficient cost data, the recommended payment rate for each service is developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter.

(f) [(e)] Refinement and adjustment. Refinement and adjustment [Refinement/adjustment] of the rate [cost] components and model assumptions will be considered, as appropriate, by HHSC. All adopted rates are limited to available levels of appropriated state and federal funds as defined in §355.201 of this chapter (relating to Establishment and Adjustment of Reimbursement Rates for Medicaid).

[(f) Total Medicaid Spending Requirement. Effective for costs and revenues accrued on or after September 1, 2015, through August 31, 2017, all HCS and TxHmL providers are required to spend at least 90 percent of revenues received through the HCS and TxHmL waiver

programs' Medicaid payment rates on Medicaid allowable costs under these programs.]

[(1) Compliance with the total Medicaid spending requirement will be determined in the aggregate for all component codes controlled by the same entity across the HCS, TxHmL and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) programs within the same cost report year.]

[(2) Compliance with the spending requirement is determined on an annual basis using cost reports as described in Chapter 355, Subchapter A, of this title (relating to Cost Determination Process) and this subchapter.]

[(A) When a provider changes ownership through a contract assignment, the prior owner must submit a report covering the period from the beginning of the provider's fiscal year to the effective date of the contract assignment as determined by HHSC or its designee. This report is used as the basis for determining compliance with the spending requirement.]

[(B) Providers whose contracts are terminated voluntarily or involuntarily must submit a report covering the period from the beginning of the provider's fiscal year to the date recognized by HHSC or its designee as the contract termination date. This report is used as the basis for determining compliance with the spending requirement.]

[(C) When part of a cost reporting period is subject to spending accountability and part is not subject to spending accountability, a provider may choose to have HHSC divide their costs for the entire cost reporting period between the part of the period subject to spending accountability and the part of the period not subject to spending accountability on a pro-rata basis (i.e., pro-rata allocation). For example, if six months of a twelve month cost reporting period are subject to spending accountability, HHSC would divide the provider's costs for the entire cost reporting period by two to determine the costs subject to spending accountability. Providers who do not choose to have HHSC divide their costs on a pro-rata basis must report their costs for the period subject to spending accountability separately from their costs for the period not subject to spending accountability (i.e., direct reporting). Once a provider indicates to HHSC their choice between a pro-rata allocation and direct reporting for a specific cost reporting period, that choice is irrevocable for that cost reporting period.]

[(3) Allowable costs are those described in Chapter 355, Subchapter A, and this subchapter.]

[(4) The total Medicaid revenue for an HCS or TxHmL provider participating in the attendant compensation rate enhancement is offset by any recoupment made under §355.112(s) of this title prior to determining compliance with the spending requirement.]

[(5) Revenue and costs for the HCS and TxHmL waiver programs are combined for a component code for determination of compliance with the spending requirement.]

[(6) Providers who fail to meet the 90 percent spending requirement are subject to a recoupment of the difference between the 90 percent spending requirement and their actual Medicaid allowable HCS and TxHmL costs. Recoupments for each rate period under this subsection are limited to the difference between the provider's Medicaid revenues for services provided at the rates subject to spending accountability and what the provider's Medicaid revenues would have been for services provided at the Medicaid rates in effect on August 31, 2015.]

[(7) The contracted provider, owner, or legal entity which received the Medicaid payment is responsible for the repayment of the recoupment amount. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification results in placement of a vendor hold on all HHSC and Texas Department of Aging and Disability Services contracts controlled by the responsible entity.]

[(8) If HHSC, or its designee, is unable to recoup owed funds using an automated system, providers are required to repay some or all of the funds to be recouped through a check, money order or other non-automated method. Providers are required to submit the required repayment amount within 60 days of notification.]

[(9) Prior to each rate period through August 31, 2017, providers will be given the option of receiving the Medicaid rates adopted by HHSC for the rate period and the Medicaid rates that were in effect on August 31, 2015. Providers who choose to receive the Medicaid rates that were in effect on August 31, 2015, will not be subject to the spending accountability requirements described in this subsection.]

[(10) For rate periods beginning on or after September 1, 2017, the Total Medicaid Spending Requirement described in this subsection will no longer apply. Additionally, providers who chose to receive the Medicaid rates that were in effect on August 31, 2015, will receive the rates that were adopted effective September 1, 2015.]

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 June 26, 2023.

TRD-202302290
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 6, 2023
For further information, please call: (512) 867-7817

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SUBCHAPTER H. BASE WAGE REQUIREMENTS FOR PERSONAL ATTENDANTS

1 TAC §355.7051

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.7051, concerning Base Wage for a Personal Attendant.

BACKGROUND AND PURPOSE

The purpose of the proposed amendment is to implement Rider 30(a) of the 2024-25 General Appropriations Act, Article II, HHSC, House Bill 1, 88th Legislature, Regular Session, 2023 (Rider 30(a)). Rider 30(a) appropriates funds to HHSC to increase the minimum base wage paid to "personal attendants" from $8.11 to $10.60 per hour. In response to Rider 30(a), HHSC must update its program requirements to require service providers to pay this updated minimum base wage. To ensure consistency and clarity, the proposed amendment also adds additional services to the definition of "personal attendant," including services in the Home and Community-based Services 1915(c) waiver program, the Texas Home Living 1915(c) waiver program, and the Home and Community-based Services--Adult Mental Health program. In addition, the proposed amendment replaces day habilitation with individualized skills and socialization services.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.7051 updates all references to the current minimum wage for personal attendants from $8.11 to $10.60.

The proposed amendment to §355.7051(a) replaces "day habilitation" with "individualized skills and socialization services" in the Deaf-Blind with Multiple Disabilities Waiver (DBMD), Home and Community-Based Services Waiver (HCS) and Texas Home Living Waiver (TxHmL) programs. The proposed amendment also adds supervised living and residential support services in the HCS program; and assisted living services, in-home respite, and supervised living and residential support services in the Home and Community-Based Service--Adult Mental Health program to the list of services subject to minimum wage requirements for personal attendant services.

Minor editorial revisions were made for formatting and to add references.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed. Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rule is in effect is an estimated cost of $373,894,831 in General Revenue (GR) ($942,988,224 All Funds (AF)) in fiscal year (FY) 2024, $393,686,869 GR ($992,905,091 AF) in FY 2025, $492,405,833 GR ($1,235,648,264 AF) in FY 2026, $492,405,833 GR ($1,235,648,264 AF) in FY 2027, $492,405,833 GR ($1,235,648,264 AF) in FY 2028.

The fiscal impact above excludes the impact of increasing wages in Intermediate Care Facilities (ICF) because those are not covered in the rule.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will expand an existing rule;

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

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

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

Trey Wood has also determined that there could be an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule requires some businesses to pay a higher wage to personal attendants than currently. HHSC lacks sufficient information to provide an estimate of the economic impact.

However, because Rider 30(a) appropriated funds to HHSC for the purpose of increasing the payment rate to providers required to comply with the proposed rule, the increased payment rates may offset any adverse economic effect incurred by such providers.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of the citizens of Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public benefit will be an improvement in the stability and quality of the attendant workforce due to higher wages.

Trey Wood has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule may incur economic costs if they are currently paying an average base wage of less than $10.60 per hour for a service listed in the proposed rule. However, the increased payment rates may address most, if not all, of the increased wages for attendant services for those providers currently paying less than the required base wage. HHSC lacks sufficient data to estimate the cost to persons required to comply with the proposed rule.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to PFD-LTSS@hhs.texas.gov.

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R045" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the Health and Human Services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§355.7051. Base Wage for a Personal Attendant.

(a) The following words and terms, when used in this subchapter, have the following meanings[,] unless the context clearly indicates otherwise.[:]

(1) HHSC contractor--A person who has a written agreement with the Texas Health and Human Services Commission (HHSC) to provide a service to an individual in exchange for payment from HHSC.

(2) Managed care organization or MCO--Has the meaning assigned in §353.2 of this title (relating to Definitions).

(3) Personal attendant--

(A) An employee or subcontractor of an HHSC contractor, or an employee of an employer in the consumer directed services (CDS) option, who provides the following services, as described in 40 TAC §49.101 (relating to Application):

(i) services in the Community Attendant Services program;

(ii) services in the Family Care program;

(iii) services in the Primary Home Care program;

(iv) day activity and health services;

(v) residential care;

(vi) in the Community Living Assistance and Support Services Program:

(I) community first choice personal assistance services/habilitation (CFC PAS/HAB);

(II) habilitation (transportation); or

(III) in-home respite;

(vii) in the Deaf-Blind Multiple Disabilities Program:

(I) CFC PAS/HAB;

(II) residential habilitation (transportation);

(III) in-home respite;

(IV) licensed assisted living;

(V) licensed home health assisted living; or

(VI) individualized skills and socialization services [~~day habilitation~~];

(viii) in the Home and Community-based Services Program:

(I) CFC PAS/HAB;

(II) supported home living (transportation); [~~or~~]

(III) in-home respite; [~~and~~]

(IV) individualized skills and socialization services;

(V) supervised living; or

(VI) residential support services; and

(ix) in the Texas Home Living Program:

(I) CFC PAS/HAB;

(II) community support services (transportation); [~~or~~]

(III) in-home respite; or

(IV) individualized skills and socialization services.

(B) An employee or subcontractor of an HHSC contractor who provides the following services in the Home and Community-Based Services--Adult Mental Health program, as described in 26 TAC §307.51 (relating to Purpose and Application):

(i) assisted living services;

(ii) in-home respite;

(iii) supervised living services; and

(iv) supported home living services.

(C) [~~(B)~~] An [~~an~~] employee or subcontractor of an HHSC contractor[,] or an employee of an employer in the CDS option who provides:

(i) personal care services, as described in Chapter 363, Subchapter F of this title (relating to Personal Care Services); or

(ii) CFC habilitation (CFC HAB) or CFC personal assistance services (CFC PAS), as described in Chapter 354, Subchapter A, Division 27 (relating to Community First Choice).[;]

(D) [~~(C)~~] An [~~an~~] employee or subcontractor of an HHSC contractor, or an employee of an employer in the CDS option or in the block grant option, who provides consumer managed personal attendant services as described in 26 [~~40~~] TAC Chapter 275 [44] (relating to Consumer Managed Personal Attendant Services (CMPAS) Program).[; ~~or~~]

(E) [~~(D)~~] A [~~a~~] provider or an employee of an employer in the CDS option who provides:

(i) in the STAR+PLUS program and STAR+PLUS Home and Community-based Services (HCBS) program:

(I) assisted living;

(II) CFC PAS;

(III) CFC HAB;

(IV) day activity and health services;

(V) in-home respite care;

(VI) personal assistance services; or

(VII) protective supervision;

(ii) in the STAR Health program and Medically Dependent Children Program (MDCP):

(I) day activity and health services;

(II) CFC PAS;

(III) CFC HAB;

(IV) flexible family support;

(V) in-home respite; or

(VI) personal care services; or

(iii) in the STAR Kids program and MDCP:

(I) CFC PAS;

(II) CFC HAB;

(III) personal care services;

(IV) day activity and health services;

(V) flexible family support services; or

(VI) in-home respite.

(4) Provider--Has the meaning assigned in §353.2 of this title.

(b) An HHSC contractor, other than an HHSC contractor described in subsection (c) or (d) of this section, must pay a personal attendant a base wage of at least $10.60 [~~$8.11~~] per hour.

(c) An HHSC contractor that has a contract for financial management services (FMS) must ensure that an employer in the CDS option, or designated representative, pays a personal attendant a base wage of at least $10.60 [~~$8.11~~] per hour.

(d) An HHSC contractor that has a CMPAS contract must:

(1) pay a personal attendant who is an employee or subcontractor of the contractor in the traditional service option or block grant option a base wage of at least $10.60 [~~$8.11~~] per hour; and

(2) ensure that an individual employer of a personal attendant under the block grant option or CDS option, or the individual's representative, pays a personal attendant a base wage of at least $10.60 [~~$8.11~~] per hour.

(e) An MCO must require an MCO contractor, other than an MCO contractor described in subsection (f) of this section, to pay a personal attendant a base wage of at least $10.60 [~~$8.11~~] per hour.

(f) An MCO must require that an MCO contractor that has a contract for FMS ensures that an employer in the CDS option or designated representative pays a personal attendant a base wage of at least $10.60 [~~$8.11~~] per hour.

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 June 26, 2023.

TRD-202302296
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 6, 2023
For further information, please call: (512) 867-7817

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SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8052

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8052, concerning Inpatient Hospital Reimbursement.

BACKGROUND AND PURPOSE

The purpose of this proposal is to comply with House Bill (H.B.) 1 Rider 8 and Rider 16, 88th Legislature, Regular Session 2023. HHSC is required by H.B. 1, to the extent allowed by law, to increase Medicaid inpatient rural hospital labor and delivery rates. Additionally, the rural hospital definition is modified to reflect the population updates in the 2020 U.S. Census. In compliance with Senate Bill 170 (S.B. 170), 86th Legislature, Regular Session 2019, to the extent allowed by law, HHSC will calculate Medicaid rural hospital inpatient rates using a cost-based prospective reimbursement methodology. HHSC must calculate rates for rural hospitals once every two years, using the most recent cost information available. HHSC previously published proposed rates to be effective September 1, 2023, and, with this legislative direction, will account for the updates in this proposed rule and republish rates.

SECTION-BY-SECTION SUMMARY

The proposed amendment modifies §355.8052(b)(32)(A) by changing the U.S. Census year from "2010" to "2020" and population from "60,000" to "68,750".

The proposed amendment modifies §355.8052(e)(2) by changing the effective date from "September 1, 2019" to "September 1, 2023" and to change the labor and delivery Standard Dollar Amount add-on payment from "no less than $500" to "no less than $1,500".

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does have foreseeable implications relating to costs or revenues of state government.

The effect on local government for each year of the first five years that the rule is in effect, enforcing or administering the rule has implications relating to revenues of local governments. The effect is projected to be a net increase to revenues of local governments of approximately $9,230,429 General Revenue (GR) and $23,493,073 All Funds (AF) for State Fiscal Year (SFY) 2024 and $9,361,990 GR and 23,493,073 AF for SFY 2025. No estimate of the impact during SFYs 2026 - 2028 is available because the rural hospital rates will be recalculated for SFY 2026.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will not expand an existing rule;

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

(8) the proposed rule will positively affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of the Provider Finance Department, has determined that for each year of the first five years the rule is in effect, the public benefit will be updated data, increased transparency as well as increased Medicaid inpatient rates for rural hospitals.

Trey Wood also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not impose any additional fees or costs on those who are required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing to receive comments on the proposal will be held via a webinar. The meeting date and time will be posted on the HHSC Communications and Events Website at https://hhs.texas.gov/about-hhs/communications-events and on the HHSC Provider Finance Hospitals website at https://pfd.hhs.texas.gov/provider-finance-communications.

Please contact Provider Finance Department Hospital Finance section at pfd_hospitals@hhsc.state.tx.us if you have questions.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Valerie Lesak in the HHSC Provider Finance for Hospitals department at pfd_hospitals@hhsc.state.tx.us in the HHSC Provider Finance Hospital section.

Written comments on the proposal may be submitted to HHSC, Mail Code 400, 4601 W. Guadalupe Street, Austin, Texas 78751, or by email to pfd_hospitals@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R046" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32; and Texas Government Code §531.02194, which requires adoption of a prospective reimbursement methodology for the payment of rural hospitals.

The amendment affects Texas Government Code §531.0055, Chapter 531 and Texas Human Resources Code Chapter 32.

§355.8052. Inpatient Hospital Reimbursement.

(a) Introduction. The Texas Health and Human Services Commission (HHSC) uses the methodology described in this section to calculate reimbursement for a covered inpatient hospital service.

(b) Definitions.

(1) Add-on--An amount that is added to the base Standard Dollar Amount (SDA) to reflect high-cost functions and services or regional cost differences.

(2) Adjudicated--The approval or denial of an inpatient hospital claim by HHSC.

(3) Base standard dollar amount (base SDA)--A standardized payment amount calculated by HHSC, as described in subsections (c) and (d) of this section, for the costs incurred by prospectively paid hospitals in Texas for furnishing covered inpatient hospital services.

(4) Base year--For the purpose of this section, the base year is a state fiscal year (September through August) to be determined by HHSC.

(5) Base year claims--For the purposes of rate setting (including Diagnosis-related group (DRG) relative weights, Mean length of stay (MLOS) and Days Thresholds, and rebasing or realignment of base rates) effective September 1, 2021, and after HHSC includes Medicaid inpatient fee-for-service (FFS) and Managed Care Organization (MCO) encounters that meet the criteria in subparagraphs (A) - (F) of this paragraph in the Base Year claims data. For base rates set prior to September 1, 2021, individual sets of base year claims are compiled for children's hospitals and urban hospitals for the purposes of rate setting and realignment. All Medicaid inpatient fee-for-service (FFS) and Primary Care Case Management (PCCM) inpatient hospital claims for reimbursement filed by an urban or children's hospital that:

(A) had a date of admission occurring within the base year;

(B) were adjudicated and approved for payment during the base year and the six-month grace period that immediately followed the base year, except for such claims that had zero inpatient days;

(C) were not claims for patients who are covered by Medicare;

(D) were not Medicaid spend-down claims;

(E) were not claims associated with military hospitals, out-of-state hospitals, state-owned teaching hospitals, and freestanding psychiatric hospitals; and

(F) individual sets of base year claims are compiled for children's hospitals and urban hospitals for the purposes of rate setting and rebasing.

(6) Children's hospital--A Medicaid hospital designated by Medicare as a children's hospital and exempted by Centers for Medicare and Medicaid Services (CMS) from the Medicare prospective payment system.

(7) Cost outlier payment adjustment--A payment adjustment for a claim with extraordinarily high costs.

(8) Cost outlier threshold--One factor used in determining the cost outlier payment adjustment.

(9) Day outlier payment adjustment--A payment adjustment for a claim with an extended length of stay.

(10) Day outlier threshold--One factor used in determining the day outlier payment adjustment.

(11) Diagnosis-related group (DRG)--The classification of medical diagnoses as defined in the 3M™ All Patient Refined Diagnosis Related Group (APR-DRG) system or as otherwise specified by HHSC. Each DRG has four digits. The last digit of the Diagnosis-Related Group is the Severity of Illness (SOI). SOI indicates the seriousness of the condition on a scale of one to four: minor, moderate, major, or extreme. SOI may increase if secondary diagnoses are present, in addition to the primary diagnosis.

(12) Final settlement--Reconciliation of Medicaid cost in the CMS form 2552-10 hospital fiscal year end cost report performed by HHSC within six months after HHSC receives the cost report audited by a Medicare intermediary, or HHSC.

(13) Final standard dollar amount (final SDA)--The rate assigned to a hospital after HHSC applies the add-ons and other adjustments described in this section.

(14) Geographic wage add-on--An adjustment to a hospital's base SDA to reflect geographical differences in hospital wage levels. Hospital geographical areas correspond to the Core-Based Statistical Areas (CBSAs) established by the federal Office of Management and Budget in 2003.

(15) HHSC--The Texas Health and Human Services Commission, or its designee.

(16) Impact file--The Inpatient Prospective Payment System (IPPS) Final Rule Impact File that contains data elements by provider used by the CMS in calculating Medicare rates and impacts. The impact file is publicly available on the CMS website.

(17) Inflation update factor--Cost of living index based on the annual CMS Prospective Payment System Hospital Market Basket Index.

(18) Inpatient Ratio of cost-to-charge (RCC)--A ratio that covers all applicable Medicaid hospital costs and charges relating to inpatient care.

(19) In-state children's hospital--A hospital located within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(20) Interim payment--An initial payment made to a hospital that is later settled to Medicaid-allowable costs, for hospitals reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(21) Interim rate--The ratio of Medicaid allowed inpatient costs to Medicaid allowed inpatient charges filed on a hospital's cost report, expressed as a percentage. The interim rate established during a cost report settlement for an urban hospital or a rural hospital reimbursed under this section excludes the application of TEFRA target caps and the resulting incentive and penalty payments.

(22) Managed Care Organization (MCO) Adjustment Factor--Factor used to estimate managed care premium tax, risk margin, and administrative costs related to contracting with HHSC. The estimated amounts are subtracted from appropriations.

(23) Mean length of stay (MLOS)--One factor used in determining the payment amount calculated for each DRG; the average number of inpatient days per DRG.

(24) Medical education add-on--An adjustment to the base SDA for an urban teaching hospital to reflect higher patient care costs relative to non-teaching urban hospitals.

(25) Military hospital--A hospital operated by the armed forces of the United States.

(26) New Hospital--A hospital that was enrolled as a Medicaid provider after the end of the base year and has no base year claims data.

(27) Out-of-state children's hospital--A hospital located outside of Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(28) Realignment--Recalculation of the base SDA and add-ons using current RCCs, inflation factors, and base year claims as specified by HHSC, or its designee, for one or more hospital types. Realignment will occur based on legislative direction.

(29) Rebasing--Calculation of all SDAs and add-ons, DRG relative weights, MLOS, and day outlier thresholds for all hospitals using a base period as specified by HHSC, or its designee. Rebasing will occur based on legislative direction.

(30) Relative weight--The weighting factor HHSC assigns to a DRG representing the time and resources associated with providing services for that DRG.

(31) Rural base year stays--An individual set of base year stays is compiled for rural hospitals for the purposes of rate setting and realignment. All inpatient FFS claims and inpatient managed care encounters for reimbursement filed by a rural hospital that:

(A) had a date of admission occurring within the base year;

(B) were adjudicated and approved for payment during the base year or the six-month period that immediately followed the base year, except for such stays that had zero inpatient days;

(C) were not stays for patients who are covered by Medicare; and

(D) were not Medicaid spend-down stays; and were not stays associated with military hospitals, out-of-state hospitals, state-owned teaching hospitals, and freestanding psychiatric hospitals.

(32) Rural hospital--A hospital enrolled as a Medicaid provider that:

(A) is located in a county with 68,750 [~~60,000~~] or fewer persons according to the 2020 [~~2010~~] U.S. Census;

(B) is designated by Medicare as a Critical Access Hospital (CAH), a Sole Community Hospital (SCH), or a Rural Referral Center (RRC) that is not located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget; or

(C) meets all of the following:

(i) has 100 or fewer beds;

(ii) is designated by Medicare as a CAH, a SCH, or a RRC; and

(iii) is located in an MSA.

(33) Safety-Net add-on--An adjustment to the base SDA for a safety-net hospital to reflect the higher costs of providing Medicaid inpatient services in a hospital that provides a significant percentage of its services to Medicaid and/or uninsured patients.

(34) Safety-Net hospital--An urban or children's hospital that meets the eligibility and qualification requirements described in §355.8065 of this division (relating to Disproportionate Share Hospital Reimbursement Methodology) for the most recent federal fiscal year for which such eligibility and qualification determinations have been made.

(35) Standard Dollar Amount (SDA)--A standardized payment amount calculated by HHSC for the costs incurred by prospectively-paid hospitals in Texas for furnishing covered inpatient hospital services.

(36) State-owned teaching hospital--Acute care hospitals owned and operated by the state of Texas.

(37) Teaching hospital--A hospital for which CMS has calculated and assigned a percentage Medicare education adjustment factor under 42 CFR §412.105.

(38) Teaching medical education add-on--An adjustment to the base SDA for a children's teaching hospital with a program approved by the Accreditation Council for Graduate Medical Education (ACGME) to reflect higher patient care costs relative to non-teaching children's hospitals.

(39) TEFRA target cap--A limit set under the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) and applied to a hospital's cost settlement under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). TEFRA target cap is not applied to services provided to patients under age 21, and incentive and penalty payments associated with this limit are not applicable to those services.

(40) Tentative settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year-end cost report performed by HHSC within six months after HHSC receives an acceptable cost report filed by a hospital.

(41) Texas provider identifier (TPI)--A unique number assigned to a provider of Medicaid services in Texas.

(42) Trauma add-on--An adjustment to the base SDA for a trauma hospital to reflect the higher costs of obtaining and maintaining a trauma facility designation, as well as the direct costs of providing trauma services, relative to non-trauma hospitals or to hospitals with lower trauma facility designations. To be eligible for the trauma add-on, a hospital must be eligible to receive an allocation from the trauma facilities and emergency medical services account under Texas Health and Safety Code Chapter 780.

(43) Trauma hospital--An inpatient hospital that meets the Texas Department of State Health Services criteria for a Level I, II, III, or IV trauma facility designation under 25 Texas Administrative Code §157.125 (relating to Requirements for Trauma Facility Designation).

(44) Universal mean--Average base year cost per claim for all urban hospitals.

(45) Urban hospital--Hospital located in a metropolitan statistical area and not fitting the definition of rural hospitals, children's hospitals, state-owned teaching hospitals, or freestanding psychiatric hospitals.

(c) Base children's hospitals SDA calculations. HHSC will use the methodologies described in this subsection to determine average statewide base SDA and a final SDA for each children's hospital.

(1) HHSC calculates the average base year cost per claim as follows.

(A) To calculate the total inpatient base year cost per children's hospital:

(i) sum the allowable inpatient charges by hospital for the base year claims; and

(ii) multiply clause (i) of this subparagraph by the hospital's inpatient RCC and the inflation update factors to inflate the base year cost to the current year.

(B) Sum the amount of all hospitals' base year costs from subparagraph (A) of this paragraph.

(C) Subtract an amount equal to the estimated outlier payment amount for the base year claims for all children's hospitals from subparagraph (B) of this paragraph.

(D) To derive the average base year cost per claim, divide the result from subparagraph (C) of this paragraph by the total number of base year claims.

(2) HHSC calculates the base children's SDA as follows.

(A) From the amount determined in paragraph (1)(C) of this subsection, HHSC sets aside an amount for add-ons as described in paragraph (3) of this subsection. In determining the amount to set aside, HHSC considers factors including other funding available to reimburse high-cost hospital functions and services, available data sources, historical costs, Medicare practices, and feedback from hospital industry experts.

(B) The amount remaining from paragraph (1)(C) of this subsection after HHSC sets aside the amount for add-ons in subparagraph (A) of this paragraph is then divided by the sum of the relative weights for all children's base year claims to derive the base SDA.

(3) A children's hospital may receive increases to the base SDA for any of the following.

(A) Add-on amounts, which will be determined or adjusted based on the following.

(i) Impact files.

(I) HHSC will use the most recent finalized impact file available at the time of realignment to calculate add-ons; and

(II) HHSC will use the impact file in effect at the last realignment to calculate add-ons for new hospitals, except as otherwise specified in this section.

(ii) Geographic wage reclassification. If a hospital becomes eligible for the geographic wage reclassification under Medicare, the hospital will become eligible for the adjustment upon the next realignment.

(iii) Teaching medical education add-on during the fiscal year. If a hospital becomes eligible for the teaching medical education add-on, the hospital will receive an increased final SDA to include these newly eligible add-ons, effective for claims that have a date of discharge occurring on or after the first day of the next state fiscal year.

(iv) Safety-net add-on during the fiscal year. The hospital will receive an increased final SDA to include these newly eligible add-ons, effective for claims that have a date of discharge occurring on or after the first day of the next state fiscal year.

(v) New children's hospital teaching medical education add-on. If an eligible children's hospital is new to the Medicaid program and a cost report is not available, the teaching medical education add-on will be calculated at the beginning of the state fiscal year after a cost report is received.

(B) Geographic wage add-on.

(i) CBSA assignment. For claims with dates of admission beginning September 1, 2013, and continuing until the next realignment, the geographic wage add-on for children's hospitals will be calculated based on the corresponding CBSA in the impact file in effect on September 1, 2011.

(ii) Designated impact file. Subsequent add-ons will be based on the impact file available at the time of realignment.

(iii) Wage index. To determine a children's hospital geographic wage add-on, HHSC first calculates a wage index for Texas as follows.

(I) HHSC identifies the Medicare wage index factor for each CBSA in Texas.

(II) HHSC identifies the lowest Medicare wage index factor in Texas.

(III) HHSC divides the Medicare wage index factor in subclause (I) of this clause for each CBSA by the lowest Medicare wage index factor identified in subclause (II) of this clause and subtracts one from each resulting quotient.

(iv) County assignment. HHSC will initially assign a hospital to a CBSA based on the county in which the hospital is located. A hospital that has been approved for geographic reclassification under Medicare may request that HHSC recognize its Medicare CBSA reclassification under the process described in subparagraph (E) of this paragraph.

(v) Medicare labor-related percentage. HHSC uses the Medicare labor-related percentage available at the time of realignment.

(vi) Geographic wage add-on calculation. The final geographic wage add-on is equal to the product of the base SDA calculated in subsection (c)(2)(B) of this section, the wage index calculated in clause (iii)(III) of this subparagraph, and the Medicare labor-related percentage in clause (v) of this subparagraph.

(C) Teaching medical education add-on.

(i) Eligibility. A teaching hospital that is a children's hospital is eligible for the teaching medical education add-on. Each children's hospital is required to confirm, under the process described in subparagraph (E) of this paragraph, that HHSC's determination of the hospital's eligibility for the add-on is correct.

(ii) Teaching medical education add-on calculation.

(I) For each children's hospital, identify the total hospital medical education cost from each hospital cost report or reports that cross over the base year.

(II) For each children's hospital, sum the amounts identified in subclause (I) of this clause to calculate the total medical education cost.

(III) For each children's hospital, calculate the average medical education cost by dividing the amount from subclause (II) of this clause by the number of cost reports that cross over the base year.

(IV) Sum the average medical education cost per hospital to determine a total average medical education cost for all hospitals.

(V) For each children's hospital, divide the average medical education cost for the hospital from subclause (III) of this clause by the total average medical education cost for all hospitals from subclause (IV) of this clause to calculate a percentage for the hospital.

(VI) Divide the total average medical education cost for all hospitals from subclause (IV) of this clause by the total base year cost for all children's hospitals from subsection (c)(1)(B) of this section to determine the overall teaching percentage of Medicaid cost.

(VII) For each children's hospital, multiply the percentage from subclause (V) of this clause by the percentage from subclause (VI) of this clause to determine the teaching percentage for the hospital.

(VIII) For each children's hospital, multiply the hospital's teaching percentage by the base SDA amount to determine the teaching medical education add-on amount.

(D) Safety-Net add-on.

(i) Eligibility. If a children's hospital meets the definition of a "safety-net hospital" as defined in subsection (b) of this section, it is eligible for a safety-net add-on.

(ii) Add-on amount. HHSC calculates the safety-net add-on amounts annually or at the time of realignment as follows.

(I) For each eligible hospital, determine the following amounts for a period of 12 contiguous months specified by HHSC:

(-a-) total allowable Medicaid inpatient days for fee-for-service claims;

(-b-) total allowable Medicaid inpatient days for managed care encounters;

(-c-) total relative weights for fee-for-service claims; and

(-d-) total relative weights for managed care encounters.

(II) Determine the total allowable days for eligible safety-net hospitals by summing the amounts in items (-a-) and (-b-) of this subclause.

(III) Determine the hospital's percentage of total allowable days to the total in subclause (II) of this clause.

(IV) Determine the hospital's portion of appropriated safety-net funds before the MCO adjustment factor is applied by multiplying the amount in subclause (III) of this clause for each hospital by the total safety-net funds deflated to the data year.

(V) For each hospital, multiply item (-d-) of this subclause by the relevant MCO adjustment factor.

(VI) Sum the amounts in item (-c-) of this subclause and subclause (V) of this clause for each hospital.

(VII) To calculate the safety-net add-on, divide the amount in subclause (IV) of this clause by the amount in subclause (VI) of this clause for each hospital. The result is the safety-net add-on.

(iii) Reconciliation. Effective for costs and revenues accrued on or after September 1, 2015, HHSC may perform a reconciliation for each hospital that received the safety-net add-on to identify any such hospitals with total Medicaid reimbursements for inpatient and outpatient services in excess of their total Medicaid and uncompensated care inpatient and outpatient costs. For hospitals with total Medicaid reimbursements in excess of total Medicaid and uncompensated care costs, HHSC may recoup the difference.

(E) Add-on status verification.

(i) Notification. HHSC will determine a hospital's initial add-on status by reference to the impact file at the time of realignment, Medicaid days, and relative weight information from HHSC's fiscal intermediary. HHSC will notify the hospital of the CBSA to which the hospital is assigned, the Medicare teaching hospital designation for children's hospitals as applicable, and any other related information determined relevant by HHSC. For state fiscal years 2017 and after, HHSC will also notify eligible hospitals of the data used to calculate the safety-net add-on. HHSC may post the information on its website, send the information through the established Medicaid notification procedures used by HHSC's fiscal intermediary, send through other direct mailing, or provide the information to hospital associations to disseminate to their member hospitals.

(ii) Rate realignment. HHSC will calculate a hospital's final SDA using the add-on status initially determined by HHSC unless, within 14 calendar days after the date of the notification, HHSC receives notification in writing from the hospital, in a format determined by HHSC, that any add-on status determined by HHSC is incorrect and:

(I) the hospital provides documentation of its eligibility for a different teaching medical education add-on or teaching hospital designation;

(II) the hospital provides documentation that it is approved by Medicare for reclassification to a different CBSA; or

(III) for state fiscal years 2017 and after, the hospital provides documentation of different data and demonstrates to HHSC's satisfaction that the different data should be used to calculate the safety-net add-on.

(iii) Annual SDA calculation. HHSC will calculate a hospital's final SDA annually using the add-on status initially determined during realignment by HHSC unless, within 14 calendar days after the date of the notification, HHSC receives notification in writing from the hospital, in a format determined by HHSC, that any add-on status determined by HHSC is incorrect and:

(I) the hospital provides documentation of a new teaching program or new teaching hospital designation; or

(II) for state fiscal years 2017 and after, the hospital provides documentation of different data and demonstrates to HHSC's satisfaction that the different data should be used to calculate the safety-net add-on.

(iv) Failure to notify. If a hospital fails to notify HHSC within 14 calendar days after the date of the notification that the add-on status as initially determined by HHSC includes one or more add-ons for which the hospital is not eligible, resulting in an overpayment, HHSC will recoup such overpayment and will prospectively reduce the SDA accordingly.

(4) Final children's hospital SDA calculations. HHSC calculates a children's hospital's final SDA as follows.

(A) Add all add-on amounts for which the hospital is eligible to the base SDA.

(B) For labor and delivery services provided to adults age 18 or older in a children's hospital, the final SDA is equal to the base SDA for urban hospitals without add-ons, calculated as described in subsection (d)(4)(E)(i) of this section plus the urban hospital geographic wage add-on for an urban hospital located in the same CBSA as the children's hospital providing the service.

(C) For new children's hospitals that are not teaching hospitals, for which HHSC has no base year claim data, the final SDA is the base SDA plus the hospital's geographic wage add-on. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(D) For new children's hospitals that qualify for the teaching medical education add-on, as defined in subsection (b) of this section, for which HHSC has no base year claim data, the final SDA is calculated based on one of the following options until realignment is performed with base year claim data for the hospital. A new children's hospital must notify the HHSC Provider Finance Department of its selected option within 60 days from the date the hospital is notified of its provider activation by HHSC's fiscal intermediary. If the HHSC Provider Finance Department does not receive timely notice of the option, HHSC will assign the hospital the SDA calculated as described in clause (i) of this subparagraph. The SDA calculated based on the selected option will be effective retroactive to the first day of the provider's enrollment.

(i) Children's hospital base SDA plus the applicable geographic wage add-on and the minimum teaching add-on for existing children's hospitals. No settlement of costs is required for services reimbursed under this option. The SDA will be in effect until the next realignment when a new SDA will be determined. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(ii) Children's base SDA plus the applicable geographic wage add-on and the maximum teaching add-on for existing children's hospitals. A cost settlement is required for services reimbursed under this option. The SDA will be in effect for the hospital until the next realignment when a new SDA will be determined. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(d) Base urban hospital SDA calculations. HHSC will use the methodologies described in this subsection to determine the average statewide base SDA and the final SDA for each urban hospital.

(1) HHSC calculates the average base year cost per claim (the universal mean) as follows.

(A) To calculate the total inpatient base year cost per urban hospital:

(i) sum the allowable inpatient charges by hospital for the base year claims; and

(ii) multiply clause (i) of this subparagraph by the hospital's inpatient RCC and the inflation update factors to inflate the base year cost to the current year.

(B) Sum the amount for all hospitals' base year costs from subparagraph (A) of this paragraph.

(C) To derive the average base year cost per claim, divide the result from subparagraph (B) of this paragraph by the total number of base year claims.

(2) HHSC calculates the base urban SDA as follows.

(A) From the amount determined in paragraph (1)(B) of this subsection for urban hospitals, HHSC sets aside an amount for add-ons as described in paragraph (3) of this subsection. In determining the amount to set aside, HHSC considers factors including other funding available to reimburse high-cost hospital functions and services, available data sources, historical costs, Medicare practices, and feedback from hospital industry experts.

(B) The amount remaining from paragraph (1)(B) of this subsection after HHSC sets aside the amount for add-ons in subparagraph (A) of this paragraph is then divided by the total number of base year claims to derive the base SDA.

(3) An urban hospital may receive increases to the base SDA for any of the following.

(A) Add-on amounts, which will be determined or adjusted based on the following.

(i) Impact files.

(I) HHSC will use the most recent finalized impact file available at the time of realignment to calculate add-ons; and

(II) HHSC will use the impact file in effect at the last realignment to calculate add-ons for new hospitals, except as otherwise specified in this section.

(ii) Geographic wage reclassification. If a hospital becomes eligible for the geographic wage reclassification under Medicare, the hospital will become eligible for the adjustment upon the next realignment.

(iii) Medical education add-on during fiscal year. If an existing hospital has a change in its medical education operating adjustment factor under Medicare, the hospital will become eligible for the adjustment to its medical education add-on upon the next realignment.

(iv) New medical education add-on. If a hospital becomes eligible for the medical education add-on after the most recent realignment:

(I) the hospital will receive a medical education add-on, effective for claims that have a date of discharge occurring on or after the first day of the next state fiscal year; and

(II) HHSC will calculate the add-on using the impact file in effect at the time the hospital initially claims eligibility for the medical education add-on; and

(III) this amount will remain fixed until the next realignment.

(B) Geographic wage add-on.

(i) Designated impact file. Subsequent add-ons will be based on the impact file available at the time of realignment.

(ii) Wage index. To determine an urban geographic wage add-on, HHSC first calculates a wage index for Texas as follows.

(I) HHSC identifies the Medicare wage index factor for each CBSA in Texas;

(II) HHSC identifies the lowest Medicare wage index factor in Texas;

(III) HHSC divides the Medicare wage index factor identified in subclause (I) of this clause for each CBSA by the lowest Medicare wage index factor identified in subclause (II) of this clause and subtracts one from each resulting quotient.

(iii) County assignment. HHSC will initially assign a hospital to a CBSA based on the county in which the hospital is located. A hospital that has been approved for geographic reclassification under Medicare may request that HHSC recognize its Medicare CBSA reclassification under the process described in subparagraph (F) of this paragraph.

(iv) Medicare labor-related percentage. HHSC uses the Medicare labor-related percentage available at the time of realignment.

(v) Geographic wage add-on calculation. The final geographic wage add-on is equal to the product of the base SDA calculated in subsection (d)(2)(B) of this section, the wage index calculated in clause (ii)(III) of this subparagraph, and the Medicare labor-related percentage in clause (iv) of this subparagraph.

(C) Medical education add-on.

(i) Eligibility. If an urban hospital meets the definition of a teaching hospital, as defined in subsection (b) of this section, it is eligible for the medical education add-on. Each hospital is required to confirm, under the process described in subparagraph (F) of this paragraph, that HHSC's determination of the hospital's eligibility and medical education operating adjustment factor under Medicare for the add-on is correct.

(ii) Add-on amount. HHSC multiplies the base SDA calculated in subsection (d)(2)(B) of this section by the hospital's Medicare education adjustment factor to determine the hospital's medical education add-on amount.

(D) Trauma add-on.

(i) Eligibility.

(I) If an urban hospital meets the definition of a trauma hospital, as defined in subsection (b) of this section, it is eligible for a trauma add-on.

(II) HHSC initially uses the trauma level designation associated with the physical address of a hospital's TPI. A hospital may request that HHSC, under the process described in subparagraph (F) of this paragraph use a higher trauma level designation associated with a physical address other than the hospital's TPI address.

(ii) Add-on amount. To determine the trauma add-on amount, HHSC multiplies the base SDA:

(I) by 28.3 percent for hospitals with Level 1 trauma designation;

(II) by 18.1 percent for hospitals with Level 2 trauma designation;

(III) by 3.1 percent for hospitals with Level 3 trauma designation; or

(IV) by 2.0 percent for hospitals with Level 4 trauma designation.

(iii) Reconciliation with other reimbursement for uncompensated trauma care. Subject to General Appropriations Act and other applicable law:

(I) if a hospital's allocation from the trauma facilities and emergency medical services account administered under Texas Health and Safety Code Chapter 780, is greater than the total trauma add-on amount estimated to be paid to the hospital under this section during the state fiscal year, the Department of State Health Services will pay the hospital the difference between the two amounts at the time funds are disbursed from that account to eligible trauma hospitals; and

(II) if a hospital's allocation from the trauma facilities and emergency medical services account is less than the total trauma add-on amount estimated to be paid to the hospital under this section during the state fiscal year, the hospital will not receive a payment from the trauma facilities and emergency medical services account.

(E) Safety-Net add-on.

(i) Eligibility. If an urban hospital meets the definition of a safety-net hospital as defined in subsection (b) of this section, it is eligible for a safety-net add-on.

(ii) Add-on amount. HHSC calculates the safety-net add-on amounts annually or at the time of realignment as follows.

(I) For each eligible hospital, determine the following amounts for a period of 12 contiguous months specified by HHSC:

(-a-) total allowable Medicaid inpatient days for fee-for-service claims;

(-b-) total allowable Medicaid inpatient days for managed care encounters;

(-c-) total relative weights for fee-for-service claims; and

(-d-) total relative weights for managed care encounters.

(II) Determine the total allowable days for eligible safety-net hospitals by summing the amounts in items (-a-) and (-b-) of this subclause.

(III) Determine the hospital's percentage of total allowable days to the total in subclause (II) of this clause.

(IV) Determine the hospital's portion of appropriated safety-net funds before the MCO adjustment factor is applied by multiplying the amount in subclause (III) of this clause for each hospital by the total safety-net funds deflated to the data year.

(V) For each hospital, multiply item (-d-) of this subclause by the relevant MCO adjustment factor.

(VI) Sum the amounts in item (-c-) of this subclause and subclause (V) of this clause for each hospital.

(VII) To calculate the safety-net add-on, divide the amount in subclause (IV) of this clause by the amount in subclause (VI) of this clause for each hospital. The result is the safety-net add-on.

(iii) Reconciliation. Effective for costs and revenues accrued on or after September 1, 2015, HHSC may perform a reconciliation for each hospital that received the safety-net add-on to identify any such hospitals with total Medicaid reimbursements for inpatient and outpatient services in excess of their total Medicaid and uncompensated care inpatient and outpatient costs. For hospitals with total Medicaid reimbursements in excess of total Medicaid and uncompensated care costs, HHSC may recoup the difference.

(F) Add-on status verification.

(i) Notification. HHSC will determine a hospital's initial add-on status by reference to the impact file available at the time of realignment or at the time of eligibility for a new medical education add-on as described in subparagraph (A)(iv) of this paragraph; the Texas Department of State Health Services' list of trauma-designated hospitals; and Medicaid days and relative weight information from HHSC's fiscal intermediary. HHSC will notify the hospital of the CBSA to which the hospital is assigned, the Medicare education adjustment factor assigned to the hospital for urban hospitals, the trauma level designation assigned to the hospital, and any other related information determined relevant by HHSC. For state fiscal years 2017 and after, HHSC will also notify eligible hospitals of the data used to calculate the safety-net add-on. HHSC may post the information on its website, send the information through the established Medicaid notification procedures used by HHSC's fiscal intermediary, send through other direct mailing, or provide the information to the hospital associations to disseminate to their member hospitals.

(ii) During realignment, HHSC will calculate a hospital's final SDA using the add-on status initially determined by HHSC unless, within 14 calendar days after the date of the notification, the HHSC Provider Finance Department receives notification in writing from the hospital, in a format determined by HHSC, that any add-on status determined by HHSC is incorrect and:

(I) the hospital provides documentation of its eligibility for a different medical education add-on or teaching hospital designation;

(II) the hospital provides documentation that it is approved by Medicare for reclassification to a different CBSA;

(III) the hospital provides documentation of its eligibility for a different trauma designation; or

(IV) for state fiscal years 2017 and after, the hospital provides documentation of different data and demonstrates to HHSC's satisfaction that the different data should be used to calculate the safety-net add-on.

(iii) Annually, HHSC will calculate a hospital's final SDA using the add-on status initially determined during realignment by HHSC unless, within 14 calendar days after the date of the notification, HHSC receives notification in writing from the hospital (in a format determined by HHSC) that any add-on status determined by HHSC is incorrect and:

(I) the hospital provides documentation of a new teaching program or new teaching hospital designation; or

(II) the hospital provides documentation of its eligibility for a different trauma designation; or

(III) for state fiscal years 2017 and after, the hospital provides documentation of different data and demonstrates to HHSC's satisfaction that the different data should be used to calculate the safety-net add-on.

(iv) If a hospital fails to notify HHSC within 14 calendar days after the date of the notification that the add-on status as initially determined by HHSC includes one or more add-ons for which the hospital is not eligible, resulting in an overpayment, HHSC will recoup such overpayment and will prospectively reduce the SDA accordingly.

(4) Urban hospital final SDA calculations. HHSC calculates an urban hospital's final SDA as follows.

(A) Add all add-on amounts for which the hospital is eligible to the base SDA. These are the fully funded final SDAs.

(B) Multiply the final SDA determined in subparagraph (A) of this paragraph by each urban hospital's total relative weight of the base year claims.

(C) Sum the amount calculated in subparagraph (B) of this paragraph for all urban hospitals.

(D) Divide the total funds appropriated for reimbursing inpatient urban hospital services under this section by the amount determined in subparagraph (C) of this paragraph.

(E) To determine the budget-neutral final SDA:

(i) multiply the base SDA in paragraph (2) of this subsection by the percentage determined in subparagraph (D) of this paragraph;

(ii) multiply each of the add-ons described in paragraph (3)(B) - (E) by the percentage determined in subparagraph (D) of this paragraph; and

(iii) sum the results of clauses (i) and (ii) of this subparagraph.

(F) For new urban hospitals for which HHSC has no base year claim data, the final SDA is a base SDA plus any add-ons for which the hospital is eligible, multiplied by the percentage determined in subparagraph (D) of this paragraph.

(e) Rural hospital SDA calculations. HHSC will use the methodologies described in this subsection to determine the final SDA for each rural hospital.

(1) HHSC calculates the rural final SDA as follows.

(A) Base year cost. Calculate the total inpatient base year cost per rural hospital.

(i) Total the inpatient charges by hospital for the rural base year stays.

(ii) Multiply clause (i) by the hospital's inpatient RCC and the inflation update factors to inflate the rural base year stays to the current year of the realignment.

(B) Full-cost SDA. Calculate a hospital-specific full-cost SDA by dividing each hospital's base year cost, calculated as described in subparagraph (A) of this paragraph, by the sum of the relative weights for the rural base year stays.

(C) Calculating the SDA floor and ceiling.

(i) Calculate the average adjusted hospital-specific SDA from subparagraph (B) of this paragraph for all rural hospitals with more than 50 claims.

(ii) Calculate the standard deviation of the hospital-specific SDAs identified in subparagraph (B) of this paragraph for all rural hospitals with more than 50 claims.

(iii) Calculate an SDA floor as clause (i) minus clause (ii) multiplied by a factor, determined by HHSC to maintain budget neutrality.

(iv) Calculate an SDA ceiling as clause (i) plus clause (ii) multiplied by a factor, determined by HHSC to maintain budget neutrality.

(D) Assigning a final hospital-specific SDA.

(i) If the adjusted hospital-specific SDA from subparagraph (B) is less than the SDA floor in subparagraph (C)(iii) of this paragraph, the hospital is assigned the SDA floor amount as the final SDA.

(ii) If the adjusted hospital-specific SDA from subparagraph (B) is more than the SDA ceiling in subparagraph (C)(iv), the hospital is assigned the SDA ceiling amount as the final SDA.

(iii) Assign the adjusted hospital-specific SDA as the final SDA to each hospital not described in clauses (i) and (ii) of this subparagraph.

(2) Alternate SDA for labor and delivery. For labor and delivery services provided by rural hospitals on or after September 1, 2023 [~~2019~~], the final SDA is the alternate SDA for labor and delivery stays, which is equal to the final SDA determined in paragraph (1)(D) of this subsection plus an SDA add-on sufficient to increase paid claims by no less than $1,500 [~~$500~~].

(3) HHSC calculates a new rural hospital's final SDA as follows.

(A) For new rural hospitals for which HHSC has no base year claim data, the final SDA is the mean rural SDA in paragraph (1)(C)(i) of this subsection.

(B) The mean rural SDA assigned in subparagraph (A) of this paragraph remains in effect until the next realignment.

(4) Minimum Fee Schedule. Effective March 1, 2021, MCOs are required to reimburse rural hospitals based on a minimum fee schedule. The minimum fee schedule is the rate schedule as described above.

(5) Biennial review of rural rates. Every two years, HHSC will calculate new rural SDAs using the methodology in this subsection to the extent allowed by federal law and subject to limitations on appropriations.

(f) Final SDA for military and out-of-state. The final SDA for military and out-of-state hospitals is the urban hospital base SDA multiplied by the percentage determined in subsection (d)(4)(D) of this section.

(g) DRG statistical calculations. HHSC rebases the relative weights, MLOS, and day outlier threshold whenever the base SDAs for urban hospitals are recalculated. The relative weights, MLOS, and day outlier thresholds are calculated using data from urban hospitals and apply to all hospitals. The relative weights that were implemented for urban hospitals on September 1, 2012, apply to all hospitals until the next realignment.

(1) Recalibration of relative weights. HHSC calculates a relative weight for each DRG as follows.

(A) Base year claims are grouped by DRG.

(B) For each DRG, HHSC:

(i) sums the base year costs per DRG as determined in subsection (d) of this section;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG; and

(iii) divides the result in clause (ii) of this subparagraph by the universal mean, resulting in the relative weight for the DRG.

(2) Recalibration of the MLOS. HHSC calculates the MLOS for each DRG as follows.

(A) Base year claims are grouped by DRG.

(B) For each DRG, HHSC:

(i) sums the number of days billed for all base year claims; and

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG, resulting in the MLOS for the DRG.

(3) Recalibration of day outlier thresholds. HHSC calculates a day outlier threshold for each DRG as follows.

(A) Calculate for all claims the standard deviations from the MLOS in paragraph (2) of this subsection.

(B) Remove each claim with a length of stay (number of days billed by a hospital) greater than or equal to three standard deviations above or below the MLOS. The remaining claims are those with a length of stay less than three standard deviations above or below the MLOS.

(C) Sum the number of days billed by all hospitals for a DRG for the remaining claims in subparagraph (B) of this paragraph.

(D) Divide the result in subparagraph (C) of this paragraph by the number of remaining claims in subparagraph (B) of this paragraph.

(E) Calculate one standard deviation for the result in subparagraph (D) of this paragraph.

(F) Multiply the result in subparagraph (E) of this paragraph by two and add that to the result in subparagraph (D) of this paragraph, resulting in the day outlier threshold for the DRG.

(4) If a DRG has fewer than five base year claims, HHSC will use National Claim Statistics and a scaling factor to assign a relative weight, MLOS, and day outlier threshold.

(5) Adjust the MLOS, day outlier, and relative weights to increase or decrease with SOI to coincide with the National Claim Statistics.

(h) DRG grouper logic changes. Beginning September 1, 2021, HHSC may adjust DRG statistical calculations to align with annual grouper logic changes. The changes will remain budget neutral unless rates are rebased, and additional funding is appropriated by the legislature. The adjusted relative weights, MLOS, and day outlier threshold apply to all hospitals until the next adjustment or rebasing described in subsection (g) of this section.

(1) Base year claim data and rural base year stays are regrouped, using the latest grouping software version to determine DRG assignment changes by comparing the newly assigned DRG to the DRG assignment from the previous grouper version.

(2) For DRGs impacted by the grouping logic changes, relative weights must be adjusted. HHSC adjusts a relative weight for each impacted DRG as follows.

(A) Divide the total cost for all claims in the base year by the number of claims in the base year.

(B) Base year claims and rural base year stays are grouped by DRG, and for each DRG, HHSC:

(i) sums the base year costs for all claims in each DRG;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in each DRG; and

(iii) divides the result in clause (ii) of this subparagraph by the amount determined in subparagraph (A) of this paragraph, resulting in the relative weight for the DRG.

(3) Recalibration of the MLOS. HHSC calculates the MLOS for each DRG as follows.

(A) Base year claims and rural base year stays are grouped by DRG.

(B) For each DRG, HHSC:

(i) sums the number of days billed for all base year claims; and

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG, resulting in the MLOS for the DRG.

(4) Recalibration of day outlier thresholds. HHSC calculates a day outlier threshold for each DRG as follows.

(A) Calculate for all claims the standard deviations from the MLOS in paragraph (3) of this subsection.

(B) Remove each claim with a length of stay (number of days billed by a hospital) greater than or equal to three standard deviations above or below the MLOS. The remaining claims are those with a length of stay less than three standard deviations above or below the MLOS.

(C) Sum the number of days billed by all hospitals for a DRG for the remaining claims in subparagraph (B) of this paragraph.

(D) Divide the result in subparagraph (C) of this paragraph by the number of remaining claims in subparagraph (B) of this paragraph.

(E) Calculate one standard deviation for the result in subparagraph (D) of this paragraph and multiply by two.

(F) Add the result of subparagraph (E) of this paragraph to the result in subparagraph (D) of this paragraph, resulting in the day outlier threshold for the DRG.

(5) If a DRG has fewer than five base year claims, HHSC will use National Claim Statistics and a scaling factor to assign a relative weight, MLOS, and day outlier threshold.

(6) Adjust the MLOS, day outliers, and relative weights to increase or decrease with SOI to coincide with the National Claim Statistics.

(i) Reimbursements.

(1) Calculating the payment amount. HHSC reimburses a hospital a prospective payment for covered inpatient hospital services by multiplying the hospital's final SDA as calculated in subsections (c) - (f) of this section as applicable, by the relative weight for the DRG assigned to the adjudicated claim. The resulting amount is the payment amount to the hospital.

(2) Full payment. The prospective payment as described in paragraph (1) of this subsection is considered full payment for covered inpatient hospital services. A hospital's request for payment in an amount higher than the prospective payment will be denied.

(3) Day and cost outlier adjustments. HHSC pays a day outlier or a cost outlier for medically necessary inpatient services provided to clients under age 21 in all Medicaid participating hospitals that are reimbursed under the prospective payment system. If a patient age 20 is admitted to and remains in a hospital past his or her 21st birthday, inpatient days and hospital charges after the patient reaches age 21 are

included in calculating the amount of any day outlier or cost outlier payment adjustment.

(A) Day outlier payment adjustment. HHSC calculates a day outlier payment adjustment for each claim as follows.

(i) Determine whether the number of medically necessary days allowed for a claim exceeds:

(I) the MLOS by more than two days; and

(II) the DRG day outlier threshold as calculated in subsection (g)(3) of this section.

(ii) If clause (i) of this subparagraph is true, subtract the DRG day outlier threshold from the number of medically necessary days allowed for the claim.

(iii) Multiply the DRG relative weight by the final SDA.

(iv) Divide the result in clause (iii) of this subparagraph by the DRG MLOS described in subsections (g)(2) or (h)(3) of this section to arrive at the DRG per diem amount.

(v) Multiply the number of days in clause (ii) of this subparagraph by the result in clause (iv) of this subparagraph.

(vi) Multiply the result in clause (v) of this subparagraph by 60 percent.

(vii) Multiply the allowed charges by the current interim rate to determine the cost.

(viii) Subtract the DRG payment amount calculated in clause (iii) of this subparagraph from the cost calculated in clause (vii) of this subparagraph.

(ix) The day outlier amount is the lesser of the amount in clause (vi) of this subparagraph or the amount in clause (viii) of this subparagraph.

(x) For urban and rural hospitals, multiply the amount in clause (ix) of this subparagraph by 90 percent to determine the final day outlier amount. For children's hospitals the amount in clause (ix) of this subparagraph is the final day outlier amount.

(B) Cost outlier payment adjustment. HHSC makes a cost outlier payment adjustment for an extraordinarily high-cost claim as follows.

(i) To establish a cost outlier, the cost outlier threshold must be determined by first selecting the lesser of the universal mean of base year claims and rural base year stays multiplied by 11.14 or the hospital's final SDA multiplied by 11.14.

(ii) Multiply the full DRG prospective payment by 1.5.

(iii) The cost outlier threshold is the greater of clause (i) or (ii) of this subparagraph.

(iv) Subtract the cost outlier threshold from the amount of reimbursement for the claim established under cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(v) Multiply the result in clause (iv) of this subparagraph by 60 percent to determine the amount of the cost outlier payment.

(vi) For urban and rural hospitals, multiply the amount in clause (v) of this subparagraph by 90 percent to determine the final cost outlier amount. For children's hospitals the amount in clause (v) of this subparagraph is the final cost outlier amount.

(C) Final outlier determination.

(i) If the amount calculated in subparagraph (A)(ix) of this paragraph is greater than zero and the amount calculated in subparagraph (B)(vi) of this paragraph is greater than zero, HHSC pays the higher of the two amounts.

(ii) If the amount calculated in subparagraph (A)(ix) of this paragraph is greater than zero and the amount calculated in subparagraph (B)(vi) of this paragraph is less than or equal to zero, HHSC pays the day outlier amount.

(iii) If the amount calculated in subparagraph (B)(vi) of this paragraph is greater than zero and the amount calculated in subparagraph (A)(ix) of this paragraph is less than or equal to zero, HHSC pays the cost outlier amount.

(iv) If the amount calculated in subparagraph (A)(ix) of this paragraph and the amount calculated in subparagraph (B)(vi) of this paragraph are both less than or equal to zero HHSC will not pay an outlier for the admission.

(D) If the hospital claim resulted in a downgrade of the DRG related to reimbursement denials or reductions for preventable adverse events, the outlier payment will be determined by the lesser of the calculated outlier payment for the non-downgraded DRG or the downgraded DRG.

(4) Interim bill. A hospital may submit a claim to HHSC before a patient is discharged, but only the first claim for that patient will be reimbursed the prospective payment described in paragraph (1) of this subsection. Subsequent claims for that stay are paid zero dollars. When the patient is discharged, and the hospital submits a final claim to ensure accurate calculation for potential outlier payments for clients younger than age 21, HHSC recoups the first prospective payment and issues a final payment in accordance with paragraphs (1) and (3) of this subsection.

(5) Patient transfers and split billing. If a patient is transferred, HHSC establishes payment amounts as specified in subparagraphs (A) - (D) of this paragraph. HHSC manually reviews transfers for medical necessity and payment.

(A) If the patient is transferred from a hospital to a nursing facility, HHSC pays the transferring hospital the total payment amount of the patient's DRG.

(B) If the patient is transferred from one hospital (transferring hospital) to another hospital (discharging hospital), HHSC pays the discharging hospital the total payment amount of the patient's DRG. HHSC calculates a DRG per diem and a payment amount for the transferring hospital as follows.

(i) Multiply the DRG relative weight by the final SDA.

(ii) Divide the result in clause (i) of this subparagraph by the DRG MLOS described in subsections (g)(2) or (h)(3) of this section, to arrive at the DRG per diem amount.

(iii) To arrive at the transferring hospital's payment amount:

(I) for a patient age 21 or older, multiply the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS, the transferring hospital's number of medically necessary days allowed for the claim, or 30 days; or

(II) for a patient under age 21, multiply the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS or the transferring hospital's number of medically necessary days allowed for the claim.

(C) HHSC makes payments to multiple hospitals transferring the same patient by applying the per diem formula in subparagraph (B) of this paragraph to all the transferring hospitals and the total DRG payment amount to the discharging hospital.

(D) HHSC performs a post-payment review to determine if the hospital that provided the most significant amount of care received the total DRG payment. If the review reveals that the hospital that provided the most significant amount of care did not receive the total DRG payment, an adjustment is initiated to reverse the payment amounts. The transferring hospital is paid the total DRG payment amount and the discharging hospital is paid the DRG per diem.

(j) Cost reports. Each hospital must submit an initial cost report at periodic intervals as prescribed by Medicare or as otherwise prescribed by HHSC.

(1) Each hospital must send a copy of all cost reports audited and amended by a Medicare intermediary to HHSC within 30 days after the hospital's receipt of the cost report. Failure to submit copies or respond to inquiries on the status of the Medicare cost report will result in provider vendor hold.

(2) HHSC uses data from these reports when realigning or rebasing to calculate base SDAs, DRG statistics, and interim rates and to complete cost settlements.

(k) Cost Settlement.

(1) The cost settlement process is limited by the TEFRA target cap set pursuant to the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) for children's and state-owned teaching hospitals.

(2) Notwithstanding the process described in paragraph (1) of this subsection, HHSC uses each hospital's final audited cost report, which covers a fiscal year ending during a base year period, for calculating the TEFRA target cap for a hospital.

(3) HHSC may select a new base year period for calculating the TEFRA target cap at least every three years.

(4) HHSC increases a hospital's TEFRA target cap in years in which the target cap is not reset under this paragraph, by multiplying the hospital's target cap by the CMS Prospective Payment System Hospital Market Basket Index adjusted to the hospital's fiscal year.

(5) For a new children's hospital, the base year for calculating the TEFRA target cap is the hospital's first full 12-month cost reporting period occurring after the date the hospital is designated by Medicare as a children's hospital. For each cost reporting period after the hospital's base year, an increase in the TEFRA target cap will be applied as described in paragraph (4) of this subsection, until the TEFRA target cap is recalculated as described in paragraph (3) of this subsection.

(6) After a Medicaid participating hospital is designated by Medicare as a children's hospital, the hospital must submit written notification to HHSC's provider enrollment contact, including documents verifying its status as a Medicare children's hospital. Upon receipt of the written notification from the hospital, HHSC will convert the hospital to the reimbursement methodology described in this subsection retroactive to the effective date of designation by Medicare.

(l) Out-of-state children's hospitals. HHSC calculates the prospective payment rate for an out-of-state children's hospital as follows:

(1) HHSC determines the overall average cost per discharge for all in-state children's hospitals by:

(A) summing the Medicaid allowed cost from tentative or final cost report settlements for the base year; and

(B) dividing the result in subparagraph (A) of this paragraph by the number of in-state children's hospitals' base year claims.

(2) HHSC determines the average relative weight for all in-state children's hospitals' base year claims by:

(A) assigning a relative weight to each claim pursuant to subsections (g)(1)(B)(iii) or (h)(2)(B)(iii) of this section;

(B) summing the relative weights for all claims; and

(C) dividing by the number of claims.

(3) The result in paragraph (1) of this subsection is divided by the result in paragraph (2) of this subsection to arrive at the adjusted cost per discharge.

(4) The adjusted cost per discharge in paragraph (3) of this subsection is the payment rate used for payment of claims.

(5) HHSC reimburses each out-of-state children's hospital a prospective payment for covered inpatient hospital services. The payment amount is determined by multiplying the result in paragraph (4) of this subsection by the relative weight for the DRG assigned to the adjudicated claim.

(m) Merged hospitals.

(1) When two or more Medicaid participating hospitals merge to become one participating provider and the participating provider is recognized by Medicare, the participating provider must submit written notification to HHSC's provider enrollment contact, including documents verifying the merger status with Medicare.

(2) The merged entity receives the final SDA of the hospital associated with the surviving TPI. HHSC will reprocess all claims for the merged entity back to the effective date of the merger or the first day of the fiscal year, whichever is later.

(3) HHSC will not recalculate the final SDA of a hospital acquired in an acquisition or buyout unless the acquisition or buyout resulted in the purchased or acquired hospital becoming part of another Medicaid participating provider. HHSC will continue to reimburse the acquired hospital based on the final SDA assigned before the acquisition or buyout.

(4) When Medicare requires a merged hospital to maintain two Medicare provider numbers because they are in different CBSAs, HHSC assigns one base TPI with a separate suffix for each facility. Both suffixes receive the SDA of the primary hospital TPI which remains active.

(n) Adjustments. HHSC may adjust a hospital's final SDA in accordance with §355.201 of this chapter (relating to Establishment and Adjustment of Reimbursement Rates for Medicaid).

(o) Additional data. HHSC may require a hospital to provide additional data in a format and at a time specified by HHSC. Failure to submit additional data as specified by HHSC may result in a provider vendor hold until the requested information is provided.

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 June 26, 2023.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 6, 2023
For further information, please call: (512) 487-3480

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 17. RESOURCE PLANNING
SUBCHAPTER B. REPORTING REQUIREMENTS

19 TAC §17.20

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter B, §17.20, concerning Resource Planning. Specifically, the amendment will modify naming nomenclature from "tuition revenue bonds" to "Capital Construction Assistance Projects."

The Coordinating Board proposes modifying the nomenclature of Chapter 17, Subchapter B, §17.20, to reflect legislative changes to the program title pursuant to the Capital Construction Assistance Projects definition as found in Texas Education Code, Chapter 55.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is to match legislatively approved nomenclature changes found in Texas Education Code, Chapter 55. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

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

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

The proposed amendment affects Texas Administrative Code, Chapter 17, Subchapter B, §17.20.

§17.20. Facility Projects to Be Submitted to the Board.

(a) Institutions shall submit data on the following projects to the Board:

(1) New construction of building and facilities and/or additions to buildings and facilities having an E&G project cost of $10 million or greater;

(2) Repair and renovation projects for buildings and facilities having an E&G project cost of $10 million or greater;

(3) Improved real property purchases that the institution intends to include in the E&G buildings and facilities inventory if the purchase price is more than $1,000,000;

(4) Energy Savings Performance Contract projects; and

(5) Projects financed by Capital Construction Assistance Projects [~~tuition revenue bonds~~] pursuant to Education Code §61.0572 and §61.058.

(b) Projects not specifically described in this rule, including but not limited to the following types of projects, are EXEMPT from Board submission.

(1) Projects at The University of Texas at Austin, Texas A&M University, and Prairie View A&M University financed more than 50 percent with Permanent University Fund bond proceeds or Available University Fund funds;

(2) New Construction, repair, or rehabilitation of privately-owned buildings and facilities on land leased from an institution if the new construction, repair, or rehabilitation is financed entirely from funds not under the control of the institution;

(3) Gifts, grants, or lease-purchase arrangements intended for clinical or research facilities;

(4) New construction, repair, or rehabilitation projects to be undertaken pursuant to specific legislative authority;

(5) Lease of property or facilities;

(6) Acquisitions of unimproved real property;

(7) Acquisitions of improved real property that the institution does not intend to include in its E&G buildings and facilities inventory;

(8) New Construction, repair, renovation, or acquisition of buildings and facilities that are to be used exclusively for auxiliary enterprises and will not require appropriations from the legislature for operations, maintenance, or repair; and

(9) All gifts and grants of improved real property.

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

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TRD-202302266
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6548

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SUBCHAPTER F. FACILITIES AUDIT

19 TAC §17.112

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter F, §17.112, concerning Facilities Audit. Specifically, this amendment will update data sources used in the facilities audit process.

The Coordinating Board proposes modifying the nomenclature to change the text of Chapter 17, Subchapter F, §17.112, from mandatory direction to permissive direction. Currently §17.112 states, "At a minimum, Board shall use the following data sources in the course of the audit." The proposed amendment will change the term "shall" to "may."

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is reduced administrative burden and clarity for the Coordinating Board and the institutions as it pertains to facilities programs. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

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

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under Texas Education Code, Section 61.0583, which requires the Coordinating Board to conduct a comprehensive audit of all educational and general facilities.

The amendment affects Texas Administrative Code, Chapter 17, Subchapter F, §17.112.

§17.112. Data Sources.

The [~~At a minimum,~~] Board may [~~shall~~] use the following data sources in the course of the audit:

(1) Institutional Capital Expenditure Plans (MP1);

(2) Campus Condition Report as submitted to the governing board;

(3) Space Model Projection Reports;

(4) Reports required by the Educational Data Center;

(5) Facilities Inventory Reports;

(6) Facilities Development and Improvement Applications and Reviews;

(7) Classroom and Class Laboratory Utilization Reports;

(8) Energy Savings Performance Contracts;

(9) Governing Board facilities approvals; and

(10) Any other institutional data deemed appropriate by the Coordinating Board staff.

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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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER J. FUTURE OCCUPATIONS & RESKILLING WORKFORCE ADVANCEMENT TO REACH DEMAND (FORWARD) LOAN PROGRAM

19 TAC §22.186

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter J, §22.186, concerning Future Occupations & Reskilling Workforce Advancement to Reach Demand (FORWARD) Loan Program. Specifically, this amendment removes unnecessary words.

Texas Education Code, Section 52.54, provides the Coordinating Board with the authority to adopt rules and regulations to effectuate the purpose of the state's student loan programs. The Coordinating Board is proposing this rule amendment to provide clarity on how the Coordinating Board will implement the FORWARD loan program's repayment process.

Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the clarification of how the Coordinating Board will implement the loan program's repayment process. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rule will not require the creation or elimination of employee positions;

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

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

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

(6) the rule will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Charles.Contero-Puls@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under Texas Education Code, Section 52.54, which provides the Coordinating Board with the authority to adopt rules and regulations to effectuate the purpose of the state's student loan programs.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter J, §§22.175 - 22.189.

§22.186. Repayment of Loans.

(a) Period of loan repayment. The repayment period shall be 10 years.

(b) The repayment period shall begin no earlier than six months after:

(1) the date on which the student ceases to be enrolled at least half-time at an eligible institution, for borrowers enrolled in credential programs measured in semester credit hours; or

(2) the anticipated graduation date certified by the institution of higher education [~~on the loan application,~~] for borrowers enrolled in programs that are not measured in semester credit hours.

(c) Monthly repayment amount. The method for calculating the monthly repayment amount for loans through this Program shall be determined annually by the Commissioner, and shall be calculated annually based on:

(1) the borrower's income, as demonstrated through federal income tax returns or other documentation determined to be acceptable by Board staff;

(2) the borrower's monthly accrued interest on loans through the Program; and

(3) the borrower's cumulative outstanding student loan [~~principal~~] balance.

(d) Income threshold. Borrowers may be automatically placed in forbearance when the demonstrated income is below a threshold established by Board staff in consultation with the Texas Workforce Commission.

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6365

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 80. COMPLAINTS

22 TAC §80.5

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §80.5 (Expert Review Process). The Board will propose a new §80.5 in a separate rulemaking. This rulemaking action will clarify language relating to the Board's authority to conduct standard of care reviews during complaint investigations.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect

there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to clarify language relating to the Board's authority to conduct standard of care reviews during complaint investigations.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §80.5. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701-1319, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and 201.210 (which authorizes the Board to adopt rules to develop a review process for complaints requiring additional chiropractic expertise).

No other statutes or rules are affected by this proposed repeal.

§80.5. Expert Review Process.

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 June 23, 2023.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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22 TAC §80.5

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §80.5 (Peer Review Process). The current §80.5 is being repealed in a separate rulemaking action.

Texas Occupations Code §201.210 requires the Board to set up a system where the Board may draw on outside chiropractic expertise (an "expert" reviewer of patient records) to help in investigations involving standard of care allegations. The Board adopted such a system through §80.5.

However, the use of the term "expert" in both the statute and the Board's current rule has caused confusion for some complainants as to the exact role and authority of the reviewer. Some complainants have thought that the reviewer's job is to assign legal liability for any injury the complainant may have suffered as the result of a licensee's failure to meet the profession's standard of care; in effect, some complainants believe that the reviewer is the same as an expert witness in a trial court who is called upon to render an opinion as to causation (and thus assign legal liability). That is not the case with the Board's reviewers.

Unlike an expert witness, a Board reviewer does not examine any patient; the reviewer only performs a review of records. Also, a Board reviewer is not statutorily authorized to render an opinion as to causation, only whether the standard of care for chiropractic was met; those are different standards. An opinion on causation is within the purview of the courts, not the Board.

The proposed new §80.5 keeps the Board's current system of outside standard of care review, but clarifies to both reviewers hired by the Board and complainants that the reviewer is not authorized to make a legal opinion as to any violation of statutes or rules under the Board's jurisdiction, nor authorized to make a legal opinion as to the liability for any injury possibly sustained by the complainant. To that end, the rule will be retitled as "Peer Review Process" to eliminate the perception that a Board reviewer is the same as an expert witness.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is a more accurate description of the role and limitations of individuals selected by the Board to perform standard of care reviews in complaints filed with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §80.5. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

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

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and §201.210 (which requires the Board to develop a review process of complaints filed with the Board that require additional chiropractic expertise).

No other statutes or rules are affected by this proposed rule.

§80.5. Peer Review Process.

(a) During the investigation of a complaint, the Enforcement Committee may order the outside peer review of a licensee's standard of patient care or billing practices.

(b) To qualify as a peer reviewer, a person shall:

(1) have an active license with the Board or appropriate professional credentials;

(2) have no prior violations of Board statutes or rules;

(3) have no open complaints;

(4) have no felony convictions or misdemeanor convictions for a crime of moral turpitude;

(5) show sufficient training or experience to offer an informed opinion;

(6) show knowledge of accepted standards of chiropractic care in Texas or other professional standards related to the alleged violation; and

(7) have an acceptable malpractice complaint history.

(c) A peer reviewer may not review a complaint if the peer reviewer has:

(1) a direct financial interest or relationship with any party or witness to the complaint that gives the appearance of a conflict of interest;

(2) a familial relationship within the third degree of affinity with any party or witness;

(3) personal knowledge of any information about any party or witness related to the complaint; or

(4) any other reason where the peer reviewer could not fairly and impartially consider the complaint.

(d) The Board shall maintain a list of peer reviewers and shall periodically audit the list to confirm their qualifications.

(e) Board staff shall select a peer reviewer when an investigator identifies a standard of care or other professional standard beyond the expertise of staff in the complaint.

(f) Board staff shall randomly select a peer reviewer from the list based on the peer reviewer's qualifications to review the type of complaint.

(g) The executive director shall remove a peer reviewer from the list for:

(1) failure to maintain the required qualifications;

(2) failure to timely complete reports;

(3) failure to inform the Board of potential or apparent conflicts of interest; or

(4) failure to maintain the confidentiality of any matter.

(h) The Board shall provide to the peer reviewer:

(1) the complaint;

(2) the investigator's report;

(3) the Board's peer review report form; and

(4) a contract for services.

(i) The peer reviewer shall review all relevant information to determine if a licensee violated the applicable standard of care in Texas or other professional standard and prepare a written report.

(j) The peer reviewer's report shall include:

(1) the peer reviewer's qualifications;

(2) the relevant facts of the complaint;

(3) the applicable standard of care or other professional standard;

(4) an application of the standard of care in Texas or other professional standard to the facts;

(5) a finding of whether the standard of care or other professional standard was met; and

(6) the clinical basis for the findings, including the use of any peer-reviewed journals, studies, or reports.

(k) A peer reviewer may not offer a legal opinion as to whether a particular statute, Board rule, or other law was violated.

(l) A peer reviewer may not offer an opinion on the legal liability of any individual for an injury sustained by a patient.

(m) The peer reviewer shall complete and return the review to the Board within 30 days, unless the peer reviewer requests more time due to the complaint's complexity.

(n) The Board shall give the peer reviewer's report to the licensee within 30 days of receipt.

(o) The Enforcement Committee shall consider the report and the licensee's response in determining if a violation occurred.

(p) The Enforcement Committee may order additional peer reviews if necessary.

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 June 23, 2023.

TRD-202302263
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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22 TAC §80.8

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §80.8 (Board Member and Staff Initiated Complaints). This proposed action puts into rule the Board's current policy for processing complaints initiated by Board members and staff.

As practicing chiropractors, Board members interact with other licensees. On occasion, a Board (or staff) member may become aware of facts that indicate that another licensee may be in violation of the statutes and rules under the Board's jurisdiction and thus need to file a formal complaint. The proposed new rule formalizes the Board's procedures for processing those complaints.

The intent behind the new rule is transparency: the licensee who is the subject of a complaint under this rule will know the identity of the Board or staff member making the complaint; know that the allegations were considered independently by the Board's executive director before the complaint is forwarded to the Board's enforcement director; and know that any Board member filing a complaint will be prohibited from voting on or considering the results of any investigation or subsequent administrative action taken by the Board on the complaint.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is greater formal transparency in the Board's procedures for processing complaints initiated by Board members and staff.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §80.8. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

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

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), §201.2205 (which requires the Board to adopt rules concerning the investigation of a complaint), and §201.2065 (which prohibits the Board from accepting anonymous complaints).

No other statutes or rules are affected by this proposed rule.

§80.8. Board Member and Staff Initiated Complaints.

(a) A Board member or staff shall notify the Board's executive director in writing of any potential violation by an individual of a statute or rule under the Board's jurisdiction.

(b) The executive director shall evaluate the written statement (and any supporting evidence) of the Board member or staff about the potential violation within five days of receipt.

(c) If the executive director determines there is sufficient grounds to begin a formal complaint, the executive director shall forward the written statement (and any supporting evidence) to the Board's director of enforcement with instructions to open an investigation.

(d) The director of enforcement shall name both the executive director and the Board member or staff as the complainant in an investigation opened under this section.

(e) A Board member who initiates a complaint under this section shall recuse himself from any consideration of the complaint by the Board.

(f) A Board member or staff who initiated a complaint under this section shall respond to a request for additional information by a Board investigator or the Enforcement Committee only in writing.

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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: August 6, 2023
For further information, please call: (512) 305-6700

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CHAPTER 82. INTERNAL BOARD PROCEDURES

22 TAC §82.7

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §82.7 (Employee Equity Salary Adjustments). The General Appropriations Act (GAA) authorizes an agency executive director to make employee equity salary adjustments only if the agency has adopted a rule permitting that action. This proposed rule, which is compliant with the terms of the GAA (Article IX, §3.07, 87th Legislature - Regular Session, 2021 (or successor provisions), permits the agency executive director to make such adjustments if necessary.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to permit the Board's executive director to make employee equity salary adjustments, if needed, in compliance with the requirements of the General Appropriations Act.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §82.7. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

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

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic) and the General Appropriations Act, Article IX, §3.07 (87th Legislature - Regular Session, 2021) or successor provisions (which authorizes the Board to adopt rules concerning employee equity salary adjustments).

No other statutes or rules are affected by this proposed rule.

§82.7. Employee Equity Salary Adjustments.

(a) Pursuant to Senate Bill 1 (General Appropriations Act), Article IX, Section 3.07 (87th Legislature - Regular Session, 2021) or successor provisions, the Board's executive director may adjust the salary rate of an employee whose position is classified under the position classification plan to any rate within the employee's salary group range as necessary to maintain desirable salary relationships:

(1) between and among employees of the Board; or

(2) between employees of the Board and employees who hold similar positions in the relevant labor market.

(b) In determining desirable salary relationships under subsection (a) of this section, the executive director shall consider the education, skills, related work experience, length of service, and job performance of Board employees and similar employees in the relevant labor market.

(c) The executive director may award an equity adjustment to an employee under this section only if the adjustment does not conflict with other law.

(d) The executive director's analysis under subsection (b) of this section shall be in writing.

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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §102.1, concerning fees. The proposed amendment reflects the fees required to submit the following applications to the Board: Registered Dental Assistant (RDA) Course Provider Application, and Continuing Education (CE) Provider Application.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does require an increase in fees paid to the agency for the applications pertaining to RDA course providers and CE providers; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §254.004, which directs the Board to establish reasonable and necessary fees sufficient to cover the cost of administering the Board's duties.

No statutes are affected by this proposed rule.

§102.1. Fees.

(a) Effective September 1, 2023 [~~October 1, 2020~~], the Board has established the following reasonable and necessary fees for the administration of its function. Upon initial licensure or registration, and at each renewal, the fees provided in subsections (b) - (d) of this section shall be due and payable to the Board.
Figure; 22 TAC §102.1(a)
[~~Figure; 22 TAC §102.1(a)~~]

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

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

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Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: August 6, 2023
For further information, please call: (512) 305-8910

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CHAPTER 110. SEDATION AND ANESTHESIA

22 TAC §110.18

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §110.18, concerning inspection of sedation/anesthesia providers. The proposed amendment gives the Board discretion on whether to pursue revocation of a dental license if a permit holder who is in an inactive status is found to have administered or delegated the administration of level 2, 3, or 4 sedation/anesthesia while in inactive status. The proposed amendment also gives the Board discretion on whether to pursue revocation of a dental license if a permit holder who is an exempt location status is found to have administered or delegated the administration of level 2, 3, or 4 sedation/anesthesia in a non-exempt location.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§110.18. Inspection of Sedation/Anesthesia Providers.

(a) The Board may conduct inspections to enforce Chapter 110 of this title (relating to Sedation and Anesthesia), including inspections of a licensee, an office site, equipment, a facility, and any document required by Board rules. The inspections shall not identify violations outside the applicable sedation/anesthesia rules in effect for each permit level at the time of the inspection. The Board may employ Board staff or contract with another state agency or qualified person to conduct these inspections.

(b) Unless it would jeopardize an ongoing investigation, the Board shall provide at least ten business days' notice before conducting an on-site inspection under this section.

(c) Regardless of issue date, all level 2, 3 and 4 permit holders will be subject to at least one inspection prior to September 1, 2022. All level 2, 3, and 4 permit holders who received their initial permit after March 1, 2018, must be inspected within a year of receiving their permit.

(d) Compliance/Tier 1 inspections: The initial inspection will be a compliance inspection, in which a Board staff member will evaluate the permit holder's compliance with the Board's rules through completing a checklist and auditing one sedation/anesthesia record of the inspector's choosing that was completed prior to the date the Board notified the licensee of the inspection. The record shall be of treatment for the highest level of sedation/anesthesia permit held by the permit holder, and will apply the Board rules in effect at the time the patient was treated. The inspector shall be a member of Board staff and will receive training in recognizing the checklist requirements and in evaluating sedation/anesthesia records. If the inspection results in the identification of a violation of the Board's rules found in Chapter 110, the permit holder must immediately cease providing sedation/anesthesia services until satisfactory proof is provided to Board staff that the violation has been corrected. Board staff shall provide contact information for both an inspector and supervisor of the inspector so that the permit holder may provide proof of remediation as soon as possible. Any violation of this cease and desist requirement shall represent grounds for disciplinary action. A failure by Board staff to respond within two business days to permit holder's satisfactory proof of remediation shall represent an affirmative defense to disciplinary action. Additionally, the permit holder shall pay an amount of not more than five hundred dollars ($500.00) as necessary to cover the expenses of additional review and inspection by Board staff as a result of any violations identified during the initial inspection. If, after a completed Compliance/Tier 1 inspection, the only violation(s) identified by Board staff relate to the time-interval recording requirements contained in the inspection items numbered 3 and 4 of the "Patient Record Audit" portion of the attached graphic "Anesthesia Levels 2-4 Inspection Form" for this section, then the violation(s) may be remedied by the Respondent through the execution of a sworn affidavit provided by Board staff. The Respondent's affidavit must attest that the Respondent shall observe the requirements of the applicable sedation/anesthesia rule sections requiring time interval recording for each permit level the Respondent holds. The inspection checklist can be previewed here:
Figure: 22 TAC §110.18(d) (No change.)

(e) Risk-based/Tier 2 inspections: A permit holder with a violation on a compliance/tier 1 inspection that is not remedied within thirty (30) days shall be referred to a risk-based inspection. Additionally, a Board member sitting on an informal settlement conference panel pursuant to Tex. Occ. Code §263.0072 may refer a permit holder to a risk-based inspection. The risk-based inspection will include the same factors as a compliance inspection, as well as a competency evaluation consisting of an audit of five sedation/anesthesia records of the inspector's choosing. The records shall be of treatment records for the highest level of sedation/anesthesia permit held by the permit holder, and shall apply the Board rules in effect at the time the patient was treated. Review of the five sedation/anesthesia records shall be performed by members of the Board's dental review panel process pursuant to Tex. Occ. Code §255.0065 who currently hold the same or higher level of sedation/anesthesia permit. The dental review panel reviewer shall prepare a report and note any violations or concerns with the permit holder's competency, and the report shall be reviewed following the procedure described in Tex. Occ. Code §255.0067. Any violation found during the risk-based inspection may result in the filing of a complaint and complaint resolution pursuant to the Board's informal disposition process in §107.63 of this title (relating to Informal Disposition and Mediation). The Executive Committee of the Board may order the emergency temporary suspension of a permit if the risk-based inspection reveals evidence of a clear, imminent, or continuing threat to the health or well-being of the public.

(f) Inactive status: A permit holder may forego an inspection if they submit a notarized, Board-issued affidavit that they will not administer levels 2, 3, or 4 sedation/anesthesia until first notifying the Board in writing that they wish to resume those activities. A permit holder must complete a compliance/Tier 1 inspection prior to resuming the administration of sedation/anesthesia at the inactive permit level. The permit holder must comply with continuing education and any other permit requirements during this time. During the period of inactive status, a permit holder may not delegate any inactive-status level of sedation/anesthesia to a certified registered nurse anesthetist or any other dental or medical professional except a dentist with a permit issued by the Board for the procedure being performed or a physician anesthesiologist licensed by the Texas Medical Board. If the permit

holder is later found to have administered or delegated the administration of level 2, 3, or 4 sedation/anesthesia while in inactive status, the Board may [~~shall~~] pursue revocation of their dental license.

(g) Exempt-location status: The Board shall not inspect a level 2, 3, or 4 permit holder who provides those services exclusively in a state-licensed hospital or state-licensed ambulatory surgery center. The permit holder must attest to that fact with a notarized, Board-issued affidavit and may not provide those services at a non-exempt location until first notifying the Board in writing and successfully completing a compliance/Tier 1 inspection. During the period of exempt-location status, a permit holder may not delegate the administration of any level of sedation/anesthesia to a dental or medical professional outside a state-licensed hospital or state-licensed ambulatory surgery center. If they are later found to have administered or delegated the administration of level 2, 3, or 4 sedation/anesthesia in a non-exempt location, the Board may [~~shall~~] pursue revocation of their dental license.

(h) Group practice inspections. The Board shall permit group practices to request an inspection of all permit holders in a single location during one inspection visit. Permit holders shall inform Board staff upon receiving notice of an inspection their wish to receive a combined group practice inspection, and Board staff shall accommodate this request as feasible while ensuring a group inspection shall not jeopardize an ongoing investigation. Board staff shall ensure that group practice inspection requests do not create unnecessary delays to the completion of the inspection process and may decline the request as needed to ensure timely completion of all scheduled inspections.

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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Lauren Studdard
General Counsel
State Board of Dental Examiners
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER M. FILING REQUIREMENTS

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §§5.9310, 5.9312, 5.9321, 5.9323, 5.9327, 5.9332, 5.9334, 5.9342, 5.9355, 5.9357, 5.9361, 5.9372, and 5.9373, and add new §5.9313, concerning filing requirements for property and casualty insurance. Among other changes, this rule proposal reflects the enactment of Senate Bills 965 and 1367, 87th Legislature, 2021.

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

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

The following summary describes the proposed changes to specific sections of the Filings Made Easy rules (FME Rules) found in 28 TAC Chapter 5, Subchapter M, Divisions 4, 5, 6, 7, 9, 10, and 11. TDI posted an informal working draft of the revised FME Rules on the TDI website on April 14, 2022. TDI received 10 comment letters on the informal draft. TDI considered those comments when drafting this proposal. The detailed section-by-section summary is organized by division.

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

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

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

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

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

Amendments also renumber subsections, paragraphs, and subparagraphs as appropriate to reflect the other amendments in the section, and they insert the titles of cited Insurance Code

and Administrative Code provisions for consistency with current TDI rule drafting style.

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

Section 5.9313. Filing Format Requirements. Proposed new §5.9313 specifies filing format requirements. The section prohibits encrypted or password-protected documents in filings. No changes are made to a filer's ability to mark documents as confidential or protect documents from public view in SERFF.

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

These new requirements streamline the filing process by ensuring that policy forms, endorsements, and form usage tables are more readily accessible to TDI staff and compatible with text search tools in SERFF and TDI's form review technology that relies on word recognition software.

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

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

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

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

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

Proposed amendments add new subsection (a), which specifies requirements for personal automobile and residential property insurance forms. The amendments include new requirements applicable to filings submitted to TDI on or after January 1, 2025. One of the amendments requires that when an insurer files new or revised policy forms on or after January 1, 2025, the insurer must incorporate the provisions of all associated mandatory endorsements that it uses or plans to use at the time of the filing. Policy forms filed on or after January 1, 2025, should not have any mandatory endorsement forms at the time the policy form is approved. This amendment does not prohibit companies from including new mandatory endorsements in subsequent filings that do not include the related policy form.

The proposed text also requires that when filing an endorsement with provisions that do not apply to every policy to which the endorsement will be attached, the provisions must be enclosed with brackets to reflect that the provisions are variable text. Proposed text requires filings to indicate that when the endorsement is attached to a policyholder's specific policy, the endorsement will not include any provisions that are inapplicable to that specific policy. The proposed text provides an example of how this requirement will operate. The requirement is effective for endorsements filed on or after January 1, 2025.

These changes are intended to increase consumers' understanding of their insurance policies by reducing or eliminating inapplicable provisions and by decreasing the need for consumers to cross-reference endorsements because applicable provisions will be integrated into the policy. The delayed implementation date for these requirements is intended to allow insurers lead time to incorporate these requirements into their business practices.

The amendments also add new subsection (c), which requires that when making a new automobile insurance policy form filing, insurers must file for informational purposes automobile insurance applications that are not part of the insurance policy. The new subsection also clarifies that insurers must file personal automobile insurance applications for approval if they are part of the insurance policy.

Current TDI practice is to ask insurers to file all personal automobile insurance applications when the associated policy is initially filed for review. For applications that are part of the policy, filing for approval is required by Insurance Code §2301.006, which prohibits insurer use of any form subject to Insurance Code Chapter 2301 until it is filed with and approved by the commissioner. For applications that are not part of the policy, TDI currently asks insurers to file them for informational purposes, which enables TDI to verify that the application does not contain policy terms or conditions and that the application and policy do not conflict.

Plain-language requirements for personal automobile and residential property insurance are deleted in proposed §5.9321 but added back in proposed §5.9327 to clarify that the plain-language requirements apply only to personal automobile and residential property forms. In addition, amendments redesignate and renumber subsequent provisions as appropriate to reflect the new text.

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

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

output is used; and a list of the rating variables that depend on the model's output.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. J'ne Byckovski, chief actuary and director of the Property and Casualty Actuarial Office of the Property and Casualty Division, has determined that during each year of the first five years the amendments and new sections are in effect, there will be no fiscal impact on state or local government because of enforcing or administering the sections. The proposal will have no measurable effect on local employment or the local economy.

PUBLIC BENEFIT AND COST NOTE. For each of the first five years the proposed amendments and new sections are in effect, Ms. Byckovski expects that the proposed amendments and new sections will have the public benefits of ensuring that TDI's rules properly implement SB 965 and SB 1367, increasing consumer understanding of insurance policies, reducing certain costs imposed on filing entities, conserving agency resources, and increasing government efficiency.

Ms. Byckovski expects that several of the proposed amendments will impose a cost on regulated entities, but that these costs will be offset by savings for regulated entities.

Costs

TDI anticipates that requiring the incorporation of mandatory endorsement form provisions into policies as described in §5.9327(a)(2) will result in costs for some insurers as they revise their forms. While it is not feasible to determine the actual time required or the cost of employees needed to comply with the requirements, TDI estimates that the incorporation of such an endorsement into a policy form would take a range of one to two hours to complete for each amended form and would likely require both software programming and clerical staff. According to the May 2021 Bureau of Labor Statistics Occupational and Employment Wage Statistics at www.bls.gov/oes/current/oes_nat.htm, the national mean hourly wage for software and web developers, programmers, and testers in the "Management of Companies and Enterprises" classification is $54.68, and the national mean hourly wage for the "Secretaries and Administrative Assistants, Except Legal, Medical, and Executive" classification is $19.75.

TDI also anticipates that the bracketing of variable text in endorsement forms as described in §5.9327(a)(3) will result in costs for some insurers. While actual costs for each insurer will depend on the language that must be bracketed and the underlying form, TDI estimates that bracketing variable text and preparing the forms to remove any inapplicable text when the endorsements are issued will take a range of one to five hours to complete for each amended form and would likely require both software programming and clerical staff. The national mean hourly wages discussed above in the mandatory endorsement cost analysis are also applicable for these costs.

TDI believes these potential costs are significantly mitigated by the delayed implementation of these requirements until January 1, 2025. Even more significantly, the rule proposal does not prohibit the use of separate mandatory endorsements or unbracketed variable text on January 1, 2025, but rather specifies that filings an insurer chooses to make after that date must conform to the new standards. Insurers can choose when to file policy forms and endorsements that will be subject to the requirements in §5.9327(a)(2) and §5.9327(a)(3). As a result, insurers will have the opportunity to integrate any necessary software programming and administrative activities into related activities the insurer will already be undertaking to develop and begin using the filed policy forms or endorsements. Insurers that do not use policy forms that have mandatory endorsements as described in §5.9327(a)(2), or that do not use endorsements forms with inapplicable text as described in §5.9327(a)(3), will have no costs resulting from these amendments.

Insurers may also experience minor costs relating to the requirement in §5.9327(c)(2) that automobile insurance applications that are not part of the insurance policy must be filed for informational purposes when the insurer files a new personal automobile policy form. According to May 2021 National Occupational and Wage Statistics as published by the Bureau of Labor Statistics at www.bls.gov/oes/current/oes_nat.htm, the national mean hourly wage for the "Secretaries and Administrative Assistants, Except Legal, Medical, and Executive" classification is $19.75. TDI estimates that filing an automobile insurance application will take less than one hour given that the insurer will already be filing a policy form. TDI regularly requests a copy of automobile insurance applications when a new policy is filed because it is needed for TDI's review of the policy. Therefore, compliance with the requirement will not result in a cost that is not already present.

Proposed new §5.9313 specifies filing format requirements. Although most insurers currently comply with the proposed requirements, the amendments may result in minor costs for a very small number of insurers. The requirements ensure that filings are compatible with text search tools in SERFF and TDI's form review technology that relies on word recognition software. TDI believes that insurers ordinarily draft or otherwise develop policy forms, endorsements, and form usage tables in a format that is selectable and searchable and can easily be converted to portrait orientation if needed. The existing requirement in §5.9310 that filings be made in SERFF sometimes results in TDI requesting that filers submit in a compatible format. Therefore, compliance with these formatting requirements will not result in costs that are not already present under existing requirements.

Proposed amendments in §§5.9332, 5.9334, and 5.9342 on third-party data and model information may result in time and filing costs for some insurers. These amendments are intended to address insurers' increasing use of modeling and data provided by third parties. The third-party information required by the proposed amendments consists of basic identifying and descriptive information and is not expected to impose a significant cost. Insurers that do not use third-party data or models will not have any costs resulting from these amendments.

Because of the number of factors impacting potential insurer costs, it is not feasible for TDI to estimate the range of all potential costs of the proposed amendments. Any potential insurer costs resulting from the proposal will be specific to each filing entity and their unique circumstances.

Savings

TDI believes that the costs previously discussed will be offset by time, effort, and cost savings for filing entities, and that as a result of these offsetting savings the proposal will result in an overall net savings for impacted entities. TDI expects that filing entities will have savings resulting from streamlining the filing process by formalizing current practices, clarifying filing requirements for advisory organizations, allowing monoline filings to be used in multi-peril insurance, and allowing the use of a SERFF tracking number instead of a TDI filing number. TDI also believes that the requirements for incorporating mandatory endorsements into policies and bracketing variable text will significantly reduce misunderstanding and increase transparency for consumers, which will result in less insurer time and expense responding to customer complaints and TDI inquiries.

The following proposed amendments streamline the filing and review process by formalizing current TDI practice and clarifying filing requirements: specifying current filing format requirements in §5.9313; clarifying advisory organization filing requirements in §5.9321 and §5.9334; formalizing the current practice of requesting that automobile insurance applications accompany the

underlying policy when filed in §5.9327; and providing specificity in §§5.9332, 5.9334, and 5.9342 on third-party data and model information in rate, rule, and underwriting guideline filings. In addition, proposed amendments in §§5.9310, 5.9321, 5.9323, 5.9332, and 5.9361 allow filers to use a SERFF tracking number in lieu of a TDI file number.

TDI anticipates that streamlining the filing process by formalizing these practices will result in time, effort, and cost savings for filing entities because it will decrease the necessity of follow-up by TDI staff during the review process. Currently, when TDI receives a filing that needs additional supporting information, or that must be resubmitted without password-protected or scanned documents, TDI staff must pause review of the filing and initiate correspondence with the filing entity. Ongoing dialogue regarding a filing is inefficient and delays the review process. Clearly specifying requirements in the FME Rules increases the likelihood of an efficient and timely review process. Submitting form filings in accordance with the requirements in proposed §5.9313 will also enable TDI to use its form review technology that relies on word recognition software. Using the technology helps TDI review filings more quickly and efficiently.

Filers may also save time and expense when preparing a filing because they can use a SERFF tracking number instead of a TDI file number. For some filers, the SERFF tracking number may be easier to find or maintain than the TDI file number.

TDI expects that proposed amendments in §5.9310 that permit a filing submitted for one line of insurance to also be used in multi-peril insurance will result in savings. Insurers that file for one line of insurance will not have to file again if they later decide to use the form in a multi-peril insurance product.

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

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal results in a net savings for regulated entities. No additional rule amendments are required under Government Code §2001.0045.

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

- will not create or eliminate a government program;

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

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

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

- will create a new regulation;

- will expand and limit existing regulations;

- will decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on August 7, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on August 7, 2023. If TDI holds a public hearing, TDI will consider comments both written and those presented at the hearing.

DIVISION 4. FILINGS MADE EASY - TRANSMITTAL INFORMATION AND GENERAL FILING REQUIREMENTS FOR PROPERTY AND CASUALTY FORM, RATE, UNDERWRITING GUIDELINE, AND CREDIT SCORING MODEL FILINGS

28 TAC §§5.9310, 5.9312, 5.9313

STATUTORY AUTHORITY. The amendments to §5.9310 and §5.9312 and new §5.9313 are proposed under Insurance Code §§36.002(1)(C), 36.002(1)(F), 36.002(2)(E), 2251.101, 2301.055, 559.004, and 36.001.

Insurance Code §36.002(1)(C) authorizes the commissioner to adopt reasonable rules that are necessary to effect the purposes of a provision of Insurance Code Chapter 2301, Subchapter A. Insurance Code §2301.001 states that the purpose of Insurance Code Chapter 2301, Subchapter A, includes regulating insurance forms to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive, and to provide regulatory procedures for the maintenance of appropriate information reporting systems.

Insurance Code §36.002(1)(F) authorizes the commissioner to adopt reasonable rules necessary to effect the purposes of a provision of Insurance Code Chapter 2251.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §2251.101 provides that each insurer must file its rates, rating manuals, supplementary rating information, and additional information with TDI as required by the commissioner. It also provides that the commissioner adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information.

Insurance Code §2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Insurance Code Chapter 2301, Subchapter B.

Insurance Code §559.004 authorizes the commissioner to adopt rules necessary to implement Insurance Code Chapter 559.

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

CROSS-REFERENCE TO STATUTE. The proposed amendments to §5.9310 and §5.9312 and new §5.9313 implement Insurance Code §§38.002, 38.003, 559.151, 2052.002, 2053.003, 2053.034, 2171.003, 2251.101, 2301.001, 2301.006, 3502.101, and 3502.104.

§5.9310. Property and Casualty Transmittal Information and General Filing Requirements.

(a) Purpose. The purpose of this division is to specify the transmittal information and general filing requirements for property and casualty form, rate, [~~and~~] rule, underwriting guideline, and credit scoring model filings.

(b) Definitions. Terms not defined in this division may be defined in Insurance Code Chapters 2053, concerning Rates for Workers' Compensation Insurance; 2251, concerning Rates; and 2301, concerning Policy Forms and have the same meaning when used in this division. The following terms when used in this division have the following meanings unless the context indicates otherwise:

[~~(1) Dual filing--A filing submitted for one line of insurance that may also be used in multi-peril insurance.~~]

(1) [~~(2)~~] Interline filing--A filing that may be used for more than one line of insurance submitted for:

(A) a policy jacket, declarations page, signature page, notice of cancellation, disclosure, schedule, general change form, company name change, or policyholder notice filed under Division 5 of this subchapter, relating to Filings Made Easy - Requirements for Property and Casualty Policy Form and Endorsement Filings; or

(B) policy fees, service fees, and other fees that are charged or collected by the insurer under Insurance Code §550.001, concerning Solicitation or Collection of Certain Payments, or §4005.003, concerning Fees, filed under Division 6 of this subchapter (relating to Filings Made Easy - Requirements for Rate and Rule Filings).

(2) [~~(3)~~] Multi-peril insurance--Policies and rates for two or more lines of insurance that are subject to regulation under Insurance Code Chapters 2251 and 2301. This definition does not include a combination of coverages described in:

(A) Insurance Code §2251.002, concerning Definitions, and §2301.002, concerning Definitions, and filed as commercial property insurance; or[~~.~~]

(B) Insurance Code §2251.0031, concerning Exceptions for Certain Lines, and §2301.0031, concerning Exceptions for Certain Lines.

(3) [~~(4)~~] NAIC--The National Association of Insurance Commissioners.

(4) [~~(5)~~] Reference filing--A filing that references the use of policy forms, endorsements, rules, loss costs, rating manuals, other supplementary rating information, or credit scoring models that TDI has adopted, approved, or accepted.

(5) [~~(6)~~] SERFF--The NAIC System for Electronic Rate and Form Filing.

(6) [~~(7)~~] TDI--Texas Department of Insurance.

(7) [~~(8)~~] TDI file number--The number TDI assigns to a filing.

(c) Transmittal information. Each filing must contain the following transmittal information:

(1) company name as used for financial reporting to the NAIC and company number assigned by the NAIC;

(2) company group name and group NAIC number;

(3) whether the filing is new, or revises or replaces an existing filing;

(4) TDI file number or SERFF tracking number of the revised or replaced filing;

(5) TDI file number or SERFF tracking number for the previously approved policy that the proposed form will be attached to;

(6) TDI file number or SERFF tracking number of associated or companion filings of other filing types;

(7) line of insurance:

(A) all filings must specify the line of insurance; and

(B) interline filings must specify all lines of insurance to which the filing applies.[~~; and~~]

[~~(C) dual filings must indicate the line of insurance to which the filing applies and the TDI file numbers for the applicable monoline and multi-peril filings;~~]

(8) type of filing;

(9) proposed effective date; and

(10) contact person, including name, telephone number, and mailing address.

(d) Multi-peril use. A filing submitted for a line of insurance that is subject to regulation under Insurance Code Chapters 2251 and 2301 may also be used in multi-peril insurance.

(e) [~~(d)~~] Filings Made Easy Guide. TDI maintains the Filings Made Easy Guide to help insurers submit filings and comply with statutory requirements. Insurers may obtain this guide from TDI's website at www.tdi.texas.gov.

(f) [~~(e)~~] Letter of authorization. A third-party representing an insurer on a filing must provide a letter of authorization signed by the insurer on the insurer's letterhead. A letter of authorization applies only to the filing with which it is submitted.

(g) [~~(f)~~] Submission of filing. Filings under Divisions 5, 6, 7, 8, and 9 of this subchapter (relating to Filings Made Easy - Requirements for Property and Casualty Policy Form and Endorsement Filings; Filings Made Easy - Requirements for Rate and Rule Filings; Filings Made Easy - Requirements for Underwriting Guideline Filings; Filings Made Easy - Requirements for Credit Scoring Model Filings for Personal Insurance; and Filings Made Easy - Reduced Filing Requirements for Certain Insurers) must be submitted through SERFF.

(h) [~~(g)~~] Public disclosure of contact information. To the extent that a filing includes company contact information, by submitting a filing the company affirmatively consents to the release and disclosure of its company contact information, including any email addresses. The filer also certifies that each person associated with an email address

that appears in the filing has affirmatively consented to the release and disclosure of that email address.

§5.9312. Personally Identifiable Information.

Filings must not include any policyholders' personally identifiable information. Filings that include this type of information may be rejected. As used in this subchapter, personally identifiable information means information that can be used either alone or in combination to distinguish an individual's identity. Examples of personally identifiable information include:

(1) any individual policyholder identification, including name, address, phone number, or email address;

(2) social security numbers;

(3) insurance policy numbers;

(4) drivers' license, identification card, vehicle identification, and license plate numbers;

(5) debit card, credit card, bank account, and routing numbers; and

(6) health information about a specific individual.

§5.9313. Filing Format Requirements.

(a) Documents included in filings may not be encrypted or password protected. TDI staff must be able to fully process and review the documents without a password or other decryption process.

(b) The policy forms, endorsements, and form usage tables submitted in a filing under Division 5 of this subchapter (relating to Filings Made Easy - Requirements for Property and Casualty Policy Form and Endorsement Filings) must:

(1) not be scanned documents;

(2) not include any scanned text, or scanned images with text, that will be part of the insurance contract;

(3) be in a format that is selectable and searchable; and

(4) be in portrait, not landscape, orientation.

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 June 16, 2023.

TRD-202302188
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: August 6, 2023
For further information, please call: (512) 676-6555

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DIVISION 5. FILINGS MADE EASY - REQUIREMENTS FOR PROPERTY AND CASUALTY POLICY FORM AND ENDORSEMENT FILINGS

28 TAC §§5.9321, 5.9323, 5.9327

STATUTORY AUTHORITY. The amendments to §§5.9321, 5.9323, and 5.9327 are proposed under Insurance Code §§36.002(1)(C), 36.002(2)(E), 541.401, 2301.053, 2301.055, Article 5.35(f), 2051.201, and 36.001.

Insurance Code §36.002(1)(C) authorizes the commissioner to adopt reasonable rules that are necessary to effect the purposes of a provision of Insurance Code Chapter 2301, Subchapter A. Insurance Code §2301.001 states that the purpose of Insurance Code Chapter 2301, Subchapter A, includes regulating insurance forms to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive, and to provide regulatory procedures for the maintenance of appropriate information reporting systems.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §541.401 specifies that the commissioner may adopt and enforce reasonable rules the commissioner determines necessary to accomplish the purposes of Insurance Code Chapter 541. Insurance Code §541.001 states that the purpose of Insurance Code Chapter 541 is to regulate insurance trade practices by defining or providing for the determination of trade practices that are unfair methods of competition or unfair or deceptive acts or practices and prohibiting those trade practices.

Insurance Code §2301.053 provides that a form may not be used unless it is written in plain language.

Insurance Code §2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Insurance Code Chapter 2301, Subchapter B.

Insurance Code Article 5.35(f) specifies timelines for commissioner form and endorsement approval, and states that for good cause shown the commissioner may withdraw approval of a form or endorsement at any time.

Insurance Code §2051.201 authorizes the commissioner to adopt and enforce all reasonable rules necessary to carry out the provisions of a law referenced in Insurance Code §2051.002(1), (2), or (3).

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

CROSS-REFERENCE TO STATUTE. The proposed amendments to §§5.9321, 5.9323, and 5.9327 implement Insurance Code §§541.001, 2052.002, 2171.003, 2301.001, 2301.006, 2301.053, 2301.056, and 3502.104.

§5.9321. General Filing Requirements.

(a) Filings must be submitted for [~~only~~] one line of insurance only, except for multi-peril and interline filings.

(b) Filings submitted under this division may not be combined with any other filing types submitted under this subchapter.

(c) Filings must contain the following:

(1) the transmittal information required in §5.9310 of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements);

(2) a copy of the proposed policy forms or endorsements;

(3) a form number for each proposed form;

(4) an edition date for each proposed form, if applicable;

(5) the TDI file number or SERFF tracking number for the previously approved policy to which the proposed form will be attached, if applicable;

(6) a form usage table that includes:

(A) the form name and form number for each proposed form;

(B) information indicating whether each proposed form is optional, mandatory, or conditional mandatory; and[. ~~For conditional mandatory forms, the filer must submit an addendum that describes the conditions that make each form mandatory. For filings other than personal automobile, residential property, or personal multi-peril, the filer may describe the conditions elsewhere in the filing; and~~]

(C) for conditional mandatory forms, an addendum to the form usage table describes the conditions that make each form mandatory. For filings other than personal automobile, residential property, or personal multi-peril, the filer may describe the conditions elsewhere in the filing;

(7) a memorandum that [~~contains~~]:

(A) explains in detail [~~a detailed explanation of~~] the reasons for the filing;

(B) describes each [~~a description of the~~] proposed policy form [~~forms~~] or endorsement [~~endorsements~~]; and

(C) details [~~an explanation of~~] each policy form or [~~and~~] endorsement's use, including [~~which may include for example,~~] the type of risk or risks for which the forms or endorsements will be used.

(d) Filings must also meet the following requirements.

(1) [~~(8)~~] Filings must include all [~~All~~] provisions required by statute, administrative rule, or Commissioner's order. Filers may add the required provisions to a policy form by including a Texas amendatory endorsement. The filing must include the amendatory endorsement, or the filing may reference an approved amendatory endorsement that applies to the policy forms in the filing.

(2) [~~(9)~~] For amended policy forms or endorsements, copies of the previously approved or adopted policy forms or endorsements indicating the differences between the approved or adopted policy forms or endorsements and the filed policy forms or endorsements must be included. New text must be underlined, and deleted text must be in brackets with a strikethrough. Alternatively, the changes can be indicated by other clearly identified or highlighted editorial notations referencing new and replaced text. The marked changes must be in a separate single document for each filed form.

~~[(10) For personal automobile and residential property insurance, a filing must meet the statutory requirements for plain language in policies required by Commissioner's Order No. 92-0573, or any superseding Commissioner's order. The filing must also include the Flesch Reading Ease Test readability score for the filed forms or endorsements.]~~

(e) Unless requested by TDI, filings made by advisory organizations do not need to include:

(1) the proposed effective date specified in §5.9310(c)(9) of this title; or

(2) the form usage table specified in subsection (c)(6) of this section.

§5.9323. Requirements for Reference Filings.

(a) Reference filings for policy forms and endorsements should not include a copy of the referenced material.

(b) In addition to the transmittal information, a reference filing must include:

(1) the name of the insurance company or advisory organization whose filing is being referenced; and

(2) the TDI file number or SERFF tracking number of the filing being referenced.

(c) For personal automobile, residential property, and personal multi-peril insurance, the filing must also include:

(1) a list of each form and endorsement that the insurer will use from each referenced filing; and

(2) a form usage table, as described in §5.9321(c)(6) of this title (relating to General Filing Requirements), that includes each form and endorsement that the insurer will use from each referenced filing.

(d) If a filer wants to change a form or endorsement approved for another insurer or an advisory organization, the filer may not submit the form as a reference filing. The filer must submit the amended form for approval with the information required by §5.9321 and §5.9322 of this title (relating to [~~General Filing Requirements and~~] Additional Information).

§5.9327. Additional Requirements for Personal Automobile and Residential Property [~~Declarations Page~~] Forms.

(a) Personal automobile and residential property insurance forms are subject to this subsection.

(1) Filed forms must meet the plain-language requirements described in Insurance Code §2301.053, concerning Requirements for Forms; Plain-Language Requirement; and Commissioner's Order No. 92-0573. Filings must also include the Flesch Reading Ease Test readability score for the forms.

(2) For policy forms filed on or after January 1, 2025:

(A) Amended policy forms must incorporate the provisions of all mandatory endorsement forms the insurer uses with the policy form at the time of filing. Amended policy forms must not have any mandatory endorsement forms at the time the policy form is approved.

(B) New policy forms must not have any mandatory endorsement forms at the time the policy form is filed and approved.

(C) Subject to subparagraphs (A) and (B) of this paragraph, an insurer may file mandatory endorsement forms in a filing that does not include the related policy form.

(3) When filing an endorsement form with provisions that do not apply to every policy to which the endorsement will be attached, the provisions must be enclosed with brackets to reflect that the provisions are variable text. The filing must also indicate that when the endorsement is attached to a policyholder's specific policy, the endorsement will not include any provisions that are inapplicable to that specific policy. For example, an insurer may file an endorsement with provisions that amend an HO-3 policy and an HO-5 policy. If certain provisions apply only to the HO-5, those must be bracketed in the filed form, and must not be visible to the policyholder when the form is used to endorse the HO-3. This paragraph applies to new or amended endorsements filed on or after January 1, 2025.

(b) [~~(a)~~] Insurers must file residential property [~~insurance~~] policy declarations page forms for approval [~~under this division~~].

(1) Declarations pages include renewal declarations pages, renewal certificates, amended declarations pages, and separate disclosure pages allowed under §5.9700 of this title (relating to Residential Property Declarations Pages and Deductible Disclosures).

(2) [~~(b)~~] Filed declarations page forms must be completed with sample--not actual--policyholder information sufficient to demonstrate how the insurer will comply with this rule and Insurance Code §2301.056, concerning Requirement for Forms; Declarations Page Requirement.

(c) Insurers must file personal automobile insurance application forms as follows:

(1) new or amended application forms that are part of the insurance policy must be filed for approval; and

(2) application forms that are not part of the insurance policy must be filed for informational purposes when an insurer files a new personal automobile policy form.

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

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Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: August 6, 2023
For further information, please call: (512) 676-6555

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DIVISION 6. FILINGS MADE EASY - REQUIREMENTS FOR RATE AND RULE FILINGS

28 TAC §5.9332, §5.9334

STATUTORY AUTHORITY. The amendments to §5.9332 and §5.9334 are proposed under Insurance Code §§36.002(1)(F), 36.002(2)(E), 912.056, 2251.101, and 36.001.

Insurance Code §36.002(1)(F) authorizes the commissioner to adopt reasonable rules necessary to effect the purposes of a provision of Insurance Code Chapter 2251.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner requires by rule.

Insurance Code §2251.101 provides that each insurer must file its rates, rating manuals, supplementary rating information, and additional information with TDI as required by the commissioner. It also provides that the commissioner adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information.

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

CROSS-REFERENCE TO STATUTE. The proposed amendments to §5.9332 and §5.9334 implement Insurance Code §§912.056, 2053.003, 2053.034, 2251.101, 3502.101, and 3502.104.

§5.9332. Categories of Supporting Information.

The categories of supporting information addressed in this section describe the different items that may be required or requested in a rate and rule filing. Section 5.9334 of this title (relating to Requirements for Rate and Rule Filing Submissions) lists the categories of supporting information that different rate and rule filings require. Categories of supporting information include:

(1) Rate filing checklists. These are found in the Filings Made Easy Guide and show the information filers need to include with the filing.

(2) Actuarial memorandum. This memorandum describes the methodologies for determining each component used in developing the actuarial support, and a qualitative discussion on the selections for each component. It includes an explanation for any changes in methodologies or any changes to the component selections from the previous analysis.

(3) Actuarial support. This type of support consists of sufficient documentation and analysis to allow a qualified actuary to understand and evaluate the rates, each component used in developing the rates, and the appropriateness of each material assumption. Actuarial support is divided into the following subcategories:

(A) Rate indications consist of the analyses the insurer relies on to support its filed rates, each component used to develop the rate indications, and support for each of these components, including the data and methodologies used by the insurer. Rate indications may be on an overall basis or by coverage, class, form, or peril when appropriate. Rate indications must include each of the following with documentation in support of each, to the extent applicable:

(i) premiums, on-level factors, and premiums at current rate level;

(ii) incurred and paid losses;

(iii) loss and claim development factors;

(iv) premium and loss trend factors;

(v) hurricane and nonhurricane catastrophe factors or loss provisions, including the definition of a catastrophe and how the definition has changed over the experience period used to calculate the provisions;

(vi) off-balance factors if there are changes in relativities, for example: discounts, surcharges, or territorial definitions;

(vii) the measure of credibility, the complement of credibility, the criteria for full credibility, and the method for determining partial credibility;

(viii) expenses, including: general expenses; other acquisition expenses; commissions and brokerage expenses; taxes, licenses, and fees; loss adjustment expenses; and expense offsets from fee income;

(ix) the net cost of reinsurance;

(x) for rates filed under Insurance Code Chapter 2251, concerning Rates, profit provisions, including risk loads;

(xi) for rates filed under Insurance Code Chapters 2053, concerning Rates for Workers' Compensation Insurance, and

3502, concerning Mortgage Guaranty Insurance, profit and contingency provisions, including risk loads;

(xii) the effect on premiums of individual risk variations based on loss or expense considerations; and

(xiii) any other component used in developing a rate indication.

(B) Relativity analysis consists of both the analysis and support for the selected rating factors, including the loss experience and methodologies used by the insurer to derive the indicated rating factors. Supporting information must include:

(i) the current relativity;

(ii) the indicated relativity;

(iii) support for the indicated relativities, including the loss experience and methodologies used by the insurer to derive the indications;

(iv) the selected relativity;

(v) support for the selected relativities if they differ from the indicated relativities; and

(vi) the percent change from current to selected relativity.

(C) Other actuarial support consists of both the analysis and support for the selected rates, including the loss experience and methodologies used by the insurer to derive them. The support must clearly demonstrate why the proposed rates are not excessive, inadequate, or unfairly discriminatory. A rate is reasonable and not excessive, inadequate, or unfairly discriminatory if it is an actuarially sound estimate of the expected value of all future costs associated with an individual risk transfer. These costs include claims, claim settlement expenses, operational and administrative expenses, and the cost of capital.

(4) SERFF rate data. This data consists of all information necessary to complete the company rate information fields in SERFF.

(5) Policyholder impact information. Policyholder impact information must reflect the changes for all policyholders. This information consists of the following provided separately by form or coverage:

(A) a histogram that graphically depicts the impact of the filed changes to policyholders in 5 percentage point intervals;

(B) the policy counts in each interval displayed in either the histogram or a separate table;

(C) the minimum and maximum policyholder impact; and

(D) a description of the changes that contributed to the minimum and maximum policyholder impact.

(6) Average rate change by county. This is the average impact of all changes included in a filing by county, provided separately by form or coverage.

(7) Rate change information. Rate change information must reflect the changes for all policyholders.

(A) For loss cost reference filings, rate change information consists of:

(i) the proposed percentage change in the underlying loss costs;

(ii) the change in the insurer's loss cost multiplier;

(iii) the combined change in the loss costs and the loss cost multipliers;

(iv) a six-year rate change history; and

(v) the effect that changes in fee income have on the total average rate change for all coverages and forms combined.

(B) For all other filings, rate change information consists of:

(i) the average proposed rate change for each applicable coverage or form;

(ii) the total average rate change for all applicable coverages and forms combined;

(iii) a six-year rate change history; and

(iv) the effect that changes in fee income have on the total average rate change for all applicable coverages and forms combined.

(8) Historical premium and loss information. This information consists of an insurer's most recent five-year experience, for both Texas and countrywide, of direct premiums written, direct premiums earned, direct losses and defense and cost containment expenses paid, direct losses and defense and cost containment expenses incurred, and the ratio of the direct losses and defense and cost containment expenses incurred to direct earned premiums. The Texas experience is the amounts, or a subset of the amounts, pertinent to the line of business reported on the Exhibit of Premiums and Losses (Statutory Page 14 Data) in the insurer's Annual Statement. The countrywide experience is the amounts, or a subset of the amounts, pertinent to the line reported on the insurer's Insurance Expense Exhibit (IEE), Part III in the insurer's Annual Statement.

(9) Expense information. This information consists of Texas experience and, if applicable, countrywide experience. The loss adjustment expenses must be shown as a dollar amount and as a ratio to incurred losses. All other expenses must be shown as a dollar amount and as a ratio to premium. All expense items must be on a direct basis.

(A) Three years of historical Texas experience must be included for commissions and brokerage expenses incurred; taxes, licenses, and fees incurred; losses incurred; and defense and cost containment expenses incurred. These must be the amounts, or a subset of the amounts, reported on the Exhibit of Premiums and Losses (Statutory Page 14 Data) in the insurer's Annual Statement.

(B) Three years of historical countrywide experience must be included for commissions and brokerage expenses incurred, other acquisition expenses incurred, general expenses incurred, losses incurred, defense and cost containment expenses incurred, and adjusting and other loss adjustment expenses incurred. These must be the amounts, or a subset of the amounts, reported in the insurer's IEE, Part III in the insurer's Annual Statement.

(C) Three years of historical countrywide experience must be included for each category of disallowed expenses. These must be the amounts reported in the insurer's response to the annual TDI Disallowed Expense Call. Other acquisition and general expenses, each adjusted to remove disallowed expenses, must be listed separately. The total adjusted general expense percentage must reflect any necessary adjustment due to the capping of general expenses at 110% [~~110 percent~~] of the industry median for the line of insurance.

(D) To the extent that the expense provisions differ from the historical expenses, the filing must provide additional support for the expense provisions underlying the rates. Provisions for commis-

sions and brokerage expenses; other acquisition expenses; general expenses; taxes, licenses, and fees; and profit and contingencies must be displayed and a sum computed. For filings submitted under Insurance Code Chapter 2251, the expense provisions must exclude disallowed expenses.

(E) When additional expense provisions are included, such as the net cost of reinsurance or an expense offset from fee income, the filing must include expected or historical experience. Support for provisions for the net cost of reinsurance may include reinsurance premiums, expected reinsurance recoverables, and a description of reinsurance coverage including attachment points and limits.

(10) Loss cost information for reference filings. This information consists of the following:

(A) the TDI file number or SERFF tracking number of the loss costs being referenced;

(B) the derivation of the proposed loss cost multiplier including any loss cost modification factor and the following expense and profit provisions:

(i) commissions and brokerage expenses;

(ii) other acquisition expenses, adjusted to remove disallowed expenses;

(iii) general expenses, adjusted to remove disallowed expenses;

(iv) taxes, licenses, and fees; and

(v) underwriting profit and contingencies;

(C) supporting documentation for loss cost modification factors other than 1.00;

(D) the loss cost multiplier to be used as of the effective date of the filing;

(E) the loss cost multiplier used immediately before the effective date of the filing; and

(F) the effective rate-level change due to any change in the loss cost multiplier.

(11) Profit provision information. This information consists of a description of the methodology, assumptions, and support for the assumptions used to arrive at the profit provisions underlying the proposed rates.

(12) A side-by-side comparison. This comparison must show any differences between the previously filed and the proposed rates, rating manual, rules, or other supplementary rating information.

(13) A mark-up [~~mark up~~]. This is a copy of the previously filed rates, rating manuals, rules, or other supplementary rating information indicating the differences between it and the revised version, with any new language or factors underlined and the deleted language or factors in brackets with a strikethrough, or other clearly identified or highlighted editorial notations referencing the new and replaced language or factors.

(14) Sample premium impacts by selected ZIP codes. These are sample premiums and premium changes based on all changes included in a filing for certain specified policy types and ZIP codes.

(15) Rate filing templates. These are found in the Filings Made Easy Guide and provide insurers with an optional means of providing certain supporting information and supplementary rating information.

(16) Third-party data information. For each third-party data set, this information consists of the following:

(A) the name of the data vendor or source;

(B) a description of the data, such as a data dictionary, that includes the name for each data element and the corresponding definition;

(C) a description of how the data is used in ratemaking or otherwise used to determine rates or premiums; and

(D) a list of the rating variables that reflect use of the data.

(17) Third-party model information. For each third-party model, this information consists of the following:

(A) the name of the model vendor or source;

(B) the model name and version number;

(C) a description of the model;

(D) a description of the model input;

(E) a description of how the model output is used in ratemaking or otherwise used to determine rates or premiums; and

(F) a list of the rating variables that depend on the output of the model.

(18) [~~(16)~~] Other information. This includes any other information required by the Commissioner necessary to determine that the rates meet the rate standards.

§5.9334. Requirements for Rate and Rule Filing Submissions.

(a) Insurers must file any new rates or revisions to previously filed rates governed by Insurance Code Chapter 2053, concerning Rates for Workers' Compensation Insurance, at least 30 days before they become effective. The insurer must file any supplementary rating information not prescribed under Insurance Code Article 5.96, concerning Promulgated Lines.

(b) For rates governed by Insurance Code Chapter 2251, concerning Rates, insurers must file any new rates, rating manuals, rules, all other supplementary rating information, and fees, or revisions to these items and all other information required by this section. An insurer may use the information filed under this division on and after the date of the filing, unless the insurer is subject to prior approval under Insurance Code Chapter 2251, Subchapter D, concerning Prior Approval of Rates Under Certain Circumstances.

(c) Insurers must file any new rates and supplementary rating information or revisions to previously filed rates and supplementary rating information governed by Insurance Code Chapter 3502, concerning Mortgage Guaranty Insurance, at least 15 days before they become effective.

(d) All rate and rule filings must be submitted for only one line of insurance except for multi-peril and interline filings.

(e) Each filing must include the transmittal information required in §5.9310 of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements).

(f) Insurers must inform TDI of a change in the effective date of a rate and rule filing on or before the effective date in the filing.

(g) Each filing must include a filing memorandum that explains the purpose of the filing and provides all material background details relating to the filing, including a statement on the overall impact of the filing. The filing memorandum must briefly describe each change to the rates, rating manuals, rules, any other supplementary rat-

ing information and fees used by the insurer, and briefly describe the supporting information provided for each change. A brief summary of any related policy form or endorsement filings, including the coverages, limitations, and exclusions, must be included.

(h) Except as provided in Division 9 of this subchapter (relating to Filings Made Easy - Reduced Filing Requirements for Certain Insurers), or subsection (j) [~~(i)~~] of this section, each filing must include supporting information. Sufficient supporting information is necessary for TDI to establish that a filing produces rates that are not excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply. Insurers must provide sufficient documentation to justify specific rates or revisions they are proposing. To the extent the information originally submitted in a rate and rule filing is insufficient, TDI may request additional information as deemed necessary by TDI or the Commissioner. Each filing must contain the following items:

(1) a completed rate filing checklist;

(2) rate change information;

(3) SERFF rate data;

(4) loss cost information, if the filing references an advisory organization loss cost filing;

(5) an actuarial memorandum;

(6) actuarial support appropriate to the rating information being filed, as specified in subparagraphs (A) - (C) of this paragraph:

(A) All filings that propose changes to relativities, such as territory or class, and those implied by discounts, surcharges, or tiers, must include relativity analyses. This requirement applies when the proposed rate changes vary across a characteristic, regardless of presentation. The related territory codes and descriptions, classification systems and descriptions, or rules must also be included.

(B) All except the following filings must include rate indications:

(i) filings for new rates that will not replace, modify, or supersede any existing rates, unless the rates are derived from the experience of an affiliate, including an eligible surplus lines insurer;

(ii) fee filings; or

(iii) filings containing changes only to supplementary rating information with no overall rate impact. Examples include filings with no overall rate impact that contain only items such as relativity changes or rates for endorsements.

(C) Filings must include other actuarial support when neither the relativity analysis in subparagraph (A) of this paragraph nor the rate indications in subparagraph (B) of this paragraph apply;

(7) policyholder impact information for owner-occupied homeowner and personal automobile filings that include changes that will result in a difference between the minimum and maximum policyholder impact that is greater than 5% [~~5 percent~~];

(8) the average rate change by county for owner-occupied homeowners rate filings;

(9) historical premium and loss information, if the filing changes or replaces existing rates;

(10) expense information; [~~and~~]

(11) profit provision information;[~~.~~]

(12) third-party data information; and

(13) third-party model information.

(i) Filings submitted by advisory organizations do not need to include:

(1) the proposed effective date as specified in §5.9310(c)(9) of this title;

(2) the written premium and policyholder information in the SERFF rate data as specified in subsection (h)(3) of this section;

(3) policyholder impact information as specified in subsection (h)(7) of this section;

(4) historical premium and loss information as specified in subsection (h)(9) of this section;

(5) expense information as specified in subsection (h)(10) of this section; or

(6) profit provision information as specified in subsection (h)(11) of this section.

(j) [~~(i)~~] Instead of the items in subsection (h) of this section, short track filings must include:

(1) a completed rate filing checklist;

(2) rate change information;

(3) SERFF rate data; and

(4) a side-by-side comparison or a mark-up [~~mark up~~], if applicable.

(k) [~~(j)~~] Each filing submitted must be legible, accurate, internally consistent, complete, and contain all required documents. In each filing:

(1) each table must be clearly labeled, including titles and column and row headings to clearly identify the contents;

(2) row and column headings must be repeated on each page of tables displayed on multiple pages;

(3) all pages must print to at least 10-point type [~~font~~] in black ink, unless the pages are a mark-up [~~mark up~~];

(4) text shading, other than yellow highlighting, may not be used; and

(5) each page should include a page number or other unique identifier.

(l) [~~(k)~~] Paragraphs (1) - (3) of this subsection address public information.

(1) If an insurer believes a portion of the information required to be filed under Insurance Code Chapter 2053 or Chapter 2251 is confidential and excepted from disclosure under Government Code Chapter 552, concerning Public Information, the insurer must mark each page excepted.

(2) For filings submitted under Insurance Code Chapters 2053 or 2251 that include information that is marked confidential, TDI will request an attorney general decision under Government Code Chapter 552 before making the information open for public inspection. TDI does not consider the following excepted from disclosure under Government Code Chapter 552: loss cost multipliers, rates, rating factors and relativities, rating manuals, fees, or summary information about the filing, including date filed, rate impact, effective dates, or a summary of the changes. TDI does not consider the following categories of supporting information excepted from disclosure under Government Code Chapter 552: rate change information, SERFF rate data, average rate change by county, sample premium impacts

by selected ZIP codes, historical premium and loss information, or historical expense information.

(3) Each filing submitted under Insurance Code Chapter 3502, including any supporting information filed, will be open for public inspection as of the date of the filing.

(m) [~~(l)~~] The insurer is responsible for ensuring that its filing complies with Texas statutes and rules.

(n) [~~(m)~~] TDI maintains the Filings Made Easy Guide to help insurers comply with Texas statutes and rules. Insurers may refer to the Filings Made Easy Guide for rate filing templates or exhibits that insurers can use to display necessary supporting information required in subsection (h) of this section. Insurers may obtain this guide from TDI's website at www.tdi.texas.gov.

(o) [~~(n)~~] Filings under this division may not be combined with any other filing types submitted under this subchapter.

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

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DIVISION 7. FILINGS MADE EASY - REQUIREMENTS FOR UNDERWRITING GUIDELINE FILINGS

28 TAC §5.9342

STATUTORY AUTHORITY. The amendments to §5.9342 are proposed under Insurance Code §§36.002(2)(E), 38.002, 38.003, 2053.034, and 36.001.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §38.002 requires each insurer writing personal automobile insurance or residential property insurance to file its underwriting guidelines with TDI and to ensure that the underwriting guidelines are sound, actuarially justified, substantially commensurate with the contemplated risk, and not unfairly discriminatory.

Insurance Code §38.003 provides that TDI may obtain a copy of the underwriting guidelines of an insurer for lines other than personal automobile insurance or residential property insurance.

Insurance Code §2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines.

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

CROSS-REFERENCE TO STATUTE. The proposed amendments to §5.9342 implement Insurance Code §§38.002, 38.003, and 2053.034.

§5.9342. Filing Requirements.

(a) Not later than 10 days after use, an [~~An~~] insurer writing personal automobile, residential property, or workers' compensation insurance must file with TDI a comprehensive set of underwriting guidelines used by the insurer or its agent.[~~:~~]

[~~(1) at least once every three calendar years on or before March 1, beginning March 1, 2004, a written, comprehensive set of each underwriting guideline used by the insurer or the insurer's agent; and~~]

[~~(2) not later than the 10th day after the underwriting guideline has changed, a written update to the underwriting guideline clearly identifying each section of the previously filed underwriting guideline that has changed.~~]

(b) A filing made under subsection (a) of this section must contain:

(1) a comprehensive set of underwriting guidelines;

(2) a mark-up or redline version of the underwriting guidelines, clearly indicating any changes in the underwriting guidelines;

(3) for each third-party data set used in underwriting, the following information:

(A) the name of the data vendor or source;

(B) a description of the data, such as a data dictionary, that includes the name for each data element and the corresponding definition;

(C) a description of how the data is used in underwriting; and

(D) a list of the underwriting guidelines that reflect use of the data; and

(4) for each third-party model used in underwriting, the following information:

(A) the name of the model vendor or source;

(B) the model name and version number;

(C) a description of the model;

(D) a description of the model input;

(E) a description of how the model output is used in underwriting; and

(F) a list of the underwriting guidelines that depend on the output of the model.

(c) Filings must clearly indicate any changes in the underwriting guidelines resulting from the change in third-party data and modeling information. No filing is necessary for a change in third-party data and modeling information that does not result in a change to underwriting guidelines.

(d) [~~(b)~~] For purposes of compliance with this section, an oral or electronic underwriting guideline must be converted to written form.

(e) [~~(c)~~] An insurer group or group of affiliated insurers may file one set of underwriting guidelines [~~or update to underwriting guidelines~~] on behalf of individual insurers in the group under the requirements of this section if the group clearly identifies which underwriting guidelines apply to each insurer within the group.

(f) [(d)] An insurer that files underwriting guidelines [or updates to underwriting guidelines] under this section must submit the filing transmittal information required in §5.9310 of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements) with each underwriting guideline filing.

(g) [(e)] All filings for underwriting guidelines must relate to only one line of insurance.

(h) [(f)] Underwriting guidelines contemplated by Insurance Code §38.003, concerning Underwriting Guidelines for Other Lines; Confidentiality, other than workers' compensation insurance, are required only if requested. Underwriting guidelines submitted in response to a request under Insurance Code §38.003 must be filed in compliance with subsections (d), (e), and (f) [(b), (c), and (d)] of this section.

(i) [(g)] Filings under this division may not be combined with any other filings submitted under this subchapter.

(j) [(h)] Information used to classify risks for the purpose of determining a rate must be filed under Division 6 of this title (relating to Filings Made Easy--Requirements for Rate and Rule Filings), even if the information is included in an underwriting guideline filing under this division.

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

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DIVISION 9. FILINGS MADE EASY - REDUCED FILING REQUIREMENTS FOR CERTAIN RESIDENTIAL PROPERTY INSURERS

28 TAC §5.9355, §5.9357

STATUTORY AUTHORITY. The amendments to §5.9355 and §5.9357 are proposed under Insurance Code §§36.002(1)(F), 36.002(2)(E), and 36.001.

Insurance Code §36.002(1)(F) authorizes the commissioner to adopt reasonable rules necessary to effect the purposes of a provision of Insurance Code Chapters 2251.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

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

CROSS-REFERENCE TO STATUTE. The proposed amendments to §5.9355 and §5.9357 implement Insurance Code §2251.252.

§5.9355. Purpose.

The purpose of this division is to specify requirements for certain insurers who qualify for reduced rate filing requirements under the provisions of Insurance Code Chapter 2251, Subchapter F, concerning Exemptions for Certain Insurers from Rate Filing and Approval Requirements. [Subchapters C or F.]

§5.9357. Filing Requirements.

(a) Insurers writing residential property in underserved areas that may qualify under Insurance Code Chapter 2251, Subchapter F, concerning Exemptions for Certain Insurers from Rate Filing and Approval Requirements, must submit rate and rule filings in compliance with this subsection and with all provisions of §5.9334 (relating to Requirements for Rate and Rule Filing Submissions) not listed in paragraph (2) of this subsection. If TDI determines that an insurer is not exempted under Insurance Code §2251.252(a), concerning Exemption from Certain Other Law, the insurer must file in compliance with Division 6 of this subchapter (relating to Filings Made Easy - Requirements for Rate and Rule Filings).

(1) Insurers must include a form meeting the elements in subparagraphs (A) and (B) of this paragraph. The Certification of §2251.251 and §2251.252 Exemption Compliance (EC-1) Form, found in the Filings Made Easy Guide, may be used to satisfy these requirements.

(A) The form must include the following statement: "{Insurance company name} certifies to the Texas Department of Insurance that the insurance company meets the requirements of Insurance Code Sections 2251.251 and 2251.252 and qualifies for the reduced filing requirements of 28 Texas Administrative Code Section 5.9357."

(B) The form must be dated and include the name, signature, and title of the insurance company representative certifying the statement.

(2) Insurers exempted under Insurance Code §2251.252(a) are not required to file the supporting information described in §5.9334(h)(5), (6), (9), (10), (11), (12), and (13) of this title.

[(a) Insurers writing personal automobile insurance. Insurers required to file under the provisions of Insurance Code Chapter 2251 may make rate and rule filings for personal automobile insurance according to the requirements described in this subsection if they meet the criteria under Insurance Code §2251.1025(a). Insurers that qualify to file under this subsection must file in compliance with Division 6 of this subchapter (relating to Filings Made Easy - Requirements for Rate and Rule Filings) with the following modifications:]

[(1) Insurers must include a Certification of §2251.1025 Exemption Compliance (EC-2), found in the Filings Made Easy Guide, with each filing.]

[(2) Insurers are not required to file supporting information described in §5.9334(h)(5), (6), (9), (10), and (11) of this title (relating to Requirements for Rate and Rule Filing Submissions), unless requested.]

[(b) Insurers writing residential property in underserved areas. In compliance with Insurance Code §2251.252(c), insurers otherwise exempt from the rate and rule filing requirements of Chapter 2251 must submit rate and rule filings in compliance with this subsection. Insurers who qualify to file under this subsection must file in compliance with Division 6 of this subchapter:]

[(1) Insurers must include a Certification of §2251.251 and §2251.252 Exemption Compliance (EC-1), found in the Filings Made Easy Guide.]

[(2) Insurers are not required to file supporting information described in §5.9334(h)(5), (6), (9), (10), and (11) of this title, unless requested.]

[(c) Additional provisions. The following provisions apply to any rate and rule filing submitted under subsection (a) or (b) of this section:]

(b) [(1)] The reduced rate and rule filing requirements provided under this division do not affect the requirements under §5.9941 of this title (relating to Differences in Rates Charged Due Solely to Difference in Credit Scores) and §5.9960 of this title (relating to Exception to Rating Territory Requirements under §2253.001 of the Insurance Code).

[(2) Requests for additional information are as outlined in §5.9335 of this title (relating to Requests for Information).]

(c) [(d)] [Filings Made Easy Guide.] TDI maintains the Filings Made Easy Guide to help insurers comply with Texas statutes and rules. [Insurers may refer to the Filings Made Easy Guide for the Certification of §2251.251 and §2251.252 Exemption Compliance (EC-1) form referenced in subsection (b)(1) of this section and the Certification of §2251.1025 Exemption Compliance (EC-2) form referenced in subsection (a)(1) of this section.] Insurers may obtain this guide from TDI's website at www.tdi.texas.gov.

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

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DIVISION 10. FILINGS MADE EASY - ADDITIONAL FILING REQUIREMENTS FOR CERTAIN COUNTY MUTUAL INSURANCE COMPANIES

28 TAC §5.9361

STATUTORY AUTHORITY. The amendments to §5.9361 are proposed under Insurance Code §§36.002(1)(F), 36.002(2)(E), 912.056, 2251.101, and 36.001.

Insurance Code §36.002(1)(F) authorizes the commissioner to adopt reasonable rules necessary to effect the purposes of a provision of Insurance Code Chapters 2251.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §912.056 requires that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner requires by rule.

Insurance Code §2251.101 requires that each insurer must file its rates, rating manuals, supplementary rating information, and additional information with TDI as required by the commissioner. It also requires that the commissioner adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information.

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

CROSS-REFERENCE TO STATUTE. The proposed amendments to §5.9361 implement Insurance Code §912.056 and §2251.101.

§5.9361. Additional Requirements.

(a) Filing transmittal. In addition to the information required by Division 4 of this subchapter (relating to Filings Made Easy--Transmittal Information and General Filing Requirements for Property and Casualty Form, Rate and Rule, Underwriting Guideline, and Credit Scoring Model Filings), the following information must be included:

(1) the name and license number of the managing general agent, district, or local chapter of a county mutual insurance company; and

(2) contact information for the county mutual insurance company, if the county mutual insurance company's contact information has not already been provided under §5.9310(c)(10) of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements).

(b) Rate and rule filings.

(1) All rate and rule filings must be made directly by the county mutual insurance company on the county mutual insurance company's letterhead, unless the county mutual insurance company submits written notice with the filing authorizing the submission of rate filings by the managing general agent, district, or local chapter.

(2) Each rate and rule filing must include:

(A) all information required under §5.9334 of this title (relating to Requirements for Rate and Rule Filing Submissions), which must be specific to the managing general agent, district, or local chapter; and

(B) a list of policy forms and endorsements, including their name, number, and the TDI file number or SERFF tracking number, used by the managing general agent, district, or local chapter. The submission of a list of policy forms and endorsements under this subsection does not constitute a form filing under Insurance Code Chapter 2301, concerning Policy Forms.

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

Filed with the Office of the Secretary of State on June 16, 2023.

TRD-202302193
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: August 6, 2023
For further information, please call: (512) 676-6555

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DIVISION 11. FILINGS MADE EASY - CERTIFICATES OF PROPERTY AND CASUALTY INSURANCE

28 TAC §5.9372, §5.9373

STATUTORY AUTHORITY. The amendments to §5.9372 and §5.9373 are proposed under Insurance Code §1811.003 and §36.001.

Insurance Code §1811.003 allows the commissioner to adopt rules necessary or proper to accomplish the purposes of Insurance Code Chapter 1811.

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

CROSS-REFERENCE TO STATUTE. The proposed amendments to §5.9372 and §5.9373 implement Insurance Code §§1811.052, 1811.053, and 1811.101.

§5.9372. Preparation and Submission of Certificate of Insurance Form Filings.

(a) Approval required. A certificate of insurance issued on property or casualty operations or a risk located in Texas, regardless of where the certificate holder, policyholder, insurer, or agent is located, must be on a form that has been filed and approved before use.

(b) Filing content. All filings for new or amended certificate of insurance forms submitted under Insurance Code Chapter 1811, concerning Certificates of Property and Casualty Insurance, must comply with the filing requirements in this division, any other applicable rules the Commissioner has adopted, and any applicable Commissioner's orders.

(1) All filings must contain transmittal information as required by §5.9373 of this title (relating to Certificate of Insurance Form Filing Transmittal Information).

(2) All filings must contain a copy of the subject certificate of insurance form. For identification purposes, the certificate of insurance must contain a form number and edition date.

(c) Combined filings. Do not combine a certificate of insurance form filing with any other filing types.

(d) Filing submission.

(1) TDI will accept a filing required under this division:

(A) by mail;

(B) by hand delivery;

(C) by email; or

(D) through SERFF.

(2) Mailing addresses and other contact information are available on the Property and Casualty Certificates of Insurance web page on TDI's website.

[~~(1) TDI will accept a filing required under this division by mail. Send filings to the Texas Department of Insurance, Property and Casualty Filings Intake, Mail Code 104-3B, P.O. Box 149104, Austin, Texas 78714-9104.~~]

[~~(2) TDI will accept a filing required under this division if it is hand delivered. Bring filings to the Texas Department of Insurance, Customer Service Center, William P. Hobby Jr. State Office Building, 333 Guadalupe St., Tower 1, Room 103, Austin, Texas 78701.~~]

[~~(3) TDI will accept a filing required under this division that is submitted electronically, whether by email to PCFilingsIntake@tdi.texas.gov or through SERFF.~~]

(3) [~~(4)~~] TDI will not collect a filing fee for a certificate of insurance filing.

(e) Public inspection of filing.

(1) A certificate of insurance form and any supporting information filed with TDI under this division is open to public inspection as of the date of the filing.

(2) To the extent that a filing includes company contact information, the company affirmatively consents to the release and disclosure of its company contact information, including any email addresses.

§5.9373. Certificate of Insurance Form Filing Transmittal Information.

(a) Required information. The filing transmittal information must be typed and must contain, at a minimum, the following:

(1) company name;

(2) NAIC number if the filing is submitted by an insurer;

(3) FEIN if the filing is submitted by an entity other than an insurer or agent; and

(4) contact person, including name, telephone number, mailing address, fax number, and email address (if available).

(b) Transmittal information format.

(1) The Certificate of Insurance Form Filing Transmittal Form is available on TDI's website at www.tdi.texas.gov [~~or by request to the Texas Department of Insurance, Property and Casualty Filings Intake, Mail Code 104-3B, P.O. Box 149104, Austin, Texas 78714-9104~~].

(2) Filers may submit transmittal information in a format other than the form provided by TDI if the information included in the transmittal form, or in an addendum to the transmittal form, contains all the information required under subsection (a) of this section.

(c) SERFF filings. Persons filing through SERFF must follow existing procedures for SERFF filings.

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 June 16, 2023.

TRD-202302194
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: August 6, 2023
For further information, please call: (512) 676-6555

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.36

The Texas Commission on Law Enforcement (Commission) proposes new 37 Texas Administrative Code Chapter 211, §211.36, concerning Advisory Committee Operations and Procedures. This new rule conforms with Texas Occupations Code § 1701.165.

Mr. John P. Beauchamp, Interim Executive Director, has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code § 1701.165.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small businesses, microbusinesses, and/or individuals as a result of the proposed section.

Mr. Beauchamp has determined the following:

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

(2) implementation of the proposed rule requires the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule requires an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

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

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

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability;

(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposal. The comment period will last 30 days following the publication of this proposal in the *Texas Register.* Comments may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. John P. Beauchamp, Interim Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed under Texas Occupations Code §§ 1701.151, General Powers of the Commission; Rulemaking Authority; 1701.165, Advisory Committees and Texas Government Code § 2001.028, Notice of Proposed Law Enforcement Rules.

The new rule as proposed is in compliance with Texas Occupations Code §§ 1701.151, General Powers of the Commission; Rulemaking Authority; 1701.165, Advisory Committees and Texas Government Code, § 2001.028, Notice of Proposed Law Enforcement Rules.

No other code, article, or statute is affected by this proposal.

§211.36. Advisory Committee Operations and Procedures.

(a) Role of advisory committee. The role of an advisory committee is to provide advice and recommendations to the commission. Advisory committees shall meet and carry out their functions upon a request from the commission for advice and recommendations on an issue.

(b) Appointment of advisory committee. The commission shall appoint members to an advisory committee. Each advisory committee shall elect from its members a presiding officer, or may be appointed by the commission's presiding officer, who shall report the advisory committee's recommendations to the commission. The executive director may designate a staff member to participate with, or to provide subject-matter expertise, guidance, or administrative support to the advisory committee as necessary. Any commission staff assigned to an advisory committee shall be non-voting members.

(c) Member qualifications. Members shall have knowledge about and interests in, and represent a broad range of viewpoints about, the work of the committee or applicable divisions and meet the enrollment and appointment requirements and qualifications for licenses under Texas Occupations Code Chapter 1701 and 37 Texas Administrative Code Chapters 211-229. Currently appointed Commission members shall not serve as advisory committee members.

(d) Composition of advisory committees. In making appointments to the advisory committees, the commission shall, to the extent practical, ensure representation of members from the public, agencies, organizations, and geographical regions of the state who have an interest or expertise in the subject area of the particular advisory committee.

(e) Committee size and quorum requirements. An advisory committee shall be composed of a reasonable number of members not to exceed 12 as determined by the commission. A simple majority of advisory committee members will constitute a quorum. An advisory committee may only deliberate on issues within the jurisdiction of the committee or any public business when a quorum is present.

(f) Terms of service. Advisory committee members may serve terms of four years or as otherwise designated by the commission. A member will serve on the committee until the member resigns, is dismissed or replaced by the commission, or the member's term expires.

(g) Member training requirements. Each member of an advisory committee must receive training regarding the Open Meetings Act, Government Code, Chapter 551 and the Public Information Act, Government Code, Chapter 552.

(h) Compliance with Open Meetings Act. The advisory committee shall comply with the Open Meetings Act, Government Code, Chapter 551.

(i) Conflict of Interest. Advisory committee members are subject to the same laws and policies governing ethical standards of conduct as those for commission members and employees.

(j) Public input and participation. Advisory committees shall accept public comments made in-person at advisory committee meetings or submitted in writing in advance of the advisory committee meeting with sufficient copies for all members.

(k) Reporting recommendations. Recommendations of the advisory committee shall be reported to the commission at a commission meeting prior to commission action on issues related to the recommendations. The recommendations shall be in writing and include any necessary supporting materials. The presiding officer of the advisory committee or the presiding officer's designee may appear before the commission to present the committee's advice and recommendations. This subsection does not limit the ability of the advisory committee to provide advice and recommendations to the executive director as necessary.

(l) Commission use of advisory committee recommendations. In developing commission policies, the commission shall consider the written recommendations and reports submitted by advisory committees.

(m) Reimbursement. The department may, if authorized by law and the executive director, reimburse advisory committee members for reasonable and necessary travel expenses.

(n) Expiration dates for advisory committees. Unless a different expiration date is established by the commission for the advisory committee, each advisory committee is abolished on the fourth anniversary of its creation by the commission.

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

Filed with the Office of the Secretary of State on June 20, 2023.

TRD-202302216
John Beauchamp
Interim Executive Director
Texas Commission on Law Enforcement
Earliest possible date of adoption: August 6, 2023
For further information, please call: (512) 936-7700

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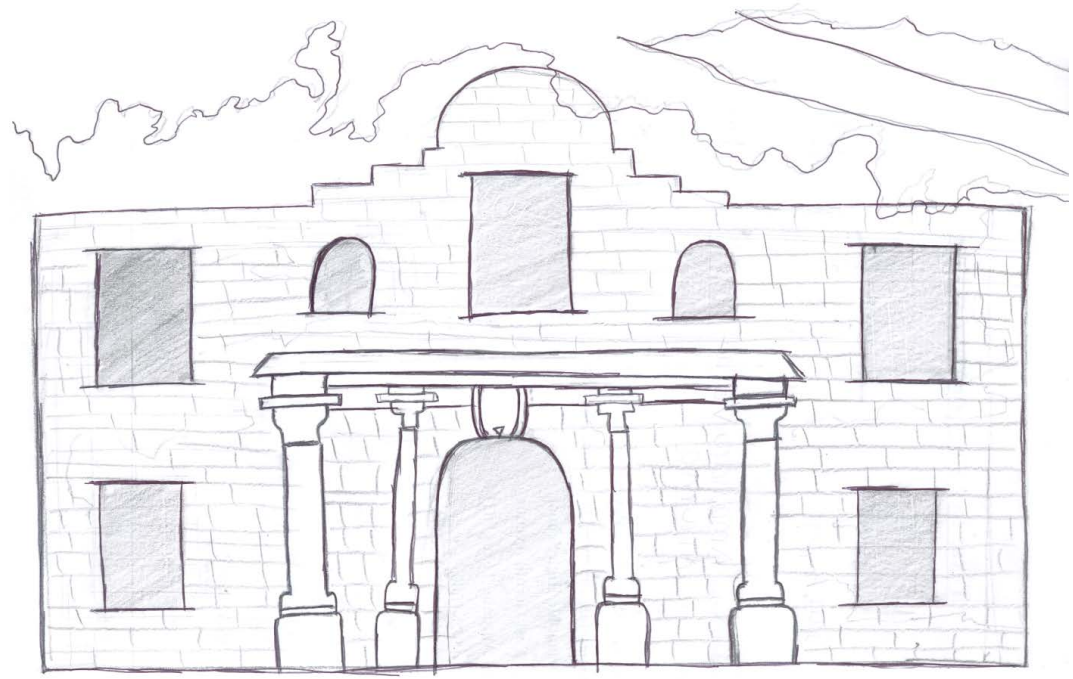

WITHDRAWN RULES

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 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 30. COUNCIL PROCEDURES FOR FEDERAL CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND PRIORITIES

31 TAC §30.50

The General Land Office withdraws proposed new §30.50, which appeared in the January 27, 2023, issue of the *Texas Register* (48 TexReg 326).

Filed with the Office of the Secretary of State on June 20, 2023.

TRD-202302232
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: June 20, 2023
For further information, please call: (512) 475-1859

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 52. CHARTER APPLICATIONS

7 TAC §§52.1 - 52.15

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 52, as follows: §§52.1 - 52.15. The commission's proposal for the repeals was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2267). The repeals are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Repeals

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 52.

Summary of Public Comments

Publication of the commission's proposal for the repeals recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302276
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

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CHAPTER 53. ADDITIONAL OFFICES

7 TAC §§53.1 - 53.5, 53.7 - 53.10, 53.17, 53.18

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 53, as follows: §§53.1 - 53.5, 53.7 - 53.10, 53.17, and 53.18. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2268). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into

one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 53.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302277
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

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CHAPTER 57. CHANGE OF OFFICE LOCATION OR NAME

7 TAC §§57.1 - 57.4

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 57, as follows: §§57.1 - 57.4. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2269). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 57.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302278
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

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CHAPTER 60. SAVINGS ASSOCIATIONS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts new rules in 7 TAC Chapter 60, as follows: §§60.1, 60.2, 60.101 - 60.104, 60.121 - 60.123, 60.131 - 60.133, 60.141 - 60.145, 60.161 - 60.165, 60.171, 60.181, 60.191, 60.201 - 60.204, 60.221 - 60.227, 60.231 - 60.234, 60.241 - 60.245, 60.251, 60.252, 60.261, 60.301 - 60.309, 60.321, 60.323 - 60.326, and 60.331. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2271). The following rules are adopted with changes to the published text and are republished to reflect such changes: §§60.2, 60.101, 60.103, 60.104, 60.121, 60.122, 60.131 - 60.133, 60.141, 60.144, 60.145, 60.161, 60.162, 60.165, 60.181, 60.201, 60.203, 60.223, 60.305, 60.308, 60.309, and 60.324. The changes do not cause the rules to regulate new parties or affect new subjects of regulation. As a result, the rules will not be republished as proposed rules for public comment. The remaining rules in the proposal are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Exami-

nations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules.

Changes Concerning Loan Requirements

The department's preexisting rules in Chapter 65, §§65.4 - 65.10, 65.13, 65.14, 65.15, 65.20, and 65.23 establish various requirements for loans made by a savings association. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such preexisting rules is not included in the adopted rules.

Changes Concerning Savings and Deposit Accounts

The department's preexisting rules in Chapter 67, §§67.1 - 67.3, 67.6 - 67.13, and 67.15 establish various requirements concerning savings and deposit accounts of a savings association. The department has determined the rules are not necessary and should be repealed. As a result, the subject matter of such preexisting rules is not included in the adopted rules.

Changes Concerning Holding Companies

Pursuant to Finance Code §66.051(a), the department's commissioner (commissioner) is required to conduct periodic examinations of a savings association, its subsidiaries, and any holding company of the savings association. Pursuant to Finance Code §66.053, the commissioner is entitled access to the books and records of a savings association, its subsidiaries, and any holding company of the savings association. Pursuant to Finance Code §66.103(a), the commissioner may intervene in the affairs of a savings association if a person that participates in the affairs of the savings association, its subsidiaries, or any holding company of the savings association, is about to commit: a fraudulent or criminal act that may cause the savings association to be insolvent; an act that threatens harm to the public, the savings association, or its account holders or creditors; or a breach of fiduciary duty that results in substantial financial losses or other damages to the savings association or that would prejudice the interests of its account holders or shareholders. Pursuant to Finance Code §66.104, the commissioner may intervene in the affairs of a savings association if a person who participates in the affairs of the association, its subsidiaries, or any holding company of the savings association, refuses to submit to or otherwise interferes with an examination conducted by the commissioner. In order to facilitate the examination of a savings association holding company and ensure the department has adequate knowledge of its existence and affairs, the adopted rules: require a savings association to register with the department any holding company of the savings association on or before 90 days after the date the holding company becomes a holding company and pay a one-time application fee of $2,000; require a savings association holding company and its subsidiaries to file periodic reports with the department as determined by the commissioner; require a savings association holding company and its subsidiaries to maintain books and records in the same manner required of a savings association; clarify the preexisting requirements of Finance Code §66.051(a) by requiring a savings association holding company and its subsidiaries to submit to and bear the costs of an examination; require a savings association holding company, if directed by the commissioner, to appoint an agent for service of process; and establish conditions under which a savings association holding company may be released from the registration requirements under the adopted rules, including a requirement that a savings association holding company maintain books and records after it has been released from such registration requirements.

Changes Concerning Fees

Pursuant to Finance Code §61.007(1), the commission, by rule, determines the fees assessed by the commissioner in connection with filing an application or other documents with the department. The department's preexisting rules in Chapter 63 (repealed elsewhere in this issue of the *Texas Register* in connection with the adopted rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), establish fees for various applications filed with the department. Such preexisting rules do not establish a specific fee concerning an application by a financial institution other than a savings association seeking to convert to a savings association charter. Instead, the $10,000 fee for a de novo charter application under preexisting §63.1 is assessed. The adopted rules establish a specific fee for an application concerning such a conversion by a financial institution other than a savings association to a savings association charter. The fee is determined based on the total asset size of the financial institution seeking to convert to a savings association charter, as follows: $0 to less than $125 million - $2,500; $125 million to less than $500 million - $5,000; $500 million to less than $1 billion - $10,000; over $1 billion - $15,000. Under the adopted rules, the fee for converting to a savings association charter could therefore be higher or lower depending on the asset size of the financial institution seeking conversion; however, the department anticipates any potential application for conversion to a savings association charter under the adopted rules will be filed by a financial institution with an asset size of less than $1 billion and will therefore result in a fee equal to or lesser than the fee under preexisting §63.1. The department asserts a graduated fee for an application for conversion based on the asset size of the financial institution seeking conversion better reflects the true costs of the department in processing the application and facilitates the department's compliance with Finance Code §16.003(c), requiring the department to collect only those amounts necessary for the purposes of carrying out its functions. Under preexisting §63.11 (repealed elsewhere in this issue of the *Texas Register* in connection with the adopted rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), the department assesses a fee of $10,000 for an application concerning change of control of a savings association made in accordance with Finance Code Chapter 62, Subchapter L. The adopted rules lower such fee from $10,000 to $5,000. Pursuant to Finance Code §66.052, the commissioner is required to con-

duct periodic examinations of the savings associations it regulates. Pursuant to Finance Code §66.052(a), the commissioner may conduct additional examinations of a savings association (each a special examination) if deemed by the commissioner to be appropriate based on the condition of the savings association. Pursuant to Finance Code §66.052(a), the savings association being examined is required to bear the costs of such special examination. Under preexisting §63.5 (repealed elsewhere in this issue of the *Texas Register* in connection with the adopted rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), the department assesses a fee of $325 per day for each examiner performing a special examination. The adopted rules: assess a maximum fee of $75 per hour for each examiner performing a special examination; clarify the preexisting requirement, pursuant to Finance Code §66.052(a), that a savings association bear the cost of the special examination, by clarifying that such costs include expenses related to travel, food, and lodging of the examiner performing the special examination; and clarify the commissioner's preexisting authority to assess a lower fee rate or otherwise waive any fees or costs related to a special examination. To the extent an examiner performing a special examination works a standard eight-hour day, the adopted rules have the effect of raising the per diem fee from $325 to $600; however, if an examiner works four hours or less on any given day, the adopted rules have the effect of lowering such per diem fee. The department asserts a per hour fee better reflects the true costs of the department in conducting a special examination and facilitates the department's compliance with Finance Code §16.003(c), requiring the department to collect only those amounts necessary for the purposes of carrying out its functions.

Other Modernization and Update Changes.

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

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §60.1, §60.2

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.2 is also adopted under the authority of, and to implement, Finance Code: §61.002; and §62.004(a).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code Title 3, Subtitle B, the following words and terms are assigned the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate--An affiliate of, or person affiliated with, a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(2) Affiliated person--

(A) a director, officer, or controlling person of a savings association;

(B) a spouse of a director, officer, or controlling person of a savings association;

(C) a member of the immediate family of a director, officer, or controlling person of a savings association, who is a director or officer of any subsidiary of a savings association or of any holding company affiliate of a savings association;

(D) any company (other than the savings association, its holding company, or an operating subsidiary) of which a director, officer, or controlling person of a savings association:

(i) is a director or officer;

(ii) in the case of a limited liability company, is a manager or managing member;

(iii) in the case of a partnership, is a general partner;

(iv) in the case of a partnership, is a limited partner who, directly or indirectly, either alone or with his or her spouse and the members of their immediate family who are also affiliated persons of the savings association, owns an interest of 10% or more in the partnership (based on the value of their contribution) or who, directly or indirectly with other directors, officers, and controlling persons of a savings association, and their spouses and their immediate family members who are also affiliated persons of the savings association, owns an interest of 25% or more in the partnership; or

(v) directly or indirectly, either alone or with their spouse and the members of their immediate family, who are also affiliated persons of the savings association, owns or controls 10% or more of any class of equity securities, or owns or controls with other directors, officers, and controlling persons of a savings association and their spouses and their immediate family members, who are also affiliated persons of the savings association, 25% or more of any class of equity securities; and

(E) any trust or other estate in which a director, officer, or controlling person of a savings association, or a member of the director's, officer's, or controlling person's immediate family, has a substantial beneficial interest or as to which such person or his or her spouse serves as trustee or in a similar fiduciary capacity.

(3) Application--An application requesting authorization or other relief from the Commissioner pursuant to this chapter or under the Texas Savings and Loan Act for which a filing fee is required under §60.102 of this title (relating to Application Fees and Charges).

(4) Appropriate banking agency--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(5) Board--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(6) Bylaws--The rules adopted to regulate or manage a company, regardless of the name used to designate the rules, and with respect to a limited liability company, means the company agreement, or similar rules adopted to regulate or manage the limited liability company.

(7) Capital stock--Has the meaning assigned by the Texas Savings and Loan Act (Tex. Fin. Code §61.002).

(8) Capital stock association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(9) Certificate of formation--The document evidencing the formation of the business entity, referred to in other governmental jurisdictions as the articles of incorporation, certificate of incorporation, or articles of organization, as applicable.

(10) Commissioner--The savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(11) Company--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(12) Control--The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company. Control is deemed to exist when a person, directly or indirectly, or acting through or in concert with one or more persons:

(A) owns, controls, or has the power to vote 25% or more of any class of voting securities of a company;

(B) is an officer or director of the company and owns, controls, or has the power to vote 10% or more of any class of voting securities of a company, and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities; or

(C) controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of a company.

(13) Controlling person--A person having control as defined by paragraph (12) of this section.

(14) Day--A calendar day, unless another method of counting days is specified.

(15) Deposit account--A savings account, certificate of deposit, withdrawable deposit, demand deposit account, checking account, or any other term referring to the amount of money a savings association owes an account holder as a result of the deposit of money in the savings association.

(16) Deposit liability--The aggregate amount of money shown by the books of the savings association to be owed to the savings association's bank deposit account holders after applying any legal or contractual reduction.

(17) FDIC--The Federal Deposit Insurance Corporation, including any successor.

(18) Finance Commission--The Finance Commission of Texas, the oversight body responsible for overseeing and coordinating the Department under Finance Code Chapter 11.

(19) Financial institution--Has the meaning assigned by Finance Code §201.101.

(20) GAAP--Generally Accepted Accounting Principles.

(21) Holding company--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002) in defining the term "savings and loan holding company."

(22) Holding company affiliate--A company of which a savings association is a subsidiary and any other subsidiary of such company other than a subsidiary of the savings association.

(23) Home office--The office where a savings association has its headquarters and from which all of its operations are directed.

(24) Immediate family--The spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(25) Issuer--The savings association that issued the security in question.

(26) Managing officer--An individual designated by the board as being responsible for, and having the authority to direct, the day-to-day operations of the savings association. The managing officer must have sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that, under the management and supervision of the managing officer, the savings association will operate in compliance with applicable law and that success of the savings association is probable.

(27) Member--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(28) Mutual association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(29) Officer--The president, any vice president (but not an assistant vice president, second president, or other vice president having authority similar to an assistant or second vice president), the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any entity or organization, whether incorporated or unincorporated. The term "officer" includes the chairman of the board, if the savings association's certificate of formation or bylaws authorize the chairman to participate in the operating management of the entity or organization, or if the chairman actually participates in such management.

(30) Person--An individual, corporation, a partnership, a savings association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

(31) Recourse--A contract by a borrower or guarantor to repay 100% of all amounts due and owing under the loan.

(32) Savings Association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002) in defining the term "association."

(33) Shareholder--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(34) Subsidiary--Any company that is controlled by the savings association or by a company that is controlled by a company which is controlled, directly or indirectly, by the savings association.

(35) Surplus--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(36) Texas Savings and Loan Act--Finance Code Title 3, Subtitle B (Finance Code §61.001 et seq.).

(37) Unsafe and unsound practice--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002), and includes excessive operating expenses, excessive growth, high-risk or undiversified investment positions, and non-existent or poorly followed lending or underwriting policies, procedures, or guidelines.

(38) Voting security--Includes any security convertible into or evidencing a right to acquire a voting security.

(39) Withdrawal value--The net amount of money that may be withdrawn by an account holder from a deposit account.

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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Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
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Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

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SUBCHAPTER B. APPLICATIONS
DIVISION 1. GENERAL PROVISIONS

7 TAC §§60.101 - 60.104

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §§60.101 - 60.103 are also adopted under the authority of, and to implement, Finance Code §66.002(3). 7 TAC §60.102 is also adopted under the authority of Finance Code: §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department; and §61.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to filing an application or other documents with the department. 7 TAC §60.102 is also adopted under the authority of, and to implement, Finance Code: §62.001(a); §62.011; and §63.004(d). 7 TAC §60.103 is also adopted under the authority of, and to implement, Finance Code: §62.006(a)(1); and §62.353(a)(1). 7 TAC §60.104 is also adopted under the authority of, and to implement, Finance Code §61.006.

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.101. Application Filing Requirements.

(a) Purpose and Applicability. Applications submitted to the Department must comply with the requirements of this section.

(b) Application Forms. All applications must be made on the current form for the application prescribed by the Commissioner.

(c) Incomplete Filings; Notice of Acceptance; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. On or before 30 days after the date the Department receives the application, the Commissioner or the Commissioner's designee will issue a written notice to the applicant informing them either that the application is complete and accepted for filing, or that the application is incomplete and specifying the information required to render the application complete. The application may be deemed withdrawn and the applicable fee forfeited if, on or before 30 days after the date the applicant is notified the application is incomplete, the applicant fails to provide to the Department the supplemental information or supporting documentation necessary to render the application complete.

(d) Duty to Supplement. The applicant has a continuing obligation and duty to supplement the application with any other information or supporting documentation requested by the Commissioner in writing. The applicant must provide any information or supporting documentation submitted in connection with any related application made to the appropriate federal banking agency, to the extent not previously provided to the Department.

(e) Duty to Amend. If a material change occurs in the facts contained in or information furnished in support of the application, the applicant must file an amended application or otherwise supplement the application to address the material change. The applicant must endeavor to resolve any potential changes or amendments to the application prior to publishing public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application). The Commissioner may, in his or her sole discretion, require the applicant to republish the public notice.

§60.103. Public Notice of Application.

If an application requires that notice to the public be given, such notice must comply with the requirements of this section. The notice must use language and content preapproved by the Commissioner prior to publishing. The notice must be submitted to the publisher for publication on or before 15 days after the date the applicant receives notice that the application is complete and accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). The notice must be published in an English language newspaper of general circulation in each county required by the rule(s) governing such application. The applicant must, on or before 10 days after the date the notice is published, provide the Commissioner with a publisher's affidavit evidencing that the notice was properly published in conformity with this section. The notice is deemed properly effected when the appropriate notice has been published in conformity with this section, and more than 10 days have elapsed.

§60.104. Motions for Rehearing.

A motion for rehearing pursuant to Finance Code §61.006 must be filed on or before 14 days after the date the decision or order that is the subject of the motion is signed. A copy of the motion for rehearing must be served on all parties who made an appearance or otherwise submitted a filing in the proceeding, and the motion must include a certificate of service reciting the parties served and the method of service. A party must file a reply to the motion for rehearing, if any, on or before 30 days after the date the decision or order that is the subject of the motion is signed. The Commissioner must act on the motion for rehearing on or before 45 days after the date the decision or order that is the subject of the motion is signed or the motion is deemed overruled by operation of law.

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

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DIVISION 2. CHARTER APPLICATIONS AND AMENDMENTS

7 TAC §§60.121 - 60.123

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable

to savings associations. 7 TAC §60.121 is also adopted to implement Finance Code: Chapter 62, Subchapter A; §62.152; and §66.002(3). 7 TAC §60.122 is also adopted under the authority of, and to implement, Finance Code: §62.011; and §66.002(3).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.121. Savings Association Charter.

(a) Application Requirements. The charter application and all required supporting information must be executed by the proposed incorporators of the proposed savings association which must consist of at least five adult residents of this state and must include all of the information required by Finance Code §62.001. The application must include a request for a corporate name to be approved by the Commissioner. The application must include the proposed home office of the savings association, the identity and qualifications of the proposed managing officer(s), and any additional information the Commissioner deems necessary to enable the Commissioner to determine the matters set forth in Finance Code §62.007.

(b) Identification of Home Office; Definition of Community; Temporary Office Location. The proposed location for the home office must be specifically identified so as to exactly locate it within the community to be served. The term "community" as used in the Finance Code §62.007 means the geographical area surrounding the proposed location of the home office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business. The Commissioner may approve the opening and operation of a temporary home office location for an approved charter, provided that such office is within the 1/2-mile radius of the permanent home office approved in the charter. If a temporary home office location is approved, the savings association must promptly cease operations at such office upon the permanent home office being constructed or rendered fit for occupancy, but in any event must cease operations on or before 18 months after the date the charter was approved, unless extended in writing by the Commissioner.

(c) Capital Requirements. No application to incorporate a savings association will be approved unless the Commissioner determines the proposed savings association has received subscriptions for capital stock and paid-in surplus in the case of a capital stock association, or pledges for savings liability and expense fund in the case of a mutual association, in an amount not less than the greater of the amount required to obtain insurance of deposit accounts by the FDIC or the amount required of a national bank. No savings association with an approved charter may open or do business as a savings association until the Commissioner certifies that the Commissioner has received satisfactory proof that the amounts of capital stock and additional paid-in capital, or the savings liability and expense fund, as set forth in this section, have been received by the savings association in cash, free of encumbrance.

(d) Public Notice. A charter application is deemed to be a complete application for purposes of Finance Code §62.006 at the time the Department notifies the applicant that the application is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the charter application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the proposed savings association will have its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the application for purposes of Finance Code §62.006.

(e) Request for Hearing; Deadline to Protest. A person may protest or otherwise request a hearing on the application as provided by Finance Code §62.006. Any person desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (d) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.006 is deemed waived.

(f) Hearing. If a charter application is protested or a hearing on the application is otherwise requested, the Commissioner will set a hearing on the application on or before 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) Time of Decision. To the extent a hearing on the charter application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the charter application is not required, the Commissioner will render a decision on or before 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by Finance Code §62.006 and subsection (e) of this section.

§60.122. Change of Name.

(a) Approval Required. A savings association may not change its name without the prior written approval of the Commissioner, and a savings association may not operate under any name which has not been approved by the Commissioner in writing.

(b) Public Notice. An applicant seeking to change its name must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings association has its home office.

(c) Request for Hearing; Deadline to Protest. A person affected by the proposed name change may protest or otherwise request a hearing on the change of name application as provided by Finance Code §62.011. Any person affected by the proposed name change and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (b) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(d) Persons Affected by the Change of Name. A person is affected by a change of name for purposes of Finance Code §62.011 only if the requested name change, if granted, would result in the savings association's name being substantially or deceptively similar to the party alleged to be affected, or is otherwise reasonably anticipated to create confusion in the marketplace involving the party alleged to be affected. A person requesting a hearing on a change of name application must allege and provide information in support of the request indicating they are a person that might be affected by the proposed name change as provided by this section. The Commissioner will review the request for hearing and determine, in his or her sole discretion, if the person might be affected so as to require a hearing under Finance Code §62.011.

(e) Hearing. If a hearing is required, the Commissioner will set a hearing on the application on or before 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning

contested cases contained in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(f) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision on or before 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by 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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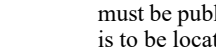

DIVISION 3. OFFICE LOCATIONS

7 TAC §§60.131 - 60.133

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rules are also adopted under the authority of, and to implement, Finance Code: §62.011; and §66.002(3).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.131. Branch Office.

(a) Approval Required. A savings association may not establish a branch office or an additional office as provided by §60.202 of this title (relating to Types of Additional Offices) without prior written approval of the Commissioner. A branch office application is required if a savings association would like to establish and operate a courier/messenger service pursuant to §60.202 of this title.

(b) Required Information. The application must provide the following information, subscribed to and sworn before a notary:

(1) proposed location for the office;

(2) the personnel and office facilities to be provided;

(3) the estimated cost and projected profits of such office; and

(4) any information deemed necessary by the Commissioner to render a determination on the matters set forth in subsection (c) of this section.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines that:

(1) the operation and condition of the savings association affords no basis for supervisory objection;

(2) the character, responsibility, and general fitness of the current management of the savings association warrant a belief that the branch office will be operated in accordance with the Texas Savings and Loan Act; and

(3) the financial effect of establishing and operating the proposed office will not adversely affect the safe and sound operation of the savings association.

(d) Commencement of Operations. The branch office must commence operations on or before 12 months after the date of approval unless the Commissioner grants a written extension. No more than one 12-month extension will be approved by the Commissioner, unless good cause for such extension is shown. At the end of any approved extension, if the office has not been opened, the approval for such office is deemed revoked and a new application must be made.

(e) Identification of Branch Office; Definition of Community. The proposed location for the branch office must be specifically identified so as to exactly locate it within the community to be served. The term "community" as used in Finance Code §62.008 means the geographical area surrounding the proposed location of the branch office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business.

(f) Public Notice. An applicant seeking to establish a branch office must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published both in the county where the proposed branch office is to be located and in the county where the savings association has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed branch office may protest or otherwise request a hearing on the branch office application as provided by Finance Code §62.011. Any person affected by the proposed establishment of a branch office and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (f) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the application on or before 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision on or before 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (g) of this section.

(j) Offices in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this chapter, a savings association may establish branch offices in any state or territory of the United States. Each application for permission to establish such a branch office must comply with the requirements of this section and must include a certified copy of an order from the appropriate banking agency approving the office, or other

evidence satisfactory to the Commissioner that all state or territorial regulatory requirements have been satisfied. The Commissioner will not approve the application unless the Commissioner determines that all requirements of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

§60.132. Mobile Facility.

(a) Approval Required. A savings association may not establish a mobile facility as provided by §60.202 of this title (relating to Types of Additional Offices) without prior written approval of the Commissioner.

(b) Required Information. The application must provide the following information, subscribed to and sworn before a notary:

(1) the proposed location(s) at and times during which the mobile facility will operate;

(2) the need for the mobile facility within the community;

(3) the personnel and office facilities to be provided; and

(4) the estimated expense to operate the mobile facility.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines that all requirements for approval of a branch office (§60.131 of this title, relating to Branch Office) have been met. Additionally, the savings association must show that adequate safeguards exist for the security of the mobile facility.

(d) Public Notice. An applicant seeking to establish a mobile facility must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county or counties where the proposed mobile facility will be operating and in the county where the savings association has its home office.

(e) Request for a Hearing; Deadline to Protest. A person affected by the proposed establishment of a mobile facility may protest or otherwise request a hearing on the mobile facility application, as provided by Finance Code §62.011. Any person affected by the proposed establishment of a mobile facility and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (d) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(f) Hearing. If a hearing is required, the Commissioner will set a hearing on the application on or before 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision on or before 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (e) of this section.

§60.133. Relocate Home or Additional Office.

(a) Approval Required. A savings association may not move its home office or any additional office as provided by §60.202 of this title (relating to Types of Additional Offices) beyond its immediate vicinity without the prior written approval of the Commissioner.

(b) Immediate Vicinity. The term "immediate vicinity" as used in Finance Code §62.011 means the area within a radius of 1 mile from the present location of such office. However, if the office to be relocated has not been open for business at its present location for more than 2 years, approval in accordance with this section is required as if the office were not within the immediate vicinity. If the existing office has been open for more than 2 years, prior written notice must be provided to the Commissioner describing the saving association's plans for the relocation, including the precise location for the new office, the date of the relocation, and information supporting that the new location of the office will be within the immediate vicinity of the present location and does not require the Commissioner's approval.

(c) Relocation of Existing Offices. Notwithstanding subsection (a) of this section, a savings association may retain its existing home office as a branch office and relocate its home office to another established branch office by providing the Commissioner prior written notice. Upon such notification, the establishment of such office is deemed to be an approved branch office of the savings association.

(d) Required Information. Each application for prior approval, or prior written notice, whichever is applicable, must provide the following information, subscribed to and sworn before a notary:

(1) the addresses of the existing and new office location;

(2) a description of the land and building to be built or leased and terms thereof;

(3) estimates of the cost of removal to and maintenance of the new location;

(4) whether any affiliated parties are involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office;

(5) evidence of the board's approval of the relocation; and

(6) any other information deemed necessary by the Commissioner.

(e) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines that all requirements for approval of a branch office (§60.131 of this title, relating to Branch Office) have been met.

(f) Public Notice. An applicant seeking to change the location of the home or an additional office must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the office is presently located, the county where the proposed new location is located, and the county where the savings association has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed change in home or additional office location may protest or otherwise request a hearing on the application, as provided by Finance Code §62.011. Any person affected by the proposed change in home or branch office location and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (f) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the application on or before 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal or decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision on or before 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (g) 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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DIVISION 4. REORGANIZATION, MERGER, CONSOLIDATION, CONVERSION, PURCHASE, AND ASSUMPTION AND ACQUISITION

7 TAC §§60.141 - 60.145

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.141 is also adopted under the authority of, and to implement, Finance Code: Chapter 62, Subchapters B, H, and I; and §66.002(3). 7 TAC §60.142 is also adopted under the authority of, and to implement, Finance Code §62.353. 7 TAC §60.143 is also adopted under the authority of, and to implement, Finance Code: Chapter 62, Subchapter E; and §66.002(3). 7 TAC §60.144 is adopted under the authority of, and to implement, Finance Code: Chapter 62, Subchapter F; and §66.002(a)(3). 7 TAC §60.145 is also adopted under the authority of, and to implement, Finance Code: §62.002; and §66.002(3).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.141. Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Association.

(a) Applicability. This section governs:

(1) A reorganization, merger, or consolidation transaction in which the resulting institution will be a savings association; and

(2) A purchase and assumption transaction by a savings association as purchaser.

(b) Non-Applicability. This section does not govern:

(1) the conversion of a savings association into another type of financial institution charter, or a reorganization, merger, or consolidation transaction that otherwise results in a savings association reorganizing into, or merging or consolidating with, a financial institution that is not a savings association, which is governed by section §60.143 of this title (relating to Reorganization, Merger or Conversion by a Savings Association to Another Financial Institution Charter); or

(2) the conversion by a financial institution that is not a savings association into a savings association, which is governed by section §60.144 of this title (relating to Conversion into a Savings Association).

(c) Plan Required. Any savings association seeking to reorganize, merge, and/or consolidate or to engage in a purchase and assumption transaction in which the resulting institution will be a savings association must do so pursuant to a plan adopted by the board and filed with the Commissioner as a part of an application for approval. Purchase and assumption transactions include purchases of assets, deposit accounts, or other liabilities in bulk not made in the ordinary course of business.

(d) Application Required. The application for approval of the plan must contain: proof that the plan was adopted by the board of each institution involved; documentation showing that the plan has been approved by each institution by a majority of the members or shareholders entitled to vote on the plan; a statement that the corporate continuity of the resulting institution will possess the same incidents as that of a savings association which has converted in accordance with the Texas Savings and Loan Act; and a statement identifying the home office of the resulting institution. A true and correct copy of the plan, as adopted, must be filed as part of the application. All documents and their contents must be subscribed and sworn to before a notary.

(e) Public Notice. An applicant seeking reorganization, merger, consolidation, conversion, purchase and assumption, or acquisition must publish a public notice of the plan and application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in each county in which a financial institution participating in the plan has its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the plan and application for purposes of Finance Code §62.353.

(f) Request for Hearing; Deadline to Protest. Any interested person desiring to protest the plan and application or otherwise request a hearing on the plan and application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (e) of this section, otherwise any right or opportunity to protest or have a hearing on the application under Finance Code §62.353 is deemed waived.

(g) Hearing. If a hearing is required, the Commissioner will set a hearing on the plan and application on or before 60 days after the date the protest or request for hearing and the required fee are received, unless the Commissioner determines that the provisions set forth in §60.142 of this title (relating to Exemption for Supervisory Merger) apply, and the merger is designated as a supervisory merger for purposes of Finance Code §62.353(e). The hearing is governed by the procedural requirements concerning contested cases set forth in Government Code Chapter 2001 and Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(h) Time of Decision. To the extent a hearing on the plan and application is required, the Commissioner will render a decision on or before 30 days after the hearings officer issues his or her proposal

for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the plan and application is not required, the Commissioner will render a decision on or before 30 days after the time period for requesting a hearing on the plan and application lapsed as provided by subsection (f) of this section, unless the Commissioner establishes a longer time period, with written notice to the applicant.

(i) Transactions Involving Financial Institutions in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this section, a savings association may acquire, by merger or purchase of stock, a financial institution incorporated under the laws of another state or territory. Each such application must include a certified copy of an order from the appropriate state regulatory authority approving the merger or acquisition, or other evidence satisfactory to the Commissioner that all state or territorial regulatory requirements have been satisfied. The Commissioner will not approve such an application unless the Commissioner determines that all requirements of this section have been met, and all applicable requirements of the laws of the state or territory in question have been met.

§60.144. Conversion into a Savings Association.

(a) The Commissioner may authorize any financial institution to convert itself into a savings association in a manner consistent with the provisions of applicable law and regulations of the institution.

(b) Plan and Application. In order to obtain such authorization, the converting institution's board must approve and authorize the filing of a conversion plan and application. Upon approval of the conversion plan, the plan must be approved by a majority vote of the members or shareholders of the financial institution entitled to vote at any annual or special meeting called to consider such conversion, a resolution declaring that the savings association will be so converted, which resolution, verified by affidavit of the secretary or an assistant secretary, must be filed with the Commissioner and mailed to the appropriate banking agency on or before 10 days after the date of its adoption. At the meeting to vote on a conversion to a savings association, the members or stockholders must also vote on the directors of the savings association. The proposed directors must execute an application for savings association charter as provided by Finance Code Chapter 62, Subchapter A, and §60.121 of this title (relating to Savings Association Charter).

(c) Review by Commissioner; Approval. The Commissioner, on receipt of the application and verified copy of the minutes, will conduct an examination of the financial institution seeking conversion. Following the examination, the Commissioner will approve the conversion if the Commissioner determines that the converting financial institution is in sound condition and meets all standards, conditions, and requirements of Finance Code Chapter 62, Subchapter A, and §60.121 of this title.

§60.145. Mutual to Stock Conversion.

(a) The application for mutual to stock conversion must include:

(1) a plan of conversion;

(2) amendments to the savings association's certificate of formation and bylaws;

(3) a copy of the proxy and soliciting materials to be used; and

(4) such other information the Commissioner may require.

(b) The plan of conversion must provide:

(1) a comprehensive description of the nontransferable subscription rights received each eligible accountholder, including details on oversubscriptions;

(2) that the shares of the converting savings association be offered to persons with subscription rights and management, in that order, and that any remaining shares will be sold either in a public offering through an underwriter or directly by the converting savings association in a direct community offering;

(3) that a direct community offering by the converting savings association will give a preference to natural persons residing in the counties in which the savings association has an office;

(4) that the sale price of the shares of capital stock to be sold in the conversion will be a uniform price determined in accordance with paragraph (1) of this subsection, and specify the underwriting and/or other marketing arrangements to be made;

(5) that the conversion must be completed on or before 24 months after the date the savings association members approve the plan of conversion;

(6) that each savings accountholder of the converting savings association will receive, without payment, a withdrawable savings account or accounts in the converted savings association equal in withdrawable amount to the withdrawal value of such accountholder's savings account or accounts in the converting savings association;

(7) for an eligibility record date;

(8) that expenses incurred in the conversion are reasonable;

(9) that the converting savings association may not loan funds or otherwise extend credit to any person to purchase the capital stock of the savings association;

(10) that the proxies held with respect to voting rights in the saving association will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion; and

(11) the amount of the deposit of an accountholder will be the total of the deposit balances in the accountholder's savings accounts in the converting savings association as of the close of business on the eligibility record date. The plan of conversion may provide that the total deposit balances of less than $50 (or any lesser amounts) will not be considered for purposes of paragraph (6) of this subsection.

(c) A plan of conversion must be adopted by not less than two-thirds of the board.

(d) Public Notice. An application for mutual to stock conversion is deemed to be a complete application at the time the Department notifies the applicant that application is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in each county in which the savings association has an office, and must prominently post the notice in each of its offices.

(e) Following approval of the application for conversion by the Commissioner, the plan of conversion must be submitted to the members at an annual or special meeting and the plan must be approved, in person or by proxy, by at least a majority of the total outstanding votes of the members.

(f) No offer to sell securities of a savings association pursuant to a plan of conversion may be made prior to Commissioner's approval of the:

(1) application for conversion;

(2) proxy statement; and

(3) offering circular.

(g) Within 45 days:

(1) of the date of the mailing of the subscription form, the subscription rights must be exercised;

(2) after the last day of the subscription period, the sale of all shares of capital stock of the converting savings association to be made under the plan of conversion, including any sale in a public offering or direct community marketing, must be completed.

(h) The converting savings association must pay interest at not less than the savings account interest rate on all amounts paid in cash or by check or money order to the savings association to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the savings association until the conversion is completed or terminated.

(i) For the purpose of this rule, the public offering and a direct community offering is deemed to commence upon the declaration of effectiveness by the Commissioner of the final offering circular.

(j) The Commissioner may grant a written waiver from any requirement of this rule that is not otherwise required by statute.

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

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DIVISION 6. CHANGE OF CONTROL

7 TAC §§60.161 - 60.165

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The adopted rules are also made under the authority of, and to implement, Finance Code: Chapter 62, Subchapter L; and §66.002(3).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.161. Acquisition of a Savings Association.

The following procedures must be followed when a person desires to obtain control of a savings association (including change of control of a savings association holding company).

(1) No person other than the issuer may make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into and consummate any agreement to exchange securities for, seek to acquire, or acquire in the open market or by means of a privately negotiated agreement or contract, any voting security or any security convertible into a voting security of a savings association if, after the consummation thereof, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such savings association, unless such person has filed with the Commissioner all of the following information on an application form approved by the Commissioner and which application form is deemed by the Commissioner to be complete and has received a written order from the Commissioner approving such acquisition or change of control:

(A) the background and identity of the applicant, if such applicant and any affiliate is an individual, or all individuals who are directors, executive officers, or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual. Such filing must contain the following information:

(i) name and address;

(ii) present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on;

(iii) material occupations, positions, offices, or employments previously held by the individual, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on, indicating if any such occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency;

(iv) whether such individual is presently charged with or has ever been convicted of a violation of law in a criminal proceeding (excluding minor traffic violations) and, if so, giving the date, nature of conviction, name and location of the court, and penalty imposed or other disposition of the case;

(v) whether such individual has been or is a party to any federal, state, or municipal court lawsuit in which such individual is or was alleged to have violated any federal or state statutes or regulations, and, if so, giving the date, style of the suit, case number, court location, and disposition of the suit;

(vi) whether any such individual has been or is a party to any federal, state, or municipal governmental agency administrative actions in which such individual was or is alleged to be in violation of any governmental agency statute or regulation, and if so, giving the date, nature of the action, name and location of the governmental agency, and disposition of the case; and any other relevant information requested by the Commissioner;

(B) if the applicant is not an individual, the nature of its business operations for the past five years or for such lesser period as such applicant and any predecessors thereof have been in existence;

(C) description of the interrelationships between the applicant and all affiliates of the applicant;

(D) nature, identity, source, and amount of funds or other consideration used or to be used in effecting the acquisition of control, and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained, there must be a description of the transaction, the names of the parties, and all arrangements, or other understanding with such parties, including all arrangements, agreements, or understandings in regard to repayment of the funds;

(E) any plans or proposals which the applicant may have to declare dividends to liquidate such savings associations, to sell its assets, or to merge it with any person or persons or to make any other material change in its business operations or corporate structure or management, including modifications in or plans to enter into any

management contracts, and any financial or employment guarantees given to present and contemplated management;

(F) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(G) the number of shares of the savings association's voting securities (including securities convertible or evidencing rights to acquire voting securities) which the applicant, its affiliates, affiliated persons, and any other related person plans to acquire, and the terms of the offer, request, invitation, agreement, or acquisition;

(H) a description of any contracts, arrangements, or understandings with respect to any voting security of the savings association in which the applicant, its affiliates, or any related person is involved;

(I) copies of any contracts, agreements, or other documents which the Commissioner determines are relevant to the review of the application; and

(J) any other relevant information requested by the Commissioner.

(2) If the person required to file the information required by paragraph (1) of this section is a partnership, limited partnership, syndicate, trust, or other group, the Commissioner may require that the information must be given to:

(A) each partner of such partnership or limited partnership;

(B) each member of such syndicate or group; and

(C) each person who controls such partner or member.

(3) If the person required to file the information required by paragraph (1) of this section is a corporation, the Commissioner may require that the information called for must be given with respect to such corporation and each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(4) The transaction for acquisition of control of a savings association may not be consummated until the Commissioner approves the application for acquisition of control. The application will be processed and considered in accordance with Finance Code §62.555 and §62.556. The Commissioner will render a decision on or before 60 days after the application is complete and accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). The application will be denied if the Commissioner finds any of the following:

(A) the acquisition would substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings association or savings bank industry in any part of the state, unless the Commissioner also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not a violation of any law of this state or the United States;

(B) the financial condition of any acquiring party might jeopardize the financial stability of the savings association being acquired;

(C) plans or proposals to liquidate or sell the savings association or its assets are not in the best interest of the savings association;

(D) the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would not be in the best interest of the savings association;

(E) the savings association will not be solvent, have adequate capital structure, or be in compliance with the laws of this state after the acquisition;

(F) the acquisition would result in the violation of any law or regulation or it has been evidenced that the applicant, affiliates, or affiliated persons may cause to be abused the fiduciary responsibility held by the savings association or other demonstration or untrustworthiness of the applicant, affiliates, or affiliated persons which would affect the savings association has been evidenced;

(G) the applicant has not provided information pertinent to the application requested by the Commissioner; or

(H) the applicant is not acting in good faith.

§60.162. Notice and Hearing.

(a) Public Notice. An applicant timely requesting a hearing on the Commissioner's decision to deny the application must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings association has its home office.

(b) Hearing. If a hearing is required, the Commissioner will set a hearing on the denial on or before 60 days after the date the request for a hearing on the denial is received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(c) Time of Decision. To the extent a hearing on the Commissioner's decision to deny the application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. Only then will the hearing be deemed to be closed for purposes of Finance Code §62.556.

§60.165. Exempt Transactions.

The following transactions are exempt from the application requirements of this division:

(1) control of an insured institution acquired solely as a result of foreclosure on the stock of a savings association which secures a loan contracted for in good faith, where such loan was made in the ordinary course of business of the lender, provided that the acquisition of control pursuant to such foreclosure is reported to the Commissioner on or before 30 days after the date of acquisition and provided further that the acquiror may not retain such control for more than one year after the date on which such control was acquired. The Commissioner may, upon application by the acquiror, extend such one-year period from year to year for an additional period of time, not to exceed three years, if the Commissioner finds such extension is warranted and would not be detrimental to the public interest. Nothing in this subsection prevents such acquiror from filing an application pursuant to this chapter for permanent approval of the acquisition of control;

(2) control of an insured institution acquired through a percentage increase in stock ownership following a pro-rata stock dividend or stock split, if the proportional interest of the recipients remains substantially the same; and

(3) acquisition of additional stock of a savings association by any person who has held power to vote 25% or more of any class

of voting stock in such savings association continuously for the three-year period preceding such acquisition, or has maintained control of the savings association continuously since acquiring control in compliance with the provisions of law or regulation then in effect provided that such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its application.

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

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DIVISION 7. CAPITAL NOTES AND DEBENTURES

7 TAC §60.171

Statutory Authority

The rule is adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rule is also adopted under the authority of, and to implement, Finance Code §63.004(d).

The adopted rule affects the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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DIVISION 8. HOLDING COMPANY APPLICATIONS

7 TAC §60.181

Statutory Authority

The rule is adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rule is also adopted under the authority of, and to implement, Finance Code: §66.002(3); §66.051(a); §66.053(2); §66.103(a); and §66.104(a).

The adopted rule affects the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.181. Registration.

A holding company must apply and register with the Commissioner on or before 90 days after the date the company becomes a holding company. The application must include information on the financial condition, ownership, operations, management, and intercompany relations of the holding company and its subsidiaries, and on related matters the Commissioner finds necessary and appropriate. On written request, the Commissioner may, in his or her sole discretion, extend the time within which a holding company is required to register and file the required information.

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DIVISION 9. SUBSIDIARY APPLICATIONS

7 TAC §60.191

Statutory Authority

The rule is adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rule is also adopted under the authority of, and to implement, Finance Code: §64.001; §64.002(18) and (19); and §66.002(3).

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SUBCHAPTER C. OPERATIONS

DIVISION 1. OFFICE LOCATIONS

7 TAC §§60.201 - 60.204

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rules are also adopted under the authority of, and to implement, Finance Code §62.011.

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.201. Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office.

(a) Approval Required. No savings association may establish, maintain, or relocate its home office, or an additional office as provided by §60.202 of this title (relating to Types of Additional Offices), without the prior written approval of the Commissioner, except as otherwise provided by §60.133 of this title (relating to Relocate Home or Additional Office).

(b) Ancillary Facilities. An authorized or approved office of a savings association is the place where the business of the savings association is conducted, and with the prior written consent of the Commissioner, may include facilities ancillary thereto for the extension of the savings association's services to the public. Any authorized or approved office of a savings association also means, with the prior written consent of the Commissioner, separate quarters or facilities to be used by the savings association for the purpose of performing service functions in the efficient conduct of its business.

(c) Notice of Home Office. All offices of a savings association which are located outside the county of its home office must display a sign which is suitable to advise the public of the type of additional office which is located therein and the location of the home office of such savings association.

(d) Closing an Office. Before closing an approved branch or other office, other than a temporary closure as provided by §60.203 of this title (relating to Temporary Closing of Additional Offices), or an emergency closure as provided by Finance Code §63.009, a savings association must comply with the notice requirements of federal law, and provide the Commissioner with a copy of the closing notice filed with the appropriate federal banking agency, if applicable, upon filing such notice. A savings association must provide the Commissioner with confirmation on or before 10 days after the actual closing date. Once closed, prior written approval from the Commissioner to operate a branch or other office is deemed revoked, and a savings association may not reopen the branch or other office without seeking new approval from the Commissioner.

(e) Activities Not Requiring an Approved Office. The following activities of a savings association, or any combination thereof, may be performed at a location other than the home or a branch office and such location does not constitute an "additional office" requiring notice to or the prior approval of the Commissioner for purposes of Finance Code §62.011:

(1) Automated or remote activities. A savings association may engage in limited banking activities through infrastructure and equipment by automated or remote means, including use of an automated teller machine (ATM), automated loan machine, automated device for receiving deposits (remote deposit capture), or other remote service unit.

(2) Loan production activities. A savings association may engage in loan production activities including taking loan applications, making a credit decision, accepting payments on loans, or managing or selling real estate owned by the institution in connection with such loans, unless such activity conflicts with applicable state or federal law.

(3) Administrative activities (administrative offices). A savings association may establish or maintain administrative offices to perform the internal operations of the institution, provided the savings association does not conduct banking activities.

(4) Advertising and marketing. A savings association may advertise and market itself to the public including soliciting deposits, providing information about the financial products of the savings association, and assisting persons in completing application forms to open a deposit account, provided the savings association does not conduct banking activities.

(5) Trade association participation; community events and engagement. A savings association may participate in trade association events promoting the banking or financial services industry broadly. A savings association may also host, attend, or otherwise participate in community events, provided the savings association does not conduct banking activities at such event.

(6) Information technology (IT) infrastructure. A savings association may operate information technology infrastructure or equipment including the placement of IT infrastructure in a data center, the hosting or processing of a website or data by a third-party IT service provider, or such other physical presence tied to the IT infrastructure of the savings association.

(7) Ancillary customer service activities. A savings association may engage in customer service activities ancillary to its banking functions including relating to accessing or using its website or a software application.

§60.203. Temporary Closing of Additional Offices.

In the event a savings association closes any additional office of any type on a temporary basis, such office must be reopened on before 12 months after the date of such closing, unless otherwise extended by written authorization of the Commissioner. In the event such office is not reopened within the allotted 12-month period, or the longer period established by the Commissioner, if applicable, the Commissioner's approval to establish such office for purposes of §60.201 of this title (relating to Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office) is deemed revoked. Written notice of any temporary closing must be provided to the Commissioner on or before 10 days after the date of such closing, and the office may not reopen until the Commissioner receives written notification on or before 10 days prior to such reopening.

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

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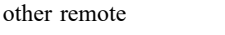

DIVISION 2. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS, AND RESERVES

7 TAC §§60.221 - 60.227

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.221 is also adopted under the authority of, and to implement, Finance Code: §66.002(4) and (6); and §66.053. 7 TAC §60.222 is also adopted under the authority of, and to implement, Finance Code §66.002(5). 7 TAC §60.223 is also adopted under the authority of, and to implement, Finance Code: §66.002(8); and §66.051. 7 TAC §60.225 is also adopted under the authority of, and to implement, Finance Code §66.002(10). 7 TAC §60.226 is also adopted under the authority of, and to implement, Finance Code §66.051. 7 TAC §60.227 is also adopted under the authority of, and to implement, Finance Code: §62.051(b)(2); §62.007(b)(3); §62.010; §62.106; and §62.151(a).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.223. Financial Statements; Annual Reports; Audits.

For safety and soundness purposes, on or before 90 days after the date its fiscal year ends, each savings association is required to submit to the Department the results and findings of an independent audit of its financial statements and all correspondence reasonably related to the audit. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of the FDIC set forth in 12 C.F.R. §363.2 and §363.3, with the exception of any matters specifically addressed by this section, the Texas Savings and Loan Act, or the rules (regulations) adopted thereunder.

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DIVISION 3. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§60.231 - 60.234

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.231 and §60.232 are also adopted under the authority of, and to implement, Finance Code: §62.002(b); §62.003(b); §62.052(c); §62.152; and §66.002(1) and (2). 7 TAC §60.233 is also adopted under the authority of, and to implement, Finance Code Chapter 66, Subchapter C. 7 TAC §60.234 is also adopted under the authority of, and to implement, Finance Code §63.004(d).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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DIVISION 4. HOLDING COMPANIES

7 TAC §§60.241 - 60.245

Statutory Authority

The rules are adopted under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations. The rules are also adopted under the authority of, and to implement, Finance Code: §66.051(a); §66.053(2); §66.103(a); and §66.104(a).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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DIVISION 5. ASSESSMENTS AND FEES

7 TAC §60.251, §60.252

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations; §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department; and §61.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to the supervision and examination of savings associations. 7 TAC §60.252 is also adopted under the authority of, and to implement, Finance Code §66.052(a).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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

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DIVISION 6. COMPLAINT PROCEDURES

7 TAC §60.261

Statutory Authority

The rule is adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rule is also adopted under the authority of, and to implement, Finance Code: §13.011(a); and Chapter 66, Subchapter C.

The adopted rule affects the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 D. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS
DIVISION 1. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §§60.301 - 60.309

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rules are also adopted under the authority of, and to implement, Finance Code: §64.001; and §64.002. 7 TAC §60.303 is also adopted under the authority of, and to implement, Finance Code Chapter 64, Subchapter E.

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.305. Loan Policies and Documentation.

(a) Policies. Each savings association must establish written policies approved by its board establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the savings association's capital. Credit underwriting standards should consider the nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's character and willingness to repay as agreed; establish a system of independent, ongoing credit review and appropriate communication to senior management and the board; take adequate account of concentration of credit risk; and are appropriate to the size of the savings association and the scope of its lending activities.

(b) Loan Documentation Standards. Loan documentation standards must be established and maintained to enable the savings association to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness intent of this section which the savings association may substitute and still address the safety and soundness concern:

(1) an application for the loan, signed and dated by the borrower or their agent (and if the borrower is a corporation, a board resolution authorizing the loan), which discloses the purpose for which the loan is sought, the identity of the security property, and the source of funds which will be used to repay the loan;

(2) a statement signed by the borrower or their agent, or a copy of the executed contract, disclosing the actual price at which the security is being purchased by the borrower, if the loan is made for the purpose of financing the purchase of the security for the loan;

(3) current financial statements signed by the borrower and all guarantors and/or current documented credit reports disclosing the financial ability of the borrower and guarantors (a current financial statement is as of a date on or before 180 days prior to the date the application is filed) together with written certification by the borrower and guarantors that no material adverse changes in financial condition have occurred since the financial statement was prepared;

(4) a loan approval sheet (which may be part of the loan application form) indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, and any conditions of approval;

(5) a loan disbursement statement or other documentation, indicating the date, amount, and ultimate recipient of every disbursement of the proceeds of such loan (this requirement is not met by showing one or more disbursements to a title company or other escrow agent, but for a construction loan, this requirement may be met by documenting bona fide construction draw disbursements to the general contractor of the project, upon their completion of an affidavit stating that all bills for labor and materials have been paid as of the date of the disbursement);

(6) a loan settlement statement, indicating in detail the expenses, fees, and charges the borrower or borrowers have paid in connection with such loan;

(7) the promissory note or notes containing the borrower's obligation to repay duly executed by the borrower and all guaranty agreements duly executed by the guarantors (a copy of the note or notes may be kept in the loan file, if the original notes are stored for safekeeping in another location at the savings association);

(8) the original mortgage, deed of trust, or other instrument creating or constituting the lien securing the loan;

(9) for real estate loans, an attorney's opinion letter based on an abstract of title, or a policy of title insurance, or binder of same, issued by a title company authorized to insure titles in the state in which the security for the loan is located, showing that the lien securing such loan meets the applicable requirements of this chapter for liens securing the loan in question;

(10) evidence that the insurable improvements of the real estate are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state in which the real estate security is located and naming the savings association as a co-insured, as its interest may appear;

(11) for real estate loans, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq.;

(12) for personal property loans, a detailed explanation of how the savings association arrived at the appraised or market value of the security property;

(13) any loan agreement or other ancillary documents relating to the loan; and

(14) any documents required by the Texas Credit Title (Finance Code §301.001 et seq.).

(c) Unsecured Loans. Documentation guidelines for unsecured loans under this chapter would generally include the documents in subsection (b)(1) and (3) - (7) of this section.

(d) Loan documentation which meets the documentation requirements of the applicable agency meets the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof.

(e) Closing Agent. A savings association may designate as escrow agent an attorney or a title company, either of which must be duly licensed in the state where the transaction is closed. However, where an escrow agent is used, all original documents must be forwarded to the savings association on or before 5 business days after the date of closing, or immediately after recording, for those documents which require filing of record.

(f) Permanent Loan File Requirements.

(1) Loan documentation must be in the possession of the savings association or an escrow agent designated by the savings association before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records must be placed in one permanent loan file immediately upon receipt by the savings association.

(2) The permanent loan file required by this section must be located at an office of the savings association. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the savings association's discretion. Files for loans which are fully secured by accounts at the association may be maintained at the office where the loan was originated.

(3) The permanent loan file must contain evidence that the savings association obtained the prompt recording in the proper records of every mortgage, deed of trust, or other instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the savings association's interest therein. This requirement does not apply to loan participations purchased by the savings association.

(4) Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw must be part of the permanent file.

(5) When a savings association purchases whole loans or participations in loans, it must cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement must be a part of the permanent file. The savings association must obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this section.

(g) The records of the savings association must reflect that the board has by appropriate resolution established procedures for the approval of all loans, loan commitments or letters of credit made by the savings association and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the savings association. Loans originating in branch offices, loan offices, or agencies must be approved in the same manner as loans originating in the principal office.

(h) A savings association must maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all material terms of the commitment, with a description of any written documents evidencing the loan commitment.

§60.308. Investment in Securities.

(a) A savings association is deemed to have power to invest in obligations of, or guaranteed as to principal and interest by, the United States or this state; in stock of a federal home loan bank of which it is eligible to be a member, and in any obligations or consolidated obligations of any federal home loan bank or banks; in stock or obligations of the FDIC; in stock or obligations of a national mortgage association created by federal law or any successor or successors thereto; in demand, time, or savings deposits with any bank or trust company the deposits of which are insured by the FDIC; in stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that such corporation or agency assists in furthering or facilitating the savings association's purposes or power; in demand, time, or savings deposits of any financial institution the deposits of which are insured by the FDIC; in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state; and in such other securities or obligations approved by the Commissioner.

(b) A savings association investing in securities under this section must ensure that the securities are delivered to the savings association, or for the savings association's account to a custodial agent or trustee designated by the savings association, on or before 3 business days after the date the savings association pays for or becomes obligated to pay for the securities. The savings association may employ as custodial agent or trustee a federal home loan bank, a federal reserve bank, a bank the accounts of which are insured by the FDIC, any financial institution legally exercising trust powers and the accounts of which are insured by the Federal Deposit Insurance Corporation, or such other trust company approved in advance by the Commissioner. When employing any of the foregoing entities as trustee or custodial agent to accept delivery of the securities, the savings association must ensure that it receives a custodial or trust receipt for the securities on or before 3 business days after the date the securities are delivered.

(c) No savings association or subsidiary thereof may invest, either directly or indirectly, in the stocks, bonds, notes, or other secu-

rities of any affiliated person without the prior written approval of the Commissioner.

(d) No savings association or subsidiary thereof may, either directly or indirectly, purchase securities from any affiliated person of such savings association.

(e) Investments in equity securities.

(1) A savings association or any service corporation, operating subsidiary, or finance subsidiary of a savings association may not invest in stock or equity securities unless the securities qualify as investment grade securities. Additionally, no savings association may invest in stock or equity securities unless the securities are eligible investments for federal associations.

(2) The limitations of paragraph (1) of this subsection do not apply to equity securities:

(A) issued by any United States government-sponsored corporation including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association; or

(B) issued by a service corporation, an operating subsidiary, or a finance subsidiary of the savings association.

(f) A savings association may be a member of the Federal Home Loan Bank System and/or Federal Reserve System and is specifically authorized to invest in such Federal Home Loan Bank and Federal Reserve Bank stock.

§60.309. Investment in Banking Premises and Other Real Estate Owned.

(a) A savings association may not, without prior written consent of the Commissioner, invest an amount in excess of its capital in fixed assets, including land, improvements, furniture and fixtures, and other depreciable assets, and capital leases.

(b) A savings association may not acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings association, or for the use of the savings association in future expansion of its banking facilities.

(c) Real estate acquired for the future expansion of a savings association's facilities not improved and occupied as banking facilities on or before 5 years after the date of its acquisition must be sold or otherwise disposed of. Existing bank facilities must be sold or otherwise disposed of on or before 5 years after the date the real estate ceases to be used for banking purposes. The Commissioner may, for good cause shown, grant an extension of time for the sale or disposition of the real estate, as described in this subsection.

(d) Real estate acquired in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings association may be held by a savings association for no more than 5 years, unless the Commissioner extends in writing the holding period for such property.

(e) Subject to subsection (f) of this section, when real estate is acquired in accordance with subsection (d) of this section, a savings association must substantiate the market value of the real estate by obtaining an appraisal on or before 90 days after the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is $500,000 or less. The Commissioner may, for good cause shown, grant an extension of time for obtaining an appraisal or evaluation (as appropriate), as described in this subsection.

(f) An additional appraisal or evaluation is not required when a savings association acquires real estate in accordance with subsection (d) of this section, if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the real estate and the appraisal or evaluation is less than 1 year old.

(g) An evaluation must be made on all real estate acquired in accordance with subsection (d) of this section at least once a year. An appraisal must be made at least once every 3 years on real estate with a recorded book value in excess of $500,000.

(h) Notwithstanding any other provision of this section, the Commissioner may require an appraisal of real estate if the Commissioner considers an appraisal necessary to address safety and soundness concerns.

(i) An appraisal or evaluation made in accordance with this section must be performed in accordance with the standards described by the FDIC in 12 C.F.R., Part 323, Subpart A or the Federal Reserve System in 12 C.F.R., Part 225, Subpart G, as applicable.

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DIVISION 2. SUBSIDIARIES

7 TAC §§60.321, 60.323 - 60.326

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rules are also adopted under the authority of, and to implement, Finance Code §64.002(18) - (20).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.324. Subsidiary Operations.

(a) The savings association must obtain prior written approval of the Commissioner for the establishment and location of the home office, and any branch office, agency office, or any other office or facility of the subsidiary, and for any change of name of the subsidiary.

(b) A verified copy of all contracts, instruments, joint ventures, and partnership agreements and financing arrangements of the subsidiary investments must be furnished to the savings association on or before 30 days after the date of execution.

(c) The subsidiary must furnish, at the expense of the subsidiary or parent savings association or its holding company, an independent appraiser's report or other expert opinion as determined to be necessary by the Commissioner for the purpose of establishing the value of any investments made by the subsidiary.

(d) Each subsidiary must maintain fidelity bond coverage with an acceptable bonding company in an amount that adequately protects the subsidiary from such loss. Coverage as an additional insured entity

under a fidelity bond of the parent savings association or its holding company may satisfy this requirement.

(e) All directors of the savings association and subsidiary must furnish affidavits fully disclosing any direct or indirect interest they may have in each investment made by the corporation.

(f) Each subsidiary must maintain books and records as may be prescribed by the Commissioner. The records must be created and maintained in accordance with the requirements of §60.221 of this title (relating to Books and Records), pertaining to savings associations.

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DIVISION 3. SAVINGS AND DEPOSITS

7 TAC §60.331

The rule is adopted under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations; and §59.310, requiring the commission to adopt rules to implement Finance Code Chapter 59, Subchapter D. The rule is also adopted under the authority of, and to implement Finance Code Chapter 59, Subchapter D.

The adopted rule affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 61. HEARINGS

7 TAC §§61.1 - 61.3

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 61, as follows: §§61.1 - 61.3. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2298). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 61.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 63. FEES AND CHARGES

7 TAC §§63.1 - 63.9, 63.11 - 63.13, 63.15

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 63, as follows: §§63.1 - 63.9, 63.11 - 63.13, and 63.15. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2299). The rules are

adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 63.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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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Iain A. Berry
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Department of Savings and Mortgage Lending
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CHAPTER 64. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS, RESERVES, NET WORTH, EXAMINATIONS, COMPLAINTS

7 TAC §§64.1 - 64.10

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 64, as follows: §§64.1 - 64.10. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2300). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 64.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 65. LOANS AND INVESTMENTS

7 TAC §§65.1 - 65.21, 65.23, 65.24

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 65, as follows: §§65.1 - 65.21, 65.23, and 65.24. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2302). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60.

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 65.

Changes Concerning Loan Requirements

The department's preexisting rules in Chapter 65, §§65.4 - 65.10, 65.13 - 65.15, 65.20, and 65.23 establish various requirements for loans made by a savings association. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such rules is not included in the department's related adoption concerning new rules in 7 TAC Chapter 60, published elsewhere in this issue of the *Texas Register.*

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 67. SAVINGS AND DEPOSIT ACCOUNTS

7 TAC §§67.1 - 67.3, 67.6 -67.13, 67.15, 67.17

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 67, as follows: §§67.1 - 67.3, 67.6 - 67.13, 67.15, and 67.17. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2303). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 67.

Changes Concerning Savings and Deposit Accounts

The department's preexisting rules in Chapter 67, §§67.1 - 67.3, 67.6 - 67.13, and 67.15 establish various requirements concerning savings and deposit accounts of a savings association. The department has determined the rules are not necessary and should be repealed. As a result, the subject matter of such preexisting rules is not included in the department's related adoption concerning new rules in 7 TAC Chapter 60, published elsewhere in this issue of the *Texas Register.*

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hear-

ing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 69. REORGANIZATION, MERGER, CONSOLIDATION, ACQUISITION, AND CONVERSION

7 TAC §§69.1 - 69.11

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 69, as follows: §§69.1 - 69.11. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2305). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 69.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 71. CHANGE OF CONTROL

7 TAC §§71.1 - 71.8

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 71, as follows: §§71.1 - 71.8. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2306). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the de-

partment's rules. The adopted rules repeal all preexisting rules in Chapter 71.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 73. SUBSIDIARY CORPORATIONS

7 TAC §§73.1 - 73.6

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 73, as follows: §§73.1 - 73.6. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2307). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 73.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 26. EMPLOYER-RELATED HEALTH BENEFIT PLAN REGULATIONS

The commissioner of insurance adopts amendments to 28 TAC §26.5 and §26.301, concerning employer-related health benefit plan regulations. The amendments clarify that the requirements and mandates of Senate Bill 1264, 86th Legislature, 2019, including Insurance Code Chapter 1467, apply to certificates of insurance (COIs) issued to certain Texas residents. The amendments are adopted without changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8479). The rules will not be republished. A notice of hearing was published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 435), and the hearing was held on February 10, 2023.

REASONED JUSTIFICATION.

The amendments to §26.5(g) and §26.301(j) clarify that SB 1264, including Insurance Code Chapter 1467, applies to carriers that:

- are licensed and doing business in Texas,

- issue group accident or health plans to an out-of-state employer, and

- deliver COIs to Texas-resident employees of the out-of-state employer.

The express listing of SB 1264 in §26.5(g) and §26.301(j) does not limit the applicability of other laws and mandates to carriers licensed in this state that issue COIs covering Texas residents.

The Texas Department of Insurance (TDI) has historically applied Texas insurance laws and mandates to COIs issued to Texas-resident employees under a group accident or health plan that is issued to the employee's out-of-state employer by an insurer licensed and doing business in Texas. *See* the adoption order for §26.5 and §26.301 at 42 TexReg 2545 (stating in response to a comment that the language adopted in §26.5(g) and §26.301(j) "is not a change and reflects how TDI has consistently applied the statutory and regulatory requirements"). TDI has, however, received questions from stakeholders about whether the requirements of SB 1264 apply to these COIs.

SB 1264 amended the Insurance Code to establish consumer protections against balance billing by certain out-of-network providers. The bill (1) prohibits those providers from billing health benefit plan enrollees for certain covered health care services or supplies in an amount greater than an applicable copayment, coinsurance, or deductible under the plan; (2) provides for the right of those providers to receive payment for those services or supplies at the usual and customary rate or at an agreed rate; and (3) establishes requirements for the inclusion of a balance billing prohibition notice in an explanation of benefits. *See, e.g.*, Insurance Code §§1271.008, 1271.157, 1301.010, and 1301.164. The bill also establishes procedures for out-of-network claim dispute resolution through arbitration or mediation, depending on the type of provider at issue. *See id.*; Insurance Code Chapter 1467.

The amendments also implement Insurance Code Article 21.42, which provides, "Any contract of insurance payable to any citizen or inhabitant of this State by any insurance company or corporation doing business within this State shall be held to be a contract made and entered into under and by virtue of the laws of this State relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the contract was executed and the premiums and policy (in case it becomes a demand) should be payable without this State, or at the home office of the company or corporation issuing the same." *See Howell v. Am. Live Stock Ins. Co.*, 483 F.2d 1354, 1360 n.4 (5th Cir. 1973) (stating in the context of group policies, "the fact that the insurer does any business in Texas is sufficient to require that Texas law apply to any contract between it and a Texas resident, regardless of the intention or expectation of the parties"); *General Am. Life Ins. Co. v. Rodriguez*, 641 S.W.2d 264, 266-67 (Tex. App.--Houston {14th Dist.} 1982, no writ) (holding Insurance Code Article 21.42 applies where group life policy issued to out-of-state employer covered employee residing in Texas).

In addition, an amendment to §26.5 revises a reference to a code chapter for consistency with agency style.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received written comments from four commenters. One of the commenters also spoke at a public hearing on the proposal held on February 10, 2023. Commenters in support of the proposal were Texas Medical Association and Texas Society of Anesthesiologists. Commenters against the proposal were Texas Association of Health Plans and Texas Association of Life and Health Insurers.

General comments.

Comment. Two commenters state that they support the proposed rules, and that the proposed rule amendments provide needed guidance and clarification. They state that the amendments clarify that employer-sponsored fully insured health plans providing benefits to Texas residents are subject to the Insurance Code's and TDI's independent dispute resolution (IDR) processes, even if the employer is not based in Texas.

Agency Response. TDI appreciates the support.

Comments on statutory authority and rulemaking

Comment. Two commenters state that TDI is impermissibly applying Insurance Code Article 21.42 to "give it extraterritorial effect."

One commenter contends that the *Wann* rule should not be applied broadly to cover out-of-state plans and that TDI should wait until courts clarify its applicability. *See Metropolitan Life Ins. Co. v. Wann*, 109 S.W.2d 470 (Tex. 1937). The commenter urges that in the meantime, when a policy covers risks in several jurisdictions, the places of contracting, negotiation, domicile, and business should determine which law applies, and neither the location of the insured risk nor location of the payment should be of any consequence.

The other commenter maintains that TDI is erroneously interpreting *Howell* and should not rely on the *Howell* court's dictum in footnote 4 regarding the *Wann* rule. *Howell*, 483 F.2d at 1360 n.4 ("The difficulty *Wann*, *Zorn*, and *Schroder* present is that they seem to assume a theory of article 21.42 that is basically contradictory to the theory implicit in the *Austin Building Co.* case, which we regard as controlling. *Austin Building Co.* interprets article 21.42 to mean that Texas law applies only when the insurance company has made the contract in question within the same course of 'business done in Texas' which satisfies the statutory condition of its 'doing business in Texas.' *Wann* and its progeny, on the other hand, permit a kind of 'bootstrapping,' whereby the fact that the insurer does *any* business in Texas is sufficient to require that Texas law apply to any contract between it and a Texas resident, regardless of the intention or expectation of the parties."). The commenter states that TDI's explanation does not comply with the reasoning used in the case, and the commenter also states that the proposed rule does not allow for the inquiry and determination of whether a particular group contract was negotiated, issued, or delivered as part of the insurer's business in Texas. The commenter states that such an inquiry is necessary before Insurance Code Article 21.42 can be applied. The commenter also states that the cases cited in the proposal should not be given more weight than the holdings in *Austin Building Co.*, 432 S.W.2d 697 (Tex. 1968) or *Great Am. Ins. Co. v. North Austin Utility*, 908 S.W.2d 415 (Tex. 1995).

Agency Response. TDI declines to make a change. The issue of extraterritorial effect focuses on whether the interpretation of Insurance Code Article 21.42 results in regulation of business outside of Texas. TDI's proposal does not result in extraterritorial effect because the proposed rules apply SB 1264 to an insurer that is licensed in Texas, doing business in Texas, and providing insurance services and payments to Texas residents. Under the commenters' interpretation, TDI would be unable to regulate insurance services provided to Texas residents and thus unable to fulfill its mission to protect and ensure the fair treatment of consumers of insurance services in Texas.

As the *Howell* court recognized, the *Wann* rule applies to group insurance policies and has been the law in Texas since 1937, and TDI declines to discount the rule. *Howell*, 483 F.2d at 1360

n.4 (interpreting *Wann*, 109 S.W.2d at 472 and its progeny, "This 'bootstrapping' logic is, of course, consistent with the literal language of the statute. This tension between *Wann* and *Austin Building Co.* does not appear ever to have been confronted by the Texas courts. The Texas Supreme Court decided *Austin Building Co.* in 1968, after the *Wann* rule had existed for over thirty years, without mentioning *Wann*. The *Wann* rule represents an exceptional rule designed only for the special case of group insurance contracts. The efforts of the Texas courts to apply article 21.42 to group insurance contracts have a very peculiar history, and the *Wann* rule can be understood only in light of that history. {...} *Wann* and *Austin Building Co.* continue to coexist, however uneasily, and *Austin Building Co.* governs cases outside the context of group insurance policies."). As Texas courts have held, the *Wann* rule can apply to group policies contracted by entities outside of Texas. *See Int'l Bhd. of Boilermakers, Iron Shipbuilders & Helpers of Am. v. Huval*, 166 S.W.2d 107 (Tex. 1942)..."("Very clearly, the contract {for disability and death benefits} entered into by the Insurance Company {with the association} was a contract of insurance payable to the {members of the association}.").

TDI also declines to disregard the *Howell* court's comments about the *Wann* rule; Texas courts have acknowledged that a higher court's dicta can be binding authority. *See, e.g., Kuykendall v. State*, 335 S.W.3d 429, 433 (Tex. App.--Beaumont 2011, pet. ref'd) ("A higher court's statements of law that are not pivotal to that Court's decision may still be considered binding on lower courts."). As the commenter acknowledges, the *Howell* reasoning was specific to the circumstances of the case and did not involve group policies.

Facts that arise from situations like *Austin Building Co.* are distinguishable because they involve covered losses occurring outside of Texas. Further, the *Austin Building Co.* court did not overturn the *Wann* rule, nor did it limit the rule's applicability to group insurance policies. The 5th Circuit's analysis has not been called into question in any subsequent case, and TDI is not aware of any subsequent case that took a different approach to group plans.

Comment. A commenter states that the proposed rule completely disregards agreements made between the issuer and the employer, that Insurance Code Article 21.42 is most properly understood as a choice of law provision, and that Texas courts such as the *Reddy Ice* court have acknowledged that an express choice of law provision in an insurance contract is controlling and only in the absence of such a provision should the court look to statute. *See Reddy Ice Corp. v. Travelers Lloyds Ins. Co.*, 145 S.W.3d 337 (Tex. App.--Houston {14th} 2004, pet. denied).

The commenter cites Texas courts' reliance on the Restatement (Second) of Conflict of Laws §187 and contends that the parties' agreement should control unless the selected state has no substantial relationship or applying the selected state's law would be contrary to the interest of another state with greater interest. The commenter further contends that TDI is attempting to longarm its way into contracts when the parties have chosen the laws of another state to control and that TDI does not have the authority to circumvent non-Texas laws.

Agency Response. TDI declines to withdraw or amend the rule. Insurance Code Article 21.42 mandates the application of Texas law to certain out-of-state insurance contracts. *See* Restatement (Second) of Conflict of Laws §6 ("A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.").

Assuming that Insurance Code Article 21.42 is applicable, the inquiry is whether it would control over a contractual choice-of-law provision to the contrary. Contrary to the commenter's contention, the answer to that question is not clear-cut, and there appears to be a divergence of opinions on the issue. As the commenter notes, at least one court has indicated that when a contract contains a choice-of-law provision, that provision controls over Insurance Code Article 21.42. *Reddy*, 145 S.W.3d at 340 ("In Texas, when . . . a contract does not contain an express choice-of-law provision, a court must determine whether a relevant statute directs the court to apply the laws of a particular state."). However, in multiple other instances, courts have held that if Insurance Code Article 21.42 is applicable, Texas law will govern despite a contractual choice of law provision to the contrary. *See Prashant P. v. Liberty Life Assurance Co. of Boston*, 2017 WL 10109450 (S.D. Tex. 2017); *Preferred Contractors Ins. Co. Risk Retention Grp., LLC v. Oyoque Masonry, Inc.*, 2013 WL 3899332 (S.D. Tex. 2013); *In re ATP Oil & Gas Corp.*, 531 B.R. 694, 701 (Bankr. S.D. Tex. 2015).

Furthermore, as the commenter notes, a contractual choice-of-law provision may be set aside if "application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which . . . would be the state of the applicable law in the absence" of the contractual provision. *See* Restatement (Second) of Conflict of Laws §187(2)(b).

The rule applies to policies where the ultimate beneficiaries--the employees--reside. Texas has a material interest in seeing that Texas residents are protected by its laws even if they happen to work for employers that are based outside the state. *See, e.g.,* Tex. Ins. Code §31.002(2) (TDI shall "protect and ensure the fair treatment of consumers."). Texas's strong consumer protection policy is codified in TDI's statutory mandate to protect consumers and supports TDI's position that contractual choice-of-law provisions in insurance contracts can be set aside, and Texas law should apply to the COIs issued to Texas consumers.

Comment. Two commenters state that the rule circumvents the specific applicability language of Insurance Code Chapter 1467, specifically Insurance Code §1467.002. The commenters state that since Insurance Code Chapter 1467 applies to plans operating under Insurance Code Chapter 843 or offered under Insurance Code Chapter 1301, and Insurance Code Chapters 843 and 1301 apply only to insurers authorized to offer coverage issued in Texas, then the proposed amendments to Insurance Code Chapter 1467 should not apply to out-of-state plans. One commenter cites Government Code §311.026, which requires that if a general provision conflicts with a special provision, the special provision prevails over the general.

Agency Response. TDI declines to make a change. TDI disagrees that the provisions of Insurance Code Chapter 1467 conflict with Insurance Code Article 21.42 or that Insurance Code Chapter 1467 cannot apply to out-of-state plans.

There is no express blanket exemption of out-of-state plans in Insurance Code Chapters 843, 1301, and 1467. Section 843.003 allows certain entities to organize and operate a health maintenance organization (HMO) and Insurance Code §843.101 provides that an HMO may provide or arrange for care. Under Insurance Code §1301.001, Insurance Code Chapter 1301 applies to insurers that issue, deliver, or issue for delivery policies in Texas. Neither chapter expressly exempts out-of-state plans.

Insurance Code §1467.002(2) applies IDR requirements, in part, to preferred provider benefit (PPO) plans "offered by an insurer under Chapter 1301." Insurance Code §1301.001(9) defines a PPO plan by referencing a "health insurance policy," which in turn is defined in Insurance Code §1301.001(2) to include a group "policy, certificate, or contract." And an "insurer" under Insurance Code Chapter 1301 means an insurance company "operating under Chapter 841, 842, 884, 885, *982*, or 1501, that is authorized to issue, deliver, or issue for delivery in this state health insurance policies" (emphasis added). That includes foreign insurers licensed in Texas.

Also, it is not TDI's position that all out-of-state HMOs or PPOs must comply with the rule. Rather, in accordance with Insurance Code Article 21.42, the rule applies if the insurance company is licensed in Texas, does business in Texas, and delivers COIs to Texas residents. The applicability language of Insurance Code Chapters 843 and 1301 does not conflict with this approach, and, therefore, conflict-of-law canons are not pertinent.

The Legislature in other instances has exempted COIs issued under out-of-state group plans from Texas mandates; that is not the case here. *See* Insurance Code §1651.002(a) (chapter governing long-term care benefit plans does not apply to "a certificate that is delivered or issued for delivery in this state under a single employer or labor union group policy that is delivered or issued for delivery outside this state.").

Comment. One commenter states that SB 1264 does not specifically allow rulemaking to apply to out-of-state policies and that none of the statutes cited in TDI's proposal (Insurance Code Article 21.42 and Insurance Code §§843.151, 1301.007, 1467.003, 1501.010, and 36.001) provide rulemaking authority to adopt the proposed rules or refer to certificates for policies issued and delivered outside of Texas. The commenter states that this lack of specific legislative authority raises serious questions about the validity of the proposed changes.

Agency Response. TDI declines to make a change. TDI acknowledges that the statutory authority cited, other than Insurance Code Article 21.42, is generally silent on out-of-state group contracts with certificates issued in Texas. However, TDI disagrees that this significantly undermines the statutory authority for the rule. Insurance Code Article 21.42 is the key statutory authority, and TDI agrees that if Insurance Code Article 21.42 were to be limited in the future by the courts or legislation, then such limitation would affect the sufficiency of statutory authority for the TDI rules as proposed and adopted. However, under the current interpretation of Insurance Code Article 21.42--which is consistent with TDI's proposal--the statutory authority cited, although mainly general in nature, is sufficient to propose and adopt these rules. In addition, Insurance Code §36.001 states that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under this code and other laws of this state.

Comment. One commenter states that the rule constitutes regulation of the business of insurance outside of the state of Texas, which is not within TDI's regulatory purview. The commenter states that Insurance Code §101.053 defines the business of insurance to exclude transactions involving group policies issued or delivered outside of Texas and to exclude certificates.

The commenter also states that because Insurance Code §1251.451(a) expressly lists specific chapters of the Insurance Code that apply to COIs issued to Texas residents under a policy delivered outside of Texas, that demonstrates legislative intent to exclude all other Insurance Code provisions, including Insurance Code Chapter 1467.

Agency Response. TDI declines to make a change. Regarding the citation to Insurance Code §101.053, the Texas Supreme Court has noted that the definition is limited to Insurance Code Chapter 101 and does not determine the applicability of other provisions of the Insurance Code. *See Tex. Dep't of Ins. v. Am. Nat'l Ins. Co.*, 410 S.W.3d 843, 849-50 (Tex. 2012); *Great Am. Ins. Co. v. North Austin Utility*, 908 S.W.2d 415, 423 (Tex. 1995).

Regarding Insurance Code §1251.451(a), the stated purpose of the predecessor statute was to ensure that COIs issued under out-of-state plans by foreign insurers not licensed in Texas complied with various provisions of Texas law that the bill authors assumed applied to COIs issued by foreign insurers licensed in Texas. The legislative history of Insurance Code §1251.451(a) does not indicate any clear intent to narrow the list of applicable laws, and predates Insurance Code Chapter 1467.

Comment. One commenter disagrees with TDI's assertion that the proposed amendments to the rule are consistent with TDI's historical practice. The commenter states that from the inception of the surprise billing requirements in 2009, up through the current law, all claims for mediation under Insurance Code Chapter 1467 for plans issued out of state were rejected on the basis that the claim was ineligible. The comment indicates that the subsequently amended "mark ineligible" checkbox was included on the IDR platform as part of the rollout after passage of SB 1264 and then subsequently removed in July 2020. The commenter also states that this significant change in policy should have been made through Administrative Procedure Act rulemaking. Another commenter states that Insurance Code Article 21.42 has been the subject of litigation on its extraterritorial application dating back nearly 100 years and that the statute has not always been construed consistently by either TDI or courts.

Agency Response. TDI acknowledges that Insurance Code Article 21.42 and the issues of extraterritorial application have been litigated several times in the past. The current position is consistent with court decisions and legislative guidance. TDI did not modify its interpretation of how Insurance Code Article 21.42 should be applied to Insurance Code Chapter 1467.

To the extent that the portal checkbox provided incorrect instructions, TDI changed the portal so that claims could not be marked as ineligible on the basis that the plan was issued outside of Texas. The checkbox, for the brief time it appeared on the portal, conflated out-of-state group contracts without Texas resident certificates with group contracts that, when viewed properly through Insurance Code Article 21.42, the state could regulate. Notably, marking the checkbox did not automatically mark the claim as ineligible. It indicated only that the contract required manual examination by TDI staff and possible follow-up with the parties. To the best of TDI's knowledge, no claims marked as "ineligible" and not processed further were actually eligible for IDR under Chapter 1467.

TDI disagrees that rulemaking was necessary to correct the portal checkbox error described above. However, to the extent that any inadvertent rulemaking process errors occurred, this rulemaking corrects them. TDI appreciates the input from all stakeholders, and this rulemaking is made consistent with the procedure and intent of the Administrative Procedures Act.

TDI's position is consistent with the *Wann* rule. The *Wann* rule dates to 1937, and the *Austin Building* decision did not extinguish

Wann's interpretation of Insurance Code Article 21.42. The 1973 *Howell* case acknowledges the continued existence of the *Wann* application of Insurance Code Article 21.42, which TDI continues to recognize and apply. Absent administrative rulemaking that would overturn this long-standing position, or other legal decisions such as an Attorney General opinion or court ruling, TDI is obligated to maintain its long-standing position.

Comment. One commenter states that the proposed rule would create confusion and be difficult to implement because of conflicts between SB 1264 and the No Surprises Act and/or other states' regulations. The commenter notes that some states, including Arkansas, have their own balance billing protections. The commenter also notes that the proposed framework could require some insurers to provide coverage and cost sharing to Texas residents compliant with Texas regulations, while other insurers might be subject to another state's regulations under the No Surprises Act. The commenter states that plans would be required to comply with different notice and consent requirements, resolution processes, and appeals procedures, and that insurers will have other difficulties such as providing required notations on enrollee identification cards. The commenter claims that the rule does not provide any additional protections since the federal No Surprises Act already provides balance billing protections and an IDR pathway. Another commenter poses questions relating to implementation of the rule, including compliance with out-of-network billing limits, COI disclosure requirements, reimbursement rates, and notice requirements in SB 1264 that may conflict with other states' regulations or the No Surprises Act.

Agency Response. TDI acknowledges that the patchwork of state and federal balance billing protections can pose practical challenges. However, this is true even if Texas does not require SB 1264 protections to apply where the state has jurisdiction. Health benefit plans doing business in multiple states will face regulatory complexity no matter what position TDI takes. Health benefit plans already need to potentially comply with their home state's regulations, the federal No Surprises Act for ERISA or other situations falling outside state regulations, and regulations in any other jurisdictions that may apply. Similarly, providers are faced with a multitude of relevant regulatory regimes. However, applying SB 1264 as described in this rule has the benefit of including Texas providers and Texas resident insureds under the protection of regulations passed by the Texas Legislature and TDI.

TDI's position, consistent with the *Wann* rule, protects Texas insureds and enrollees where the health plan is licensed to do business in this state. The health plans, by virtue of being licensed in this state, have already voluntarily consented to the authority and jurisdiction of state law. The amendments adopted here, like the *Wann* rule, are designed only for the special case of group insurance contracts. TDI has a duty to ensure that the insurance laws are executed, and to protect and ensure the fair treatment of consumers. *See* Tex. Ins. Code §31.002.

TDI acknowledges that the federal regulations may apply where a covered state law is not applicable. However, here a state law is applicable. There are some differences between the Texas and federal IDR procedures. The Texas law--SB 1264 and later amendments--represents the Texas Legislature's vision for how balance billing disputes ought to be handled in this state. The rule clarifies how the legislation is applied in Texas. In addition, federal rules implementing the No Surprises Act have multiple lawsuits pending, and until those suits or additional rulemaking are concluded, parties may lack a federal alternative. Even where federal regulations could apply, Texas law reflects the measured policy decisions the Legislature has decided ought to apply to situations within the state's jurisdiction.

Comment. Two commenters suggest that TDI withdraw the proposal. One commenter asks TDI to instead alter the portal to reflect the commenter's view of SB 1264's applicability and provide a clarifying statement so that plans and consumers understand the applicability of the IDR process.

The other commenter asks TDI to instead consider amending §26.5 and §26.301 to delete the requirement that mandates apply on all out-of-state group health policies. This commenter also requests that TDI consider adopting other rules that clarify how it will apply Insurance Code Article 21.42 to be consistent with constitutional requirements imposing limitations on its extraterritorial application, including the application of Texas laws to certificates for group accident and health policies issued outside of Texas. The commenter requests that if the proposed rule is not withdrawn, TDI include in its Reasoned Justification section the reasons why it disagrees with the legal issues raised in these comments and provide answers to the specific questions submitted as part of these comments.

Agency Response. TDI declines to withdraw the proposal. TDI has a different view as to the scope and application of Texas state law than the commenters. TDI has addressed its long-standing and present view of the legal issues raised by commenters. Unless and until the Legislature, courts, or TDI through future APA rulemaking provides otherwise, TDI's position on IDR is as provided in this rule adoption.

SUBCHAPTER A. DEFINITIONS, SEVERABILITY, AND SMALL EMPLOYER HEALTH REGULATIONS

28 TAC §26.5

STATUTORY AUTHORITY. The commissioner adopts amendments to §26.5 under Insurance Code Article 21.42 and §§843.151, 1301.007, 1467.003, 1501.010, and 36.001.Insurance Code Article 21.42 provides that any insurance payable to any citizen or inhabitant of this state by a company doing business within this state is held to be a contract made and entered into and governed by Texas insurance law despite execution of the contract or payment of the premiums outside of this state.

Insurance Code §843.151 authorizes the commissioner to adopt rules as necessary and proper to implement laws applicable to HMOs, including Insurance Code Chapters 843 and 1271.

Insurance Code §1301.007 authorizes the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of Texas.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §1501.010 authorizes the commissioner to adopt rules necessary to implement Insurance Code Chapter 1501.

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

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

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

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Jessica Barta
General Counsel
Texas Department of Insurance
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Proposal publication date: December 23, 2022
For further information, please call: (512) 676-6555

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SUBCHAPTER C. LARGE EMPLOYER HEALTH INSURANCE REGULATIONS

28 TAC §26.301

STATUTORY AUTHORITY. The commissioner adopts amendments to §26.301 under Insurance Code Article 21.42 and §§843.151, 1301.007, 1467.003, 1501.010, and 36.001.

Insurance Code Article 21.42 provides that any insurance payable to any citizen or inhabitant of this state by a company doing business within this state is held to be a contract made and entered into and governed by Texas insurance law despite execution of the contract or payment of the premiums outside of this state.

Insurance Code §843.151 authorizes the commissioner to adopt rules as necessary and proper to implement laws applicable to HMOs, including Insurance Code Chapters 843 and 1271.

Insurance Code §1301.007 authorizes the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of Texas.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §1501.010 authorizes the commissioner to adopt rules necessary to implement Insurance Code Chapter 1501.

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 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 26. COASTAL MANAGEMENT PROGRAM

The General Land Office (GLO) adopts amendments to §§26.3, 26.4, 26.10, 26.13, 26.15, 26.18, 26.21, 26.23 - 26.25, 26.31, and 26.34 in 31 TAC Chapter 26, relating to the Coastal Management Program. The amendments are adopted without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 313) and therefore will not be republished.

JUSTIFICATION

These amendments are adopted to update cross references that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 501 to 31 TAC Chapter 26, effective on December 1, 2022. The adoption of the amendments is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The adopted amendments update cross references within the following sections: §26.3, relating to Definitions and Abbreviations; §26.4, relating to Coastal Coordination Advisory Committee; §26.10, relating to Compliance with CMP Goals and Policies; §26.13, relating to Administrative Policies Review; §26.15, relating to Policy for Major Actions; §26.18, relating to Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities; §26.23, relating to Policies for Development in Critical Areas; §26.24, relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands; §26.25, relating to Policies for Dredging and Dredged Material and Placement; §26.31, relating to Policies for Transportation Projects; and §26.34, relating to Policies for Levee and Flood Control Projects.

The adopted amendment to §26.21, relating to Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters, updates the name of a state agency from Texas Department of Health to Texas Department of State Health Services.

PUBLIC COMMENTS

The GLO received no comments regarding the proposed amendments.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §26.3, §26.4

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; and §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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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Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
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For further information, please call: (512) 475-1859

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SUBCHAPTER B. GOALS AND POLICIES

31 TAC §§26.10, 26.13, 26.15, 26.18, 26.23 - 26.25, 26.31, 26.34

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; and §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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 27. COASTAL MANAGEMENT PROGRAM BOUNDARY

31 TAC §27.1

The General Land Office (GLO) adopts an amendment to §27.1 in 31 TAC Chapter 27, relating to the Coastal Management Program Boundary. The amendment is adopted with changes to correct punctuation to the proposed text to published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 316), and therefore the rule will be republished.

JUSTIFICATION

This amendment is adopted to update a rule reference that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 503 to 31 TAC Chapter 27, effective on December 1, 2022. The adoption of the amendment is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The adopted amendment updates the rule reference labeling the Attached Graphic in §27.1(a).

PUBLIC COMMENTS

The GLO received no comments regarding the proposed amendment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; and §33.054, which allows the commissioner to review and amend the CMP.

The adoption of the amendment is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§27.1. Coastal Management Program Boundary.

(a) General Description of the Coastal Management Program Boundary. The coastal management program boundary delineates the coastal zone. The inland part of the boundary is a modification of the coastal facility designation line, which is the line the State of Texas adopted under the Oil Spill Prevention and Response Act of 1991 (Texas Natural Resources Code, Chapter 40) to describe areas where oil spills are likely to enter coastal waters. Generally, the boundary encompasses the area within Texas lying seaward of the coastal facility designation line. It also includes coastal wetlands landward of the coastal facility designation line. The boundary includes areas within the following Texas counties: Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Jefferson, and Orange. The seaward reach of the boundary extends into the Gulf of Mexico to the limit of state title and ownership under the Submerged Lands Management Act (43 United States Code, §§1301 et seq.), that is, three marine leagues. The following maps outline the coastal management program boundary.
Figure: 31 TAC §27.1(a)

(b) Particular Description of the Coastal Management Program Boundary. The boundary is more particularly described in terms of the inland boundary, the boundary with the State of Louisiana, the seaward boundary, the boundary with the Republic of Mexico, and the excluded federal lands.

(1) The inland boundary. The inland boundary encompasses the following areas:

(A) Roadway portion of boundary. The boundary begins at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (FM Road 1847) in Brownsville, thence northward along FM Road 1847 to the junction of FM Road 106 east of Rio Hondo, thence westward along FM Road 106 to the junction of FM Road 508 in Rio Hondo, thence northward along FM Road 508 to the junction of FM Road 1420,

thence northward along FM Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of FM Road 774 in Refugio, thence eastward along FM Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northwestward along State Highway 185 to the junction of FM Road 616 in Bloomington, thence northeastward along FM Road 616 to the junction of State Highway 35 east of Blessing, thence southward along the State Highway 35 to the junction of FM Road 521 north of Palacios, thence northeastward along FM Road 521 to the junction of State Highway 36 south of Brazoria, thence northward along State Highway 36 to the junction of State Highway 332 in Brazoria, thence eastward along State Highway 332 to the junction of FM Road 2004 in Lake Jackson, thence northeastward along FM Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the Louisiana State line.

(B) Tidal portion of the boundary. The boundary runs at a distance of 100 yards inland from the mean high tide line along each of the following tidal river and stream segments from the points where they intersect the roadway boundary described in subparagraph (A) of this paragraph:

(i) on the Arroyo Colorado, to a point 100 meters (110 yards) downstream of Cemetery Road south of Port Harlingen in Cameron County;

(ii) on the Nueces River, to Calallen Dam 1.7 kilometers (1.1 miles) upstream of U.S. Highway 77 in Nueces/San Patricio County;

(iii) on the Guadalupe River, to the Guadalupe-Blanco River Authority Salt Water Barrier 0.7 kilometers (0.4 mile) downstream of the confluence of the San Antonio River in Calhoun and Refugio Counties;

(iv) on the Lavaca River, to a point 8.6 kilometers (5.3 miles) downstream of U.S. Highway 59 in Jackson County;

(v) on the Navidad River, to Palmetto Bend Dam in Jackson County;

(vi) on Tres Palacios Creek, to a point 0.6 kilometer (1.0 mile) upstream of the confluence of Wilson Creek in Matagorda County;

(vii) on the Colorado River, to a point 2.1 kilometers (1.3 miles) downstream of the Missouri-Pacific Railroad in Matagorda County;

(viii) on the San Bernard River, to a point 3.2 kilometers (2.0 miles) upstream of State Highway 35 in Brazoria County;

(ix) on Chocolate Bayou, to a point 4.2 kilometers (2.6 miles) downstream of State Highway 35 in Brazoria County;

(x) on Clear Creek, to a point 100 meters (110 yards) upstream of FM Road 528 in Galveston/Harris County;

(xi) on Buffalo Bayou, to a point 400 meters (440 yards) upstream of Shepherd Drive in Harris County;

(xii) on the San Jacinto River, to Lake Houston Dam in Harris County;

(xiii) on Cedar Bayou, to a point 2.2 kilometers (1.4 miles) upstream of Interstate Highway 10 in Chambers/Harris County;

(xiv) on the Trinity River, to the border between Chambers and Liberty Counties;

(xv) on the Neches River, to a point 11.3 kilometers (7.0 miles) upstream of Interstate Highway 10 in Orange County; and

(xvi) on the Sabine River, to Morgan Bluff in Orange County.

(C) Wetlands portion of boundary. Except for the part of the boundary adjacent to the Trinity and Neches rivers, the boundary includes wetlands lying within one mile inland of the mean high tide lines of the tidal river and stream segments identified in subparagraph (B) of this paragraph.

(i) Adjacent to the Trinity River, the boundary includes wetlands within the area located between the mean high tide line on the western shoreline of the river and Farm-to-Market Road 565 and Farm-to-Market Road 1409, and wetlands within the area located between the mean high tide line on the eastern shoreline of that portion of the river and Farm-to-Market Road 563.

(ii) Adjacent to the Neches River, the boundary includes wetlands within one mile of the mean high tide line on the western shoreline of the river, and wetlands within the area located between the mean high tide line on the eastern shoreline of that portion of the river and Farm-to-Market Road 105.

(2) The boundary with the State of Louisiana. The boundary with the State of Louisiana begins in Orange County at Morgans Bluff, the northernmost extent of tidal influence, along the adjudicated boundary between the State of Texas and the State of Louisiana, as established by the United States Supreme Court in Texas v. Louisiana, 410 U.S. 702 (1973); thence it continues in a southerly direction along the adjudicated boundary out into the Gulf of Mexico until it intersects the seaward boundary.

(3) The seaward boundary. The seaward boundary is that line marking the seaward limit of Texas title and ownership under the Submerged Lands Act (43 United States Code, §1301 et seq.), as recognized by the United States Supreme Court in United States v. Louisiana et al., 364 U.S. 502 (1960).

(4) The boundary with the Republic of Mexico. The boundary with the Republic of Mexico begins at a point three marine leagues into the Gulf of Mexico where the line marking the seaward limit of Texas title and ownership under the Submerged Lands Act (43 United States Code, §§1301 et seq.) intersects the international boundary between the United States and the Republic of Mexico, as established pursuant to the Treaty of Guadalupe-Hidalgo (February 2, 1848) between the United States and the Republic of Mexico; thence it continues in a westerly direction along the international border with the Republic of Mexico until it meets the International Toll Bridge in Brownsville.

(5) The excluded federal lands. The excluded federal lands are those lands owned, leased, held in trust by, or whose use is otherwise by law subject solely to the discretion of the federal government, its officers or agents.

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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Chief Clerk, Deputy Land Commissioner
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CHAPTER 28. PERMITTING ASSISTANCE AND PRELIMINARY CONSISTENCY REVIEW

The General Land Office (GLO) adopts amendments to §§28.2, 28.3, 28.10, 28.11, and 28.20 in 31 TAC Chapter 28, relating to Permitting Assistance and Preliminary Consistency Review. The amendments to §§28.3, 28.10, 28.11, and 28.20 are adopted without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 317) and therefore will not be republished. The amendments to §28.2 are adopted with changes to the proposed text and will be republished.

JUSTIFICATION

These amendments are adopted to update cross references that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 504 to 31 TAC Chapter 28, effective on December 1, 2022. The adopted amendments also include minor revisions to ensure that the role of the Permitting Assistance Group conforms with current practice. The adoption of the amendments is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The adopted amendments update cross references within the following sections: §28.2, relating to Definitions; §28.11, relating to Permitting Assistance Coordinator; and §28.20, relating to Requests for Preliminary Consistency Review.

The adopted amendment to §28.10, relating to Permit Service Center, adds updated terminology, including a clarification that the Texas Parks and Wildlife Department issues "certificates of location."

The adopted amendment to §28.3, relating to Permitting Assistance Group (PAG), adds a new subsection (d) to conform with current practice by clarifying that the PAG's role may include participation in the planning and development of regional general permits and general permits to support future beach management and nourishment, coastal restoration projects, and the continued development of the Texas Coastal Management Program, as needed.

PUBLIC COMMENTS

The GLO received no comments regarding the proposed amendments.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §28.2, §28.3

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.205, which authorizes the commissioner to establish by rule processes for preliminary consistency review and permitting assistance.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§28.2. Definitions.

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

(1) Agency of subdivision--Any state agency, department, board, or commission or political subdivision of the state.

(2) Applicant--An individual or small business. In addition, the term includes a city, county, or special district.

(3) Coastal zone--The area within the CMP boundary established in §27.1 of this title.

(4) Commissioner--Commissioner of the General Land Office (GLO).

(5) Committee--Coastal Coordination Advisory Committee.

(6) CMP goals and policies--The goals and policies set forth in Chapter 26 of this title.

(7) Permitting assistance coordinator--The GLO staff member designated by the commissioner.

(8) Permitting assistance group (PAG)--The group composed of representatives of committee member agencies and other interested committee members.

(9) Permit service center (PSC)--The center that administers permitting assistance for activities in the coastal zone. The PSC has an office that serves the Upper Coast and an office that serves the Lower Coast.

(10) Program boundary--The CMP boundary established in §27.1 of this title.

(b) To the extent that reference is made to statutory or regulatory terms or phrases which are not defined in this chapter, such terms and phrases shall retain the meaning provided in the pertinent agency or political subdivision policies or regulations.

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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Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
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SUBCHAPTER B. PERMITTING ASSISTANCE

31 TAC §28.10, §28.11

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.205, which authorizes the commissioner to establish by rule processes for preliminary consistency review and permitting assistance.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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

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SUBCHAPTER C. PRELIMINARY CONSISTENCY REVIEW

31 TAC §28.20

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.205, which authorizes the commissioner to establish by rule processes for preliminary consistency review and permitting assistance.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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 29. PROCEDURE FOR STATE CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND POLICIES

The General Land Office (GLO) adopts amendments to §§29.11, 29.12, 29.20 - 29.26, 29.30 - 29.34, 29.36, 29.42, 29.51, 29.52, 29.60, 29.62 - 29.66, 29.68, and 29.74 in 31 TAC Chapter 29, relating to Procedures for State Consistency with Coastal Management Program Goals and Policies. The amendments are adopted without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 320) and therefore will not be republished.

JUSTIFICATION

These amendments are adopted to update cross references that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 505 to 31 TAC Chapter 29, effective on December 1, 2022. The adoption of the amendments is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The adopted amendments update cross references within the following sections: §29.11, relating to Actions and Rules Subject to the Coastal Management Program; §29.12, relating to Definitions; §29.20, relating to Commissioner Review and Certification of Agency Rules and Rule Amendments; §29.21, relating to Effect of Commissioner Certification of Agency Rules and Rule Amendments; §29.22, relating to Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program; §29.23, relating to Expedited Certification of Rules and Rule Amendments; §29.24, relating to Pre-Certification Review of Draft Rules and Draft Rule Amendments; §29.25, relating to Revocation of Certification; §29.26, relating to Approval of Thresholds for Referral; §29.30, relating to Agency Consistency Determination; §29.31, relating to Preliminary Consistency Review of Proposed Agency Action; §29.32, relating to Requirements for Referral of a Proposed Agency Action; §29.33, relating to Filing of Request for Referral; §29.34, relating to Referral of a Proposed Agency Action to the Commissioner for Consistency Review; §29.36, relating to Standard of Commissioner Review of a Proposed Agency Action; §29.42, relating to Enforcement after Commissioner Protest of a Proposed Agency Action; §29.51 relating to Request for a Non-Binding Advisory Opinion and Commissioner Action; §29.52, relating to Request for Commissioner Participation in the Development of General Plans; §29.60, relating to Subdivisions Actions Subject to the Coastal Management Program; §29.62, relating to Subdivision Consistency Determinations; §29.63, relating to Preliminary Consistency Review of a Proposed Subdivision Action; §29.64, relating to Requirements for a Referral of a Proposed Subdivision Action; §29.65, relating to Filing of Request for Referral; §29.66, relating to Referral of a

Proposed Subdivision Action to the Commissioner for Review; §29.68, relating to Standard of Commissioner Review of a Proposed Subdivision Action; and §29.74, relating to Enforcement after Commissioner Protest of a Proposed Subdivision Action.

The adopted amendment to §29.11(a)(7)(A) adds updated terminology, including a clarification that the Texas Parks and Wildlife Department issues "certificates of location."

PUBLIC COMMENTS

The GLO received no comments regarding the proposed amendments.

SUBCHAPTER A. PURPOSE AND SCOPE

31 TAC §29.11, §29.12

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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 B. COMMISSIONER REVIEW AND CERTIFICATION OF AGENCY RULES

31 TAC §§29.20 - 29.26

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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

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SUBCHAPTER C. CONSISTENCY AND COMMISSIONER REVIEW OF PROPOSED STATE AGENCY ACTIONS

31 TAC §§29.30 - 29.34, 29.36, 29.42

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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 D. COMMISSIONER ADVISORY OPINIONS ON GENERAL PLANS

31 TAC §29.51, §29.52

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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

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SUBCHAPTER E. CONSISTENCY AND COMMISSIONER REVIEW OF LOCAL GOVERNMENT ACTIONS

31 TAC §§29.60, 29.62 - 29.66, 29.68, 29.74

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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 30. COUNCIL PROCEDURES FOR FEDERAL CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND PRIORITIES

The General Land Office (GLO) adopts the repeal of §§30.10 - 30.13, 30.20 - 30.37, 30.40 - 30.45, and 30.50 - 30.54, and adopts new §§30.10, 30.11, 30.20, 30.30, 30.40, and 30.60 without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 326). These rules will not be republished.

The GLO adopts new §30.12 with changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 326). This rule will be republished.

The GLO has determined that the procedures in proposed new §30.50 are not needed at this time and therefore proposed §30.50 is withdrawn.

BACKGROUND AND JUSTIFICATION

The Texas Coastal Management Program (CMP) is based on the Coastal Coordination Act, Texas Natural Resources Code, Chapter 33, Subchapter F. In 1991, the Coastal Coordination Council (Council) was created for the purpose of developing CMP policy, facilitating interagency coordination, conducting dispute resolution, and overseeing the CMP. The CMP goals and policies are utilized for ensuring state and federal actions are consistent with the CMP. In 2010, the Council was reviewed by the Texas Sunset Advisory Commission. The Sunset Commission's review found that the Council had transitioned from developing and implementing the CMP to merely administering it. The Sunset Commission further determined that since the GLO was charged with the primary administrative responsibility for the CMP, the GLO could more efficiently perform the Council's duties. Based on these findings, the Sunset Commission recommended abolishing the Council and transferring the Council's functions to the Commissioner and GLO.

During the 82nd Legislative Session, the Texas Legislature passed Senate Bill (SB) 656, amending the Coastal Coordination Act. SB 656 abolished the Council and transferred the duties and powers of the Council to the Commissioner and GLO. SB 656 also directed the Commissioner to establish the Coastal Coordination Advisory Committee (Committee). The Committee's membership closely resembles the former Council's membership, as it requires a representative from each of eight state agencies with coastal duties, as well as four public members appointed by the Commissioner to represent coastal priorities.

The adopted rules repeal and replace the sections in Chapter 30 with new sections and a new chapter title. The new rules are intended to better reflect SB 656 and more closely conform to the Coastal Zone Management Act (CZMA) Federal Consistency regulations in 15 CFR Part 930. Specifically, the new rules help

further implement SB 656 by removing all references to the abolished Council, by clarifying the transfer of the Council's functions and duties to the Commissioner and the GLO, and by adding references to the Committee. Additionally, the GLO's federal consistency procedures are required to be consistent with the Federal Consistency regulations in 15 CFR Part 930, promulgated by the National Oceanic and Administrative Administration (NOAA). The new rules closely adhere to the Federal Consistency regulations and incorporate the review timeframes for federal agency actions in 15 CFR Part 930.

The adopted rules also reorganize, streamline, and clarify the GLO's federal consistency review procedures for federal license or permit activities, federal agency activities and development projects, and outer continental shelf (OCS) plans. In addition, the new sections incorporate updated rule cross-references that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 506 to 31 TAC Chapter 30, effective on December 1, 2022.

The adopted repeals and new sections are necessary for the continued implementation of the Coastal Coordination Act, as amended by SB 656, and to ensure the GLO's federal consistency procedures conform to the Federal Consistency regulations in 15 CFR Part 930.

SECTION BY SECTION SUMMARY

The adopted rules include repealing the title of Chapter 30, "Council Procedures for Federal Consistency with Coastal Management Program Goals and Priorities," and adopting a new title for Chapter 30, "Procedures for Federal Consistency with Coastal Management Program Goals and Policies."

New §30.10, relating to Purpose and Policy, stipulates that the rules in the Chapter establish a process for federal consistency review, as required by Texas Natural Resources Code, §33.206(d). This new section reflects federal procedures for implementing the federal consistency requirements of the CZMA and provides that federal actions and activities subject to the Texas CMP are consistent with the goals and enforceable policies. The procedures in this Chapter are also intended to allow the Commissioner to identify, address, and resolve federal consistency issues. The new section also stipulates that if any inconsistencies are found between these rules and those of the Federal Consistency regulations in 15 CFR Part 930, the federal regulations control. This new section is necessary to implement SB 656 and to update the rules to conform with the Federal Consistency regulations in 15 CFR Part 930.

New §30.11, relating to Definitions, sets forth the meanings of key terms used in the Chapter.

New §30.11(a) adds an interpretive provision clarifying that the defined terms have the meanings set forth in this section unless the context clearly indicates otherwise.

New §30.11(a)(1) adds a definition for "associated facilities," which means all "proposed facilities: (A) which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (e.g., activity, development project, license, permit, or assistance); and (B) without which the federal action, as proposed, could not be conducted." *See* 15 CFR §930.11(d).

New §30.11(a)(2) adds a definition for "Coastal Coordination Act," which is the short title of Texas Natural Resources Code, Chapter 33, Subchapter F.

New §30.11(a)(3) adds a definition for "coastal zone," which means the "portion of the coastal area located within the boundaries established by the CMP under Texas Natural Resources Code, §33.2053(k), and described in Chapter 27 of this title (relating to Coastal Management Program Boundary)."

New §30.11(a)(4) adds a definition for "CMP," which means "Texas Coastal Management Program, which was accepted into the federal Coastal Zone Management Program in 1996 after receiving approval from the federal Office for Coastal Management."

New §30.11(a)(5) adds a definition for "CMP coordinator," which means the "GLO Coastal Resources staff member designated by the commissioner."

New §30.11(a)(6) adds a definition for "CMP goals and enforceable policies," which means the "goals and enforceable policies set forth in Chapter 26 of this title."

New §30.11(a)(7) adds a definition for "Commissioner," which means the "Commissioner of the GLO."

New §30.11(a)(8) adds a definition for "Committee," which means the "Coastal Coordination Advisory Committee."

New §30.11(a)(9) adds a definition for "CZMA," which means the "Federal Coastal Zone Management Act of 1972, as amended."

New §30.11(a)(10) - (16) adds definitions for "development project," "Director," "federal agency," "federal agency activity," "federal assistance," "federal license or permit activity," and "Outer Continental Shelf (OCS) plan," that are consistent with the Federal Consistency Regulations in 15 CFR Part 930.

New §30.11(a)(17) adds a definition for "program boundary," which means "CMP program boundary established in §27.1 of this title (relating to the Coastal Management Program Boundary)."

New §30.11(b) adds an interpretive provision clarifying that statutory or regulatory terms or phrases that are not defined in the Chapter retain the meaning provided in the pertinent agency's regulations unless a different meaning is assigned in the applicable regulations under the CZMA.

New §30.12, relating to Federal Listed Activities Subject to CZMA Review, identifies federal agency actions that are subject to the Federal Consistency regulations set out in 15 CFR Part 930.

New §30.12(a) states that federal actions within the CMP boundary may adversely affect coastal natural resource areas (CNRAs) within the coastal zone. The list of federal actions that are subject to CZMA federal consistency review by the GLO include federal agency activities, federal license or permit activities, and federal assistance applications.

New §30.12(a)(1) explains that a consistency determination is required for federal agency activities and development projects by or on behalf of federal agencies that may have reasonably foreseeable effects on CNRAs. The new subsection also states that a consistency determination or negative determination must be submitted to the GLO in accordance with the requirements of the Federal Consistency regulations found at 15 CFR Part 930, subpart C.

New §30.12(a)(1)(A) - (F) identify federal agencies that must submit consistency determinations or negative determinations to the GLO for specifically listed activities in this section.

New §30.12(a)(1)(A)(i) and (ii) identify the following United States Department of the Interior activities subject to consistency review: "(i) modifications to the boundaries of the Coastal Barrier Resource System under 16 United States Code Annotated, §3503(c); and (ii) OCS lease sales within the western and central Gulf of Mexico under 43 United States Code Annotated, §1337."

New §30.12(a)(1)(B) identifies a United States Environmental Protection Agency activity subject to consistency review: "Selection of remedial actions under 42 United States Code Annotated §9604(c)."

New §30.12(a)(1)(C)(i) - (viii) identify the following United States Army Corps of Engineer activities subject to consistency review: "(i) small river and harbor improvement projects under 33 United States Code Annotated, §577; (ii) water resources development projects under 42 United States Code Annotated, §1962d-5; (iii) small flood control projects under 33 United States Code Annotated, §701s; (iv) small beach erosion control projects under 33 United States Code Annotated, §426g; (v) operation and maintenance of civil works projects under the Code of Federal Regulations, Title 33, Parts 335 and 338; (vi) dredging projects under the Code of Federal Regulations, Title 33, Part 336; (vii) approval for projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects pursuant to 33 United States Code Annotated, §426i; and (viii) approval for projects for the placement on state beaches of beach-quality sand dredged from federal navigation projects pursuant to 33 United States Code Annotated, §426j."

New §30.12(a)(1)(D)(i) and (ii) identify the following Federal Emergency Management Agency activities subject to consistency review: "(i) model floodplain ordinances; and (ii) approval of a community's participation in the National Flood Insurance Program (NFIP) under the Code of Federal Regulations, Title 44, Part 59, subpart B."

New §30.12(a)(1)(E)(i) and (ii) identify the following General Services Administration activities subject to consistency review: "(i) acquisitions under 40 United States Code Annotated, §602 and §603; and (ii) construction under 40 United States Code Annotated, §605."

New §30.12(a)(1)(F)(i) and (ii) identify the following federal agency activities subject to consistency review: "(i) all other development projects; (ii) and natural resource restoration plans developed pursuant to the Oil Pollution Act of 1990 (33 United States Code Annotated §§2701-2761) and the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code Annotated §§9601-9675)."

New §30.12(a)(2), relating to Federal License or Permit Activities, explains that for all proposed activities requiring a federal license or permit, a consistency certification must be submitted to GLO pursuant to the requirements of the Federal Consistency regulations in 15 CFR Part 930, subpart D.

New §30.12(a)(2)(A) - (F) identify federal agencies and associated licenses and permits that have reasonably foreseeable adverse effects upon CNRAs and require applicants to submit a consistency certification to the GLO if the proposed action occurs in the Texas coastal zone.

New §30.12(a)(2)(A)(i) - (v) identify the following Environmental Protection Agency activities that are subject to consistency review: "(i) National Pollution Discharge Elimination System (NPDES) permits under 33 United States Code Annotated, §1342; (ii) ocean dumping permits under 33 United States Code Annotated, §1412; (iii) approvals of land disposal of wastes under 42 United States Code Annotated, §6924(d); and (iv) development of total maximum daily loads (TMDLs) and associated federally developed TMDL implementation plans under 33 United States Code Annotated, §1313; and (v) approvals of National Estuary Program Comprehensive Conservation Management Plans under 33 United States Code Annotated, §1330f."

New §30.12(a)(2)(B)(i) - (v) identify the following United States Army Corps of Engineers activities and Memoranda of Agreement that are subject to consistency review: "(i) ocean dumping permits under 33 United States Code Annotated, §1413; (ii) dredge and fill permits under 33 United States Code Annotated, §1344; (iii) permits under §9 of the Rivers and Harbor Act of 1899, 33 United States Code Annotated, §401; (iv) permits under §10 of the Rivers and Harbor Act of 1899, 33 United States Code Annotated, §403; and (v) Memoranda of Agreement for mitigation banking."

New §30.12(a)(2)(C)(i) - (iii) identify the following United States Department of Transportation approvals and licenses that are subject to consistency review: "(i) approvals under §7(a) of the Federal-Aid Highway Amendments Act of 1963, 23 United States Code Annotated, §106; (ii) approvals under §502 of the General Bridge Act of 1946, 33 United States Code Annotated, §525; and (iii) deepwater port licenses under 33 United States Code Annotated, §1503."

New §30.12(a)(2)(D)(i) identifies airport operating certificates for the Federal Aviation Administration under 49 United States Code Annotated, §44702.

New §30.12(a)(2)(E)(i) - (iii) identify the following Federal Energy Regulatory Commission authorizations that are subject to consistency review: "(i) certificates under §7 of the Natural Gas Act, 15 United States Code Annotated, §717f; (ii) licenses under §4 of the Federal Power Act, 16 United States Code Annotated, §797(e); and (iii) exemptions under §403 of the Public Utility Regulatory Policies Act of 1978, 16 United States Code Annotated, §2705(d)."

New §30.12(a)(2)(F) identifies Nuclear Regulatory Commission licenses that are subject to consistency review: "Licenses under §103 of the Atomic Energy Act of 1954, 42 United States Code Annotated, §2133."

New §30.12(a)(3), relating to State and Local Government Applications for Federal Assistance, is adopted with changes from the language in the proposal. The change to this subsection was made in response to comments and discussion with NOAA Office for Coastal Management (OCM) staff regarding the list of federal financial assistance awards in the proposal, and the GLO's decision to postpone listing certain federal financial assistance awards pending further analysis and evaluation. Specifically, §30.12(a)(3) has been changed to remove the proposed list of federal financial assistance awards. Instead of the proposed list, the subsection adds and adopts language that provides as follows: "Federal financial assistance awards may be subject to federal consistency review in accordance with the procedures specified at 15 CFR §§ 930.98 and 930.54 with the approval of the Office for Coastal Management within the National Oceanic and Atmospheric Administration." As the GLO is no longer including listed federal financial assistance awards, the language in adopted §30.12(a)(3) is intended to outline the procedure for

reviewing unlisted federal financial assistance awards pursuant to the federal regulations.

New §30.12(b), relating to the review of OCS Exploration Plans, and Development and Production Plans, as set out in 43 United States Code, §§1340(c) and 1351, includes "activities that are authorized by the United States Department of the Interior and provides for the review of a federal license or permit activity described in detail in OCS plans, including pipeline activities."

New §30.12(c), relating to the review of a proposed federal agency activity that is unlisted in subsection (a)(1) of this section, states that the GLO will follow the federal regulations process set out in 15 CFR §930.34(c) and that if the GLO elects to review a proposed federal license or permit activity of a type that is unlisted in subsection (a)(2) of this section the GLO will follow the procedures set out in 15 CFR §930.54.

New §30.20, relating to Consistency Determinations for Federal Agency Activities and Development Projects, adds a section that details the required information for a consistency determination and the associated federal consistency review process for a federal agency activity or development project.

New §30.20(a), relating to the Review of a Consistency Determination, sets forth the review standard that the GLO must follow when conducting a consistency review of a federal agency activity or development project as set out in 15 CFR Part 930, subpart C. The new subsection requires a federal agency activity or development project to be consistent with the CMP goals and enforceable policies.

New §30.20(b), relating to Required Information for a Consistency Determination, identifies the information required for a consistency determination as set out in 15 CFR §930.39. This includes: a detailed description of the activity, its associated facilities, coastal effects, and comprehensive data and information sufficient to support the federal agency's consistency statement. The new subsection also provides that the amount of detail in the evaluation of the enforceable policies, activity description and supporting information is to be commensurate with the expected coastal effects of the activity. Additionally, a federal agency may submit the information to the GLO in any manner that it chooses so long as the requirements in 15 CFR §930.39 are met. The federal agency is also required to provide the consistency determination to the GLO for review no later than ninety (90) days prior to the approval of the activity. The new subsection also requires a statement in the consistency determination indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the Texas CMP. This is in conformance with 15 CFR §930.39(a).

New §30.20(c), relating to Request for Information, explains how GLO staff may request information from a federal agency if the federal agency provides an incomplete consistency determination, the GLO provides notice of the incomplete submission in accordance with the federal regulations, and it is the type of information identified in 15 CFR §930.39(a).

New §30.20(d), relating to NEPA or other Project documents, describes the types of documents, a federal agency may provide to GLO to sufficiently support the federal agency's consistency determination in accordance with 15 CFR §930.39(a).

New §30.20(e), relating to Demonstration of Consistency, describes the type of information a federal agency must provide in support of the federal agency's consistency determination. The information is set out in 15 CFR §930.39(a) and this section notes that the federal agency should demonstrate consistency to the maximum extent practicable with the CMP goals and enforceable policies. The demonstration of consistency may rely upon information contained in NEPA documents or other project documents, but if a consistency determination is embedded within a NEPA document, this should be clearly stated and provided to the GLO. The consistency determination should also meet all of the information requirements of 15 CFR §930.39(a) which can include a reference to the findings of the NEPA document.

New §30.20(f), relating to Public Participation, provides a description of the public notice and comment period for a consistency determination in accordance with 15 CFR §930.42. The new subsection provides that the GLO may issue joint public notices with federal agencies involved with the respective activity or development project. The GLO may also extend the public notice and comment period or schedule a public meeting. The new subsection also provides that the GLO will consider all comments received during the notice period.

New §30.20(g), relating to Referral to Commissioner, describes the process for referring a matter to the Commissioner for an elevated consistency review. This new subsection states that to refer an issue, at least three committee members must agree that a significant unresolved issue exists regarding consistency with the CMP goals and enforceable policies. If this requirement is met, then at least three committee members must submit a letter or email addressed to the CMP coordinator with a request that the matter be referred to the Commissioner for an elevated consistency review. Any applicable CMP goals and enforceable policies that are unresolved and potential impacts to CNRAs should be addressed in the letter or email. The referral process tracks the requirements in Texas Natural Resources Code, §33.206(e), as amended by SB 656.

New §30.20(h), relating to Commissioner Review, describes the factors the Commissioner must consider when conducting an elevated consistency review for a federal agency activity or development project. The new subsection states that the Commissioner will consider: (1) oral or written testimony received during the public comment period; (2) applicable CMP goals and enforceable policies; (3) information submitted by the federal agency or applicant; and (4) other relevant information to determine consistency with CMP goals and enforceable policies. This new subsection conforms to the requirements of Texas Natural Resources Code, §33.204(e), as amended by SB 656.

New §30.20(i), relating to the Review Period, sets the timeframe in which GLO will provide a decision or status update to the federal agency on the consistency determination. Under the new subsection, the GLO will provide a status update to the federal agency in writing within sixty (60) days from the date the consistency determination was deemed administratively complete. If the GLO has not completed its review during this time, the GLO will explain the basis for delay and follow the procedures set out in 15 CFR §930.36(b)(2) if an additional fifteen (15) days for review is necessary. The new subsection further states that a concurrence may be presumed by the federal agency if the matter has not been acted upon by the GLO after sixty (60) days from the date of administrative completeness and the GLO has not requested additional time for review. The sixty (60) day presumption of concurrence is set out in 15 CFR §930.41.

New §30.20(j), relating to Commissioner Objection, describes the process in which the Commissioner may object to the con-

sistency determination. The new subsection provides that the federal agency will be notified of the objection prior to the time, including any extensions, that the federal agency is entitled to presume the activity's consistency. The Commissioner's objection will follow the requirements provided in 15 CFR §930.43 which set out the required content for an objection.

New §30.20(k), relating to Mediation, describes how mediation may be sought if the Commissioner objects to the federal agency's consistency determination because it is deemed inconsistent with the CMP goals and enforceable policies. The mediation process is set out in 15 CFR §§930.110 et seq.

New §30.20(l), relating to Final Approval, describes the time that must pass before a federal agency may make a decision to undertake a proposed federal agency activity subject to CZMA review in §30.12 of this chapter.

New §30.30, relating to Consistency Certifications for Federal License or Permit Activities, describes the requirements for a consistency certification and the federal consistency process associated with the review of federal license or permit activities as provided for in 15 CFR Part 930, subpart D.

New §30.30(a), relating to Review of a Consistency Certification, describes the consistency certification review process for a non-federal applicant for a federal license or permit activity listed under §30.12 of this chapter. This new subsection provides the applicable review standard that the GLO will follow when conducting a consistency certification review of a federal license or permit activity in accordance with 15 CFR Part 930, subpart D. The new subsection also requires a federal license or permit activity listed under §30.12 of this Chapter to be consistent with the CMP goals and enforceable policies.

New §30.30(b), relating to Required Information for a Consistency Certification, requires an applicant for a federal license or permit activity to submit a consistency certification to the GLO for a consistency review. The consistency certification must be complete and follow the requirements set out in 15 CFR §930.57. This includes the necessary data and information that is required in 15 CFR §930.58 and §§30.30(b)(1), (2), (3), and (4) of this Chapter. The applicant must also provide a statement affirming that the "The proposed activity complies with the enforceable policies of Texas's approved coastal management program and will be conducted in a manner consistent with such program" which is in conformance with 15 CFR §930.57(b).

New §30.30(c), relating to a Request for Necessary Data and Information, states that GLO staff may request necessary data and information from the applicant when it has received an incomplete submission of information, as required by 15 CFR §§930.57 and 930.58. The GLO will send a notice of incomplete submission and may delay the start of the review period if the request for this information is provided within thirty (30) days from the date the consistency certification is received by the GLO.

New §30.30(d), relating to the Review Period, provides the GLO up to six (6) months to conduct the consistency review and issue a decision on the consistency certification request. The review period is initiated when the required necessary data and information has been received by the GLO. The required necessary data and information is identified in 15 CFR §930.58 and 31 TAC §30.30(b). The GLO cannot require the issuance of state or local permits to begin the consistency review, but the lack of this information may result in an objection based on lack of information because the GLO is unable to complete the consistency review without the identified information.

New §30.30(e), relating to Mutual Stay Agreement, allows the GLO and applicant to enter into a mutual written agreement with the applicant to stay the CZMA review period in accordance with 15 CFR §930.60(b). The mutual stay agreement provides additional time for the applicant and GLO to resolve any issues before the consistency review period expires. For a stay to be executed, the mutual stay agreement must be entered into before the consistency review period expires. The remaining day count in the federal consistency review period that is available on the date the mutual stay agreement is signed will be available to the GLO for purposes of completing the consistency review after the stay agreement expires.

New §30.30(f), relating to Permit Assistance, states that the GLO will provide permit assistance and guidance when requested by the applicant in accordance with 15 CFR §930.56.

New §30.30(g), relating to Consolidation of Federal License or Permit Activities, encourages applicants to consolidate related federal license or permit activities that are identified in §30.12 of this chapter (relating to Listed Federal Activities Subject to CZMA Review) to maximize efficiency and avoid unnecessary delays by reviewing all federal license or permit activities relating to a project at the same time.

New §30.30(h), relating to Public Participation, describes the public participation process which is in accordance with 15 CFR §930.61. The new subsection states that the GLO may issue joint public notices with the federal permitting or licensing agency. The new subsection also provides that the GLO may extend the public comment period or schedule a public meeting on the consistency certification. Comments received during the comment period will be considered.

New §30.30(i), relating to Demonstration of Consistency, explains how an applicant should demonstrate that the federal license or permit activity under review is consistent with the CMP goals and enforceable policies. The new subsection allows required state and local permits that have been issued to the applicant to be used by the applicant as evidence to demonstrate consistency with the CMP goals and enforceable policies.

New §30.30(j), relating to Referral to Commissioner, explains the process for referring a matter to the Commissioner for an elevated consistency review of the consistency certification. To refer a matter, at least three committee members must agree that a significant unresolved issue exists regarding consistency with the CMP goals and enforceable policies. If this requirement is met, then at least three committee members must submit a letter or email addressed to the CMP coordinator with a request that the issue be referred to the Commissioner for an elevated consistency review. Any applicable CMP goals and enforceable policies that are unresolved and potential impacts should be addressed in the letter or email. The referral process is consistent with the requirements in Texas Natural Resources Code, §33.206(e), as amended by SB 656.

New §30.30(k), relating to Commissioner Review, describes the factors the Commissioner must consider when conducting an elevated consistency review of a consistency certification. The factors that will be considered include: (1) oral or written testimony received during the public comment period; (2) applicable CMP goals and enforceable policies; (3) information submitted by the federal agency or applicant; and (4) other relevant information to determine consistency with CMP goals and enforce-

able policies. This new subsection conforms to the requirements of Texas Natural Resource Code, §33.204(e), as amended by SB 656.

New §30.30(l), relating to Presumption of Concurrence, describes when a concurrence may be presumed. Under the new subsection, the GLO will provide a status update in writing within ninety (90) days to the applicant seeking a federal license or permit. If the GLO has not issued a decision within six (6) months from the date the GLO received the complete consistency certification, the applicant may presume a concurrence.

New §30.30(m), relating to Commissioner Objection, provides that once a matter has been referred to the Commissioner for an elevated consistency review with the goals and enforceable policies of the CMP, the Commissioner may object to the consistency certification in accordance with the requirements in 15 CFR §930.63.

New §30.30(n), relating to Right of Appeal, provides that if the Commissioner finds that the proposed federal license or permit activity is inconsistent with the CMP goals and enforceable policies and objects to the consistency certification, the GLO shall notify the applicant of its appeal rights to the U.S. Secretary of Commerce, and the federal agency shall not authorize the federal license or permit activity, except as provided through the appeal process established in 15 CFR Part 930, subpart H.

New §30.40(a), relating to Consistency Review of an Outer Continental Shelf (OCS) Exploration, Development, and Production Activities, requires that an authorization from the U.S. Department of the Interior pursuant to the Outer Continental Shelf Lands Act (43 USC §§1331-1356(a)) be consistent with the goals and enforceable policies of the CMP. The GLO shall conform to the requirements and procedures set out in 15 CFR Part 930, subpart E and 43 U.S.C. §§1331 et seq.

New §30.40(b), relating to Consistency Certification of an OCS Plan, requires that any person, as defined at 15 CFR §930.72, submitting any OCS plan to the Secretary of Interior or designee shall provide a copy of the OCS plan and that the consistency certification include a provision affirming as follows: "The proposed activities described in detail in this plan shall comply with Texas' approved coastal management program and will be conducted in a manner consistent with the program." The new section also incorporates the requirement in 15 CFR §930.76 that the Secretary of the Interior or designee must provide the plan and consistency certification to the appropriate State agency, which in this case is the GLO.

New §30.40(c), relating to Request for Information, states that GLO's six (6) month review period on a consistency certification for an OCS plan begins on the date the GLO receives the information required at 15 CFR §930.76, and all the necessary data and information required at 15 CFR §930.58(a). Pursuant to 15 CFR §930.60(a), within thirty (30) days of an incomplete submission, GLO shall inform the person submitting the OCS plan that the GLO six (6) month review period will commence on the date of receipt of the missing consistency certification or necessary data and information. The GLO may waive the requirement that all necessary data and information described in §930.58(a) be submitted before commencement of the State agency's six (6) month consistency review. In the event of such a waiver, the requirements of 15 CFR §930.58(a) must be satisfied prior to the end of the six (6) month consistency review period or the GLO may object to the consistency certification for insufficient information.

New §30.40(d), relating to Consolidation of Related Authorizations, encourages persons submitting OCS plans to consolidate related federal licenses and permits that are subject to GLO review. This is not required but would allow for a more efficient review and minimize the duplication of effort and unnecessary delays. *See* 15 CFR §930.81.

New §30.40(e), relating to Public Participation, describes the public notice and comment period in accordance with 15 CFR §930.77. The new subsection provides that the GLO may issue joint public notices with the federal permitting or licensing agency. The new subsection also provides that the GLO may extend the public comment period or schedule a public meeting on the consistency certification. Comments received during the comment period will be considered by the GLO.

New §30.40(f), relating to Referral to Commissioner, explains the process for referring a matter to the Commissioner for an elevated consistency review of the OCS plan's consistency certification. To refer an issue, at least three committee members must agree that a significant unresolved issue exists regarding the OCS plan's consistency with the CMP goals and enforceable policies. If this requirement is met, then at least three committee members must submit in writing a letter or email addressed to the CMP coordinator with a request that the issue be referred to the Commissioner for an elevated consistency review. Any applicable CMP goals and enforceable policies that are unresolved and potential impacts should be addressed in the letter or email. The referral process conforms to Texas Natural Resources Code, §33.206(e), as amended.

New §30.40(g), relating to Commissioner Review, describes the factors the Commissioner must consider when conducting an elevated consistency review of an OCS Plan's consistency certification. The factors that will be considered include: (1) oral or written testimony received during the public comment period; (2) applicable CMP goals and enforceable policies; (3) information submitted by the federal agency or person; and (4) other relevant information to determine consistency with CMP goals and enforceable policies. This new subsection follows the requirements of Texas Natural Resources Code, §33.204(e), as amended by SB 656.

New §30.40(h), relating to Review Period, states that if the GLO has not issued a decision regarding the OCS plan within three months from the date the GLO received the administratively complete consistency certification, then the GLO shall notify the person submitting the plan, Secretary of the Interior, and the Office for Coastal Management (OCM) Director of the status of the review and basis for further delay. *See* 15 CFR §930.78. The GLO's review period is up to six (6) months but if no action is taken by the GLO, a concurrence may be presumed after three (3) months.

New §30.40(i), relating to Presumption of Concurrence, provides that if the GLO does not act on an OCS plan within three (3) months of the date from when the GLO receives an administratively complete consistency certification, then the GLO's concurrence with the consistency certification shall be conclusively presumed. If the GLO provides a status of review letter within three (3) months and continues its review, a concurrence may be presumed at six (6) months. Additionally, if the GLO issues a concurrence or the action is presumed concurrent, then the person submitting the OCS plan is not required to submit additional consistency certifications to the GLO for the individual federal authorizations that will be required to authorize the activities described in detail in the OCS plan as set out in 15 CFR §930.79.

New §30.40(j), relating to Commissioner Objection, provides that once a matter has been referred to the Commissioner for an elevated consistency review with CMP goals and enforceable policies, the Commissioner may object to a federal license or permit activity described in detail in the OCS plan's consistency certification as provided for in 15 CFR §930.79. The GLO will notify the person of its appeal rights to the U.S. Secretary of Commerce.

Proposed new §30.50, relating to Consistency Review of Federal Assistance Applications, is withdrawn. Given that new §30.12(a)(3), as adopted with the changes discussed above, does not include listed federal financial assistance awards, the GLO has determined that the more detailed review procedures in proposed new §30.50 are not needed at this time. Although §30.50 is withdrawn, the GLO intends to reserve the section number for future use.

New §30.60, relating to Equivalent Federal and State Actions, sets out the referral thresholds of a proposed activity for state consistency review, and does not allow a state and federal consistency review to occur for the same action.

New §30.60(a), relating to Below Thresholds, provides that if a proposed activity requiring a state agency or subdivision action falls below thresholds for referral approved under Chapter 29, Subchapter B of this title (relating to Commissioner Certification of State Agency Rules and Approval of Thresholds for Referral) and requires an equivalent federal permit or license under this chapter, the GLO may only determine the state agency or subdivision action's consistency by using the process provided in Chapter 29 of this title (relating to Procedures for State Consistency with Coastal Management Program Goals and Policies). The GLO's determination regarding the consistency of an action under this subsection constitutes the state's determination regarding consistency of the equivalent federal action.

New §30.60(b), relating to Above Thresholds, states that if an activity requiring a state agency or subdivision action meets the threshold for referring the matter for an elevated consistency review and requires an equivalent federal permit or license, the GLO may determine the consistency of the state agency or subdivision action or the federal license or permit, but not both. Texas Natural Resource Code, §33.206(f), as amended by SB 656.

New §30.60(c), relating to Equivalent State Action or Federal Action, explains that an action made by the GLO under §§30.60(a) and (b) is the state's determination regarding consistency of the equivalent agency or subdivision action or federal action. Texas Natural Resource Code, §33.206(f), as amended by SB 656.

PUBLIC COMMENTS

During the public comment period, GLO received comments from NOAA OCM staff regarding the proposed new rules in Chapter 30. Specifically, OCM staff provided comments regarding the federal consistency list in §30.12. Following discussion between GLO and OCM staff, several of the comments were resolved and resulted in no changes to the proposal. In response to OCM comments regarding proposed §30.12(a)(3), relating to State and Local Government Applications for Federal Assistance, the GLO decided to revise the subsection. Specifically, the proposed list of federal financial assistance awards in §30.12(a)(3) was removed and replaced with the adopted language which outlines the procedures for reviewing unlisted federal financial assistance awards pursuant to the federal regulations. Pending further evaluation and analysis, the GLO may decide in the future to propose adding a list of certain federal financial assistance awards and seek OCM approval of the same, in which case this rule would be proposed for amendment in a subsequent rulemaking action. In the meantime, given the changes to §30.12(a)(3) as adopted, the GLO has determined that the procedures in proposed §30.50 are not needed at this time and therefore §30.50 is withdrawn.

No other comments were received on the proposed repeals and new rules.

31 TAC §§30.10 - 30.13, 30.20 - 30.37, 30.40 - 30.45, 30.50 - 30.54

STATUTORY AUTHORITY

The repeals are adopted under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; and §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule.

The repeals are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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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Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
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Proposal publication date: January 27, 2023
For further information, please call: (512) 475-1859

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CHAPTER 30. PROCEDURES FOR FEDERAL CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND POLICIES

31 TAC §§30.10 - 30.12, 30.20, 30.30, 30.40, 30.60

STATUTORY AUTHORITY

The new sections are adopted under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; and §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule.

The adopted new sections are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§30.12. Federal Listed Activities Subject to CZMA Review.

(a) For purposes of this section, the following federal actions within the CMP boundary may adversely affect coastal natural resource areas (CNRAs) within the coastal zone. This list of federal actions includes federal agency activities, federal license or permit activities, and federal assistance applications that are subject to CZMA federal consistency review by the GLO.

(1) Federal Agency Activities and Development Projects. For all actions proposed by or on behalf of federal agencies that may have reasonably foreseeable effects on CNRAs, a consistency determination or negative determination must be submitted to the GLO pursuant to the requirements of the Federal Consistency regulations found at 15 CFR Part 930, subpart C.

(A) United States Department of the Interior:

(i) modifications to the boundaries of the Coastal Barrier Resource System under 16 United States Code Annotated, §3503(c); and

(ii) OCS lease sales within the western and central Gulf of Mexico under 43 United States Code Annotated, §1337;

(B) United States Environmental Protection Agency. Selection of remedial actions under 42 United States Code Annotated, §9604(c);

(C) United States Army Corps of Engineers:

(i) small river and harbor improvement projects under 33 United States Code Annotated, §577;

(ii) water resources development projects under 42 United States Code Annotated, §1962d-5;

(iii) small flood control projects under 33 United States Code Annotated, §701s;

(iv) small beach erosion control projects under 33 United States Code Annotated, §426g;

(v) operation and maintenance of civil works projects under the Code of Federal Regulations, Title 33, Parts 335 and 338;

(vi) dredging projects under the Code of Federal Regulations, Title 33, Part 336;

(vii) approval for projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects pursuant to 33 United States Code Annotated, §426i; and

(viii) approval for projects for the placement on state beaches of beach-quality sand dredged from federal navigation projects pursuant to 33 United States Code Annotated, §426j;

(D) Federal Emergency Management Agency:

(i) model floodplain ordinances; and

(ii) approval of a community's participation in the National Flood Insurance Program (NFIP) under the Code of Federal Regulations, Title 44, Part 59, subpart B;

(E) General Services Administration:

(i) acquisitions under 40 United States Code Annotated, §602 and §603; and

(ii) construction under 40 United States Code Annotated, §605;

(F) All federal agencies:

(i) all other development projects; and

(ii) natural resource restoration plans developed pursuant to the Oil Pollution Act of 1990 (33 United States Code Annotated §§2701-2761) and the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code Annotated §§9601-9675).

(2) Federal license or permit activities. For all actions proposed by an applicant a consistency certification must be submitted to the GLO pursuant to the requirements of the Federal Consistency regulations in 15 CFR Part 930, subpart D.

(A) Environmental Protection Agency:

(i) National Pollution Discharge Elimination System (NPDES) permits under 33 United States Code Annotated, §1342;

(ii) ocean dumping permits under 33 United States Code Annotated, §1412;

(iii) approvals of land disposal of wastes under 42 United States Code Annotated, §6924(d);

(iv) development of total maximum daily loads (TMDLs) and associated federally developed TMDL implementation plans under 33 United States Code Annotated, §1313; and

(v) approvals of National Estuary Program Comprehensive Conservation Management Plans under 33 United States Code Annotated, §1330f;

(B) United States Army Corps of Engineers:

(i) ocean dumping permits under 33 United States Code Annotated, §1413;

(ii) dredge and fill permits under 33 United States Code Annotated, §1344;

(iii) permits under §9 of the Rivers and Harbor Act of 1899, 33 United States Code Annotated, §401;

(iv) permits under §10 of the Rivers and Harbor Act of 1899, 33 United States Code Annotated, §403; and

(v) Memoranda of Agreement for mitigation banking;

(C) United States Department of Transportation:

(i) approvals under §7(a) of the Federal-Aid Highway Amendments Act of 1963, 23 United States Code Annotated, §106;

(ii) approvals under §502 of the General Bridge Act of 1946, 33 United States Code Annotated, §525; and

(iii) Deepwater port licenses under 33 United States Code Annotated, §1503;

(D) Federal Aviation Administration: Airport operating certificates under 49 United States Code Annotated, §44702;

(E) Federal Energy Regulatory Commission:

(i) certificates under §7 of the Natural Gas Act, 15 United States Code Annotated, §717f;

(ii) licenses under §4 of the Federal Power Act, 16 United States Code Annotated, §797(e); and

(iii) exemptions under §403 of the Public Utility Regulatory Policies Act of 1978,16 United States Code Annotated, §2705(d);

(F) Nuclear Regulatory Commission. Licenses under §103 of the Atomic Energy Act of 1954, 42 United States Code Annotated, §2133.

(3) State and Local Government Applications for Federal Assistance. Federal financial assistance awards may be subject to federal consistency review in accordance with the procedures specified at 15 CFR §§ 930.98 and 930.54 with the approval of the Office for Coastal Management within the National Oceanic and Atmospheric Administration.

(b) OCS Exploration Plans and Development and Production Plans. 43 United States Code, §§1340(c) and 1351. United States Department of the Interior. This includes federal agency actions requiring a license or permit described in detail in OCS plans, including pipeline activities.

(c) In the event the GLO elects to review a proposed federal agency activity of a type that is unlisted in subsection (a)(1) of this section the GLO will follow the federal regulations process set out in 15 CFR §930.34(c). If the GLO elects to review a proposed federal license or permit activity of a type that is unlisted in subsection (a)(2) of this section, the GLO will follow the procedures set out in 15 CFR §930.54.

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 June 20, 2023.

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Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
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For further information, please call: (512) 475-1859

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PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.2

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 23, 2023 adopted an amendment to 31 TAC §53.2, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules, without changes to the proposed text as published in the February 17, 2023, issue of the *Texas Register* (48 TexReg 824). The rule will not be republished.

The amendment authorizes reciprocal license privileges regarding the activities of freshwater fishing guides in the shared boundary waters of Texas and Louisiana. The department has entered into a reciprocity agreement with the Louisiana Department of Wildlife and Fisheries to allow appropriately licensed residents of both states to engage in business as freshwater fishing guides in the shared boundary fresh waters of either state.

The department received one comment opposing adoption of the rule as proposed. The commenter did not provide a reason or rationale for opposing adoption. No changes were made as a result of the comment.

The department received 11 comments supporting adoption of the rule as proposed.

The Coastal Conservation Association commented in support of adoption of the rule as proposed.

The amendment is adopted under Parks and Wildlife Code, §41.003, which authorizes the director to negotiate for the commission with the proper representatives of each state having a common border with Texas to allow reciprocal fishing on rivers and lakes on the common boundary between Texas and the border state, and under Parks and Wildlife Code, §41.006, which authorizes the commission to make regulations conforming to an agreement under §41.003 for the conservation of fish and wildlife.

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 June 21, 2023.

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James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: July 11, 2023
Proposal publication date: February 17, 2023
For further information, please call: (512) 389-4775

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CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 23, 2023, adopted the repeal of §57.985 and amendments to 31 TAC §§57.971 - 57.974, 57.981, and 57.992, concerning the Statewide Recreational and Commercial Fishing Proclamation. The amendments to §57.981 and §57.992 are adopted with changes to the proposed text as published in the February 17, 2023, issue of the *Texas Register* (48 TexReg 825). The repeal of §57.985 and the amendments to §§57.971 - 57.974 are adopted without change and will not be republished.

The change to §57.981, concerning Bag, Possession, and Length Limits, removes an exception to catfish harvest regulations currently in effect for Dixieland Reservoir in Cameron County. Biological assessments have revealed that Dixieland Reservoir now meets the definition of a community fishing lake (CFL) because it is less than 75 acres in size and located within a city park.

The change to §57.981 also eliminates the proposed vessel limit for cobia. The proposed rule would have instituted a bag limit of one cobia per person per day with a vessel limit of two cobia per day. The proposal was intended to make harvest regulations for cobia in Texas waters consistent with federal rules in effect in federal waters. In the course of its deliberations, the commission determined that the vessel limit could in some cases act to

restrict angler opportunity in Texas waters by eliminating the opportunity for more than two persons aboard any vessel to retain a cobia if desired.

The change to §57.981 also alters subsection (d)(2) to replace the phrase "greater than 14 inches" with the phrase "14 inches or greater," with respect to minimum length limits for black bass, which is necessary to prevent confusion. The department does not intend for the length limit to prohibit the retention of fish of exactly 14 inches in length. The change also alters subsection (d)(2) by adding language to clarify that Elm Lake is on Brazos Bend State Park and inserting Lake Pilant (also in Brazos Bend State Park) in the list of affected waterbodies because it is one of the state park lakes that will continue to be managed under CFL rules.

The change to §57.992, concerning Bag, Possession, and Length Limits for commercial harvest, would also eliminate the proposed vessel limit for cobia in state waters, for the same reasons articulated in the discussion of the changes to §57.981.

The repeal of §57.985, concerning Largemouth Bass - Special Bag, Possession, and Length Limits, is necessary to rescind what was, in effect, a temporary regulation that is no longer necessary because its provisions are now contained in §57.981(d)(1)(C)(iii).

The amendment to §57.971, concerning Definitions, alters the definition for "community fishing lake" and add new definitions for "descending device" and "venting tool." The alteration to the definition of community fishing lake replaces the term "public park" with the phrase "municipal, city, county, or state park" to exclude federal parklands (which are not regulated by the department) and to clarify that the provisions of the subchapter with respect to angling on community fishing lakes apply to waterbodies at all levels of political jurisdiction within the state.

The amendment also defines the terms "descending device" and "venting tool." Federal law (50 CFR Part 622) requires anglers on commercial vessels, charter vessels and headboats (for-hire vessels), and private recreational vessels to have a descending device or venting tool rigged and ready to use when fishing for Gulf reef fish in federal waters, which is intended to reduce release mortality caused by barotrauma (the lethal expansion of gases inside a fish when it is caught at depth and quickly brought to the surface).

The amendment to §57.972, concerning General Rules, requires a descending device or venting tool be rigged, present, and ready for use while fishing for reef fish, and be deployed on reef fish exhibiting signs of barotrauma when returning reef fish to the water; thus, the terms must be defined for purposes of compliance and enforcement.

The amendment to §57.973, concerning Devices, Means and Methods, consists of several actions.

Several components of this rulemaking affect harvest regulations on community fishing lakes (CFLs). CFLs are currently defined as "all public impoundments 75 acres or smaller located totally within an incorporated city limits or a public park, and all impoundments of any size lying totally within the boundaries of a state park." Because the overwhelming majority of CFLs are proximally located to urban and suburban environments, the department believes they are an ideal "gateway" to the angling experience for the uninitiated and curious public. The department wishes to encourage new participants to the angling experience and believes that making the experience less intimidating/confusing is crucial to that goal. Therefore, the amendments in concert implement a single harvest regulation applicable on all CFLs (with certain specific exceptions based on management goals on specific lakes), which the department believes will make the angling experience less daunting to those unfamiliar with it as well as making compliance and enforcement easier for all concerned. Historically, the department has treated virtually all state park lakes, irrespective of size, as CFLs. The CFL rules as adopted exclude several lakes associated with certain state parks that are currently being managed as CFLs (because of their size); however, the department wishes to retain certain restrictions governing means and methods (restriction of method of take to pole-and-line only, limitations on taking devices per angler) on those water bodies, which is necessary, given the high angling pressure typical on those water bodies, to equitably distribute angling opportunity and reduce user conflicts. Therefore, those state park water bodies must be identified for those restrictions to apply.

The amendment also removes Gibbons Creek Reservoir in Grimes County from special gear restriction rules because there is no longer public access to the reservoir. Therefore, the special restrictions are no longer necessary since the high angling pressure that originally necessitated them will be greatly reduced.

The amendment to §57.974, concerning Reservoir Boundaries, adds boundary descriptions for two reservoirs, corrects an inaccurate boundary description, and removes the boundary description for one reservoir. In cases where harvest regulations on a stream are different from those on a reservoir created by impounding the stream, angler confusion can occur; therefore, boundary descriptions are necessary to specifically delineate the physical point separating the differential harvest rules. The amendment adds boundary descriptions for Choke Canyon Reservoir in Live Oak and McMullen counties and O. H. Ivie Reservoir in Concho, Coleman, and Runnels counties, corrects an erroneous roadway identification in the boundary for Lake Conroe in Montgomery and Walker counties, and eliminates the description for Gibbons Creek Reservoir in Grimes County (for reasons discussed earlier in this preamble).

The amendment to §57.981, concerning Bag, Possession, and Length Limits, consists of several actions. As indicated earlier in this preamble, one aspect of this rulemaking is the implementation of a single harvest regulation on CFLs. Under current rule, harvest regulations on CFLs consist of the statewide standards for various species and numerous special exceptions. The amendment creates new subsection (d)(2) to implement a bag limit of five fish, all species combined, to include not more than one black bass of 14 inches or greater in length. By imposing a standard bag limit, the department intends to make angling opportunity less intimidating for those who are curious or simply wish to engage in angling activity during a park visit. Because CFLs are routinely stocked by the department, fish population and population structure management are less complicated than on much larger waterbodies. In this context, the bag limit for CFLs is more a matter of equitable distribution of angling opportunity than of concrete management goals for fish populations. As mentioned earlier in this preamble, the revised definition of CFLs excludes larger waterbodies associated with state parks; therefore, various portions of current rules must be altered to address harvest management on those waterbodies, in particular, various special exceptions in current rules for largemouth bass and blue and channel catfish. Current subsection (d)(1)(G)(v) - (vii) must be eliminated to accommodate the new

CFL standards, although the department notes that special exceptions for blue and channel catfish on lakes Bellwood (Smith County) and Tankersley (Titus County) are eliminated, which means the statewide standard catfish harvest rules are in effect on those waterbodies. Current special exceptions for largemouth bass are removed on Lake Bright, Cleburne State Park, Meridian State Park, Rusk State Park, Buescher State Park, and Lake Lakewood. Finally, the amendment imposes the CFL bag limits on seven waterbodies that are not CFLs by definition, but which department biologists believe, based on specific indices such as angling pressure and population data, are best managed under that standard. Lakes Abilene, Raven, and Sheldon are now subject to the exceptions for blue and channel catfish harvest rules because they are state park lakes that would no longer be managed as CFLs.

Under current rule, largemouth bass on Lake Nasworthy in Tom Green County are managed under a special exception to the statewide standard, which consists of a 14 to 18-inch slot length limit. Fisheries data at Lake Nasworthy indicate that no change in largemouth bass abundance, size structure, or growth resulted from the implementation of the slot length limit. Harvest is low and the harvest of additional largemouth bass less than 14 inches is needed to restructure the population. Therefore, the amendment removes the special exception and harvest regulations and harvest regulations on those waterbodies revert to the statewide standard.

The amendment also implements a catch-and-release restriction for harvest of largemouth bass on Lake Forest Park in Denton County. The lake has been undergoing renovation activities including dam replacement, silt removal, fish habitat improvements, and fish stocking. The catch-and-release restriction is intended to temporarily protect the initial year-classes of stocked largemouth bass to develop into a quality, self-sustaining population.

Additionally, what was previously known as the Bedford Boys Ranch Lake in Tarrant County has been renamed; therefore, the amendment reflects that fact. The new name is Generations Park.

As mentioned previously in this preamble, the amendments result in the removal of exceptions to the statewide harvest regulations specific to Gibbons Creek Reservoir in Grimes County; thus, the department notes that harvest regulations on Gibbons Creek revert to the statewide standard for all species.

Finally, the amendment alters recreational bag and possession limits for cobia and prohibits the recreational retention or landing of shortfin mako sharks, both in response to federal actions. The National Marine Fisheries Service has prohibited the retention or landing of shortfin mako sharks in response to concerns about declining populations. The amendment is intended to conform state regulations with federal regulations, which is intended to prevent angler confusion and enhance compliance, administration, and enforcement. Concerns with declining stocks of cobia in the Gulf of Mexico have resulted in federal changes that reduce the daily bag limit (from two fish to one fish) and implement a boat limit of two fish. The amendment makes Texas rules regarding personal daily bag limits consistent with federal rules with the exception of the two-fish vessel limit.

The amendment to §57.992, concerning Bag, Possession, and Length Limits, implements federal actions regarding cobia and shortfin mako sharks with respect to commercial fishing. Those actions are identical to the actions described in the discussion of the adopted amendment to §57.981 and are undertaken for the same reasons.

The department received 22 comments opposing adoption of the portion of the proposed amendments that affects community fishing lakes (CFLs) and selected state parks lakes managed under CFL regulations. Of those comments, four articulated a reason or rationale for opposition. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that pole restrictions on CFLs are unnecessary and overreaching. The department disagrees with the comment and responds that CFLs are small waterbodies stocked by the department in order to provide angling opportunities in urban areas and to introduce novice anglers to the fishing experience. As such they are quite popular. Gear restrictions are necessary to equitably distribute angling opportunity and to prevent user conflicts. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the uniform five-fish bag limit on CFLs is "nonsense." The commenter stated the bag limit will result in "unnatural over breeding of certain fish versus others" and that instead of "sweeping blanket policies" the department should leave fisheries management to lake authorities, counties or cities. The department disagrees with the comment and responds that because CFLs are regularly stocked by the department and typically experience significant angling pressure, species composition is not a significant management concern. The department also responds that by statute the department is the sole management authority for the public fisheries resources of the state, which means that lake authorities, counties, and cities are prohibited from resource regulation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the gear restrictions for CFLs should allow no more than three, rather than two, pole-and-line taking devices per person, because gear can break and anglers should be allowed to have a back-up. The department disagrees with the comment and responds that the rules prohibit the use of more than two devices by any person at the same time, not the possession of more than two devices. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the CFL daily bag limit of one black bass of 14 inches or greater is too restrictive and unnecessary because it limits a husband and wife to one fish. The department disagrees with the comment and responds that the bag limit is a personal bag limit, meaning any person with a fishing license (if one is required) is entitled to the bag and length limits in effect on any waterbody.

The department received 668 comments supporting adoption of the rule as proposed.

The department received six comments opposing adoption of the proposed amendment to §57.974, concerning reservoir boundaries. None of the commenters provided a reason or rationale for opposing adoption. The department disagrees with the comments. No changes were made as a result of the comments.

The department received 318 comments supporting adoption of the rule as proposed.

The department received 77 comments opposing adoption of the portion of the proposed amendment to §57.981 that eliminates exceptions to statewide harvest regulations on Gibbons Creek Reservoir. The commenters articulated a variety of reasons for opposition and the department disagrees with all of them, re-

sponding as stated in the preamble that public access by land to Gibbons Creek Reservoir is no longer possible; therefore, the only access to the waterbody is via public water upstream or downstream and the resultant decline in angling pressure makes the current harvest rules unnecessary. No changes were made as a result of the comments.

The department received 269 comments supporting adoption of the rule as proposed.

The department received 21 comments opposing adoption of the portion of the proposed amendment to §57.981 that eliminates the slot length limit for largemouth bass on Lake Nasworthy. Of those comments, three provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated the slot length limit should remain and the department should consider raising the lower end of the slot length limit to 15 inches. The commenter also stated that opinions of tournament anglers should not be what drives the regulatory process. The department disagrees with the comment and responds that fisheries data at Lake Nasworthy indicate that no change in largemouth bass abundance, size structure, or growth resulted from the implementation of the slot length limit. Harvest is low and the harvest of additional largemouth bass less than 14 inches is needed to restructure the population. Additionally, angler opinion survey data show that most anglers prefer a return to statewide length and bag limits for largemouth bass. The department also responds that management decisions are based on biological science and not the desires of any particular user group. No changes were made as a result of the comment.

One commenter opposed adoption and stated the lower end of the slot length limit should be reduced to 12 inches. The department disagrees with the comment and responds that fisheries data at Lake Nasworthy indicate that no change in largemouth bass abundance, size structure, or growth resulted from the implementation of the slot length limit. Harvest is low and the harvest of additional largemouth bass less than 14 inches is needed to restructure the population. Reducing the lower end of the slot length limit will not encourage or increase the needed harvest of largemouth bass less than 12 inches. No changes were made as a result of the comment.

One commenter opposed adoption and stated the slot length limit should be broadened. The department disagrees with the comment and responds that, as noted elsewhere in this preamble, the slot length limit on Lake Nasworthy has not been effective. No changes were made as a result of the comment.

The department received 389 comments supporting adoption of the rule as proposed.

The department received 19 comments opposing adoption of the portion of the proposed amendment to §57.981 that implements catch-and-release harvest regulations for Lake Forest Park in Denton County. Of those comments, four articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that catch-and-release provisions should not be imposed on any waterbody. The department disagrees with the comment and responds that catch-and-release restrictions are useful in situations where continued angler enjoyment can be offered while management actions are ongoing. Once a given management action is completed or discontinued, harvest regulations typically revert to either the statewide standard harvest rule for the species or an exception to the statewide standard. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's management goal of creating a self-sustaining quality largemouth bass fishery is impossible because the lake is only 15 acres in size. The department disagrees with the comment and responds that the management goal is reasonable in light of existing examples of a similar nature. No changes were made as a result of the comment.

One commenter opposed adoption and stated that catch-and-release provisions should be based on fish weight. The department disagrees with the comment and responds that imposing weight restrictions would be problematic, as the efficacy of individual measurement devices would be variable and perhaps unreliable. No changes were made as a result of the comment.

One commenter opposed adoption and stated that harvest should be governed by a slot length limit. The department disagrees with the comment and responds that slot length limits function to protect certain age classes or stages of life history in a population, whereas catch-and-release only provisions protect all fish in the population until a viable population structure is established. No changes were made as a result of the comment.

The department received 387 comments supporting adoption of the rule as proposed.

The department received 18 comments opposing adoption of the portion of the proposed amendment to §57.981 that eliminates special catfish harvest regulations on lakes Bellwood (Smith County) and Tankersley (Titus County) and replaces them with the statewide standard harvest regulation. None of the commenters provided a reason or rationale for opposing adoption. The department disagrees with the comments. No changes were made as a result of the comments.

The department received 318 comments supporting adoption of the rule.

The department received 21 comments opposing adoption of the portion of the proposed amendment to §57.981 that prohibits the take of shortfin mako shark. Of those comments, 11 articulated a reason or rationale for opposition. Those comments, accompanied by the department's response to each, follow.

Three commenters opposed adoption and stated that there is no data to suggest that recreational angling exerts any population-level impacts on shortfin mako shark populations and the rule is therefore overreaching. The department disagrees with the comments and responds that apart from the consensus of the scientific community that the data clearly indicate overfishing of shortfin mako sharks is occurring, the intent of the rule is to conform harvest regulations in state waters with those in effect in federal waters for purposes of preventing angler confusion and to enhance compliance, administration, and enforcement. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there are too many sharks in the Gulf of Mexico as a result of federal actions, that mako sharks are not being overfished, and that more sharks are unnecessary. The department disagrees with the comment and responds that the purpose of the rule is to conform harvest regulations in state waters with those in federal waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no evidence of overfishing of shortfin mako sharks. The department disagrees with the comment and responds that apart from the consensus of the scientific community that the data clearly indicate overfishing of shortfin mako sharks is occurring, the purpose of the rule is to conform harvest regulations in state waters with those in federal waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many sharks decimating game fish populations. The department disagrees with the comment and responds that there is no biological evidence to suggest that there are too many sharks or that sharks exert negative population impacts on any other species of fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should not be a boat limit for shortfin mako sharks. The department agrees with the comment and responds that a boat limit was not proposed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that recreational angling should not be regulated. The department disagrees with the comment and responds that the department is required by statute to manage public fisheries resources and that in light of the popularity of fishing and the level of angling pressure, regulation of recreational angling is unquestionably necessary to protect those resources for the enjoyment of present and future generations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a boat limit of one shortfin mako shark per day. The department disagrees with the comment and responds that in addition to the department's reluctance to employ boat limits due to the sometimes problematic nature of boat limits with respect to efficient distribution of individual angling opportunity, implementing a boat limit for shortfin mako sharks is unnecessary because take of shortfin mako sharks is prohibited by the rule. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no valid reason for the proposal because "the federal regulation is not stated." The department disagrees with the comment and responds that there is a valid reason for the rule, namely, and as explained earlier in this preamble as well as in the preamble of the proposed rule, to avoid angler confusion and problematic enforcement scenarios. Additionally, the department considers that verbatim reproduction of federal regulatory language is unnecessary because the proposal preamble clearly stated that federal rules prohibit the take of shortfin mako shark in federal waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the take of shortfin mako sharks should be prohibited for commercial anglers and allowed for recreational anglers. The department disagrees with the comment and responds that the rule is intended to prevent angler confusion; therefore, allowing any harvest of shortfin mako shark - either commercial or recreational - in Texas waters would defeat the purpose of the rule. No changes were made a result of the comment.

One commenter opposed adoption and stated that the rule will cause anglers who catch shortfin mako sharks to cut the line and leave the hook and associated tackle in the shark. The department disagrees with the comment and responds that the rule does not prohibit the catch of shortfin mako sharks, just the retention of shortfin mako sharks, and that the ethical angler will take the necessary steps to maximize the survival potential of all fish that must be released. No changes were made as a result of the comment.

The department received 128 comments supporting adoption of the rule as proposed.

The department received 15 comments opposing adoption of the portion of the proposed amendment to §57.981 that imposed requirements to possess and use descending devices and venting tools. Of those comments, five offered a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated that the rule is unnecessary in state waters because those waters are too shallow. The department disagrees with the comment and responds that a recreational saltwater license entitles the holder to fish in federal waters in addition to state waters, and notes that the rule requires the use of descending devices only on fish that exhibit signs of barotrauma. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is stupid because there are too many snapper in the Gulf. The department disagrees with the comment and responds that the rule is intended to reduce hooking mortalities in general and applies to all species of fish showing signs of barotrauma. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the real problem is "foreign commercial fishing boats overfishing the international waters off the Texas Coast" and that international limits should be established that are enforced by all countries. The department neither agrees nor disagrees with the comment and responds that international fishing agreements are not within the authority of the commission to negotiate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that compliance will be low. The department disagrees with the comment and responds that ethical anglers will do their part by complying with the rules. No changes were made as a result of the comment.

The department received 147 comments supporting adoption of the rule as proposed.

The department received 17 comments opposing adoption of the portion of the proposed amendment to §57.981 that affect the personal daily bag limit for cobia.

One commenter opposed adoption and stated that the ability to harvest wildlife resources is becoming more difficult every day. The department neither agrees nor disagrees with the comment and responds that the rule is intended to comport rules in Texas waters with those in federal waters in order to reduce confusion. The department also responds that direct and indirect effects of human population growth over the last century have created circumstances that preclude the exploitation of natural resources without restraint or limitation, which is unsustainable. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are plenty of cobia. The department disagrees with the comment and responds that apart from scientific data indicating that overfishing of cobia is occurring, the intent of the rule is to comport rules in Texas waters with those in federal waters in order to reduce confusion to the most practicable extent without compromising individual angling opportunity for all persons aboard a vessel. No changes were made as a result of the comment.

One commenter opposed adoption and stated that recreational fishing is not responsible for cobia declines. The department agrees with the comment and responds that the intent of the rule is to comport rules in Texas waters with those in federal waters in order to reduce confusion. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should apply to "the Houston area" in order "to meet quotas." The department disagrees with the comment and responds that absent extraordinary situations, uniform harvest regulations are preferable because they are easy to understand and comply with, and that there are no "quotas" the department is aware of with respect to cobia harvest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should allow the harvest of one cobia per person per day. The department agrees with the comment and responds that the rule allows the harvest of one cobia per person per day. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is a knee-jerk reaction and a waste of time. The department disagrees with the comment and responds that apart from scientific data indicating that overfishing of cobia is occurring, the intent of the rule is to comport rules in Texas waters with those in federal waters in order to reduce confusion. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily personal bag limit should be three because "there's enough to go around." The department disagrees with the comment and responds that the data do not support a three-fish daily personal bag limit, which would result in rapid population declines. No changes were made as a result of the comment.

The department received 150 comments supporting adoption of the proposed amendment.

The department received 31 comments opposing adoption of the portion of the proposed amendment to §57.981 that would have imposed a vessel limit for the take of cobia. Of those comments, seven provided a specific reason or rationale for opposition. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that to remove the opportunity for everyone aboard a vessel to catch a cobia is overbearing and unreasonable. The department neither agrees nor disagrees with the comment and responds that after extensive deliberation, the commission was reluctant to employ boat limits due to the sometimes problematic nature of boat limits with respect to efficient distribution of individual angling opportunity; therefore, the proposed vessel limit was not adopted.

One commenter opposed adoption and stated that there should not be a vessel limit for recreational anglers. The department neither agrees nor disagrees with the comment and responds that after extensive deliberation, the commission was reluctant to employ boat limits due to the sometimes problematic nature of boat limits with respect to efficient distribution of individual angling opportunity; therefore, the proposed vessel limit was not adopted.

One commenter opposed adoption and stated that a vessel limit would cause problems on charter vessels. The department agrees with the comment and responds that the vessel limit was not adopted.

One commenter opposed adoption and stated that imposing a boat limit will only confuse the fishermen without having an impact on the species. The department neither agrees nor disagrees with the comment and responds that after extensive deliberation, the commission was reluctant to employ boat limits due to the sometimes problematic nature of boat limits with respect to efficient distribution of individual angling opportunity; therefore, the proposed vessel limit was not adopted.

One commenter opposed adoption and stated that the cobia limit per vessel per day should be four. The department neither agrees nor disagrees with the comment and responds that after extensive deliberation, the commission was reluctant to employ boat limits due to the sometimes problematic nature of boat limits with respect to efficient distribution of individual angling opportunity; therefore, the proposed vessel limit was not adopted.

One commenter opposed adoption and stated that the vessel limit should not apply to recreational anglers, which does not include party boats. The department disagrees with the comment to the extent that anyone fishing under a recreational license is engaged in recreational angling, including persons on chartered vessels, and, for reasons discussed elsewhere in this preamble, the proposed vessel limit was not adopted.

One commenter opposed adoption and stated that vessel limit should only apply to commercial anglers. The department disagrees with the comment and responds that the intent of the proposed rule was to standardize harvest regulation with those in effect in federal waters, which would affect all harvest, both recreational and commercial, but that in any case, the proposed vessel limit was not adopted.

The department received 125 comments supporting adoption of the rule as proposed.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§57.971 - 57.974

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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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James Murphy
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§57.981. Bag, Possession, and Length Limits.

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's residence and is finally processed.

(b) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(c) There are no bag, possession, or length limits on game or non-game fish, except as provided in this subchapter.

(1) Possession limits are twice the daily bag limit on game and non-game fish except as otherwise provided in this subchapter.

(2) For flounder, the possession limit is the daily bag limit.

(3) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested.

(4) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document (WRD) from the person who took the wildlife resource, provided the person is in compliance with all other applicable provisions of this subchapter and the Parks and Wildlife Code. The properly executed WRD document shall accompany the wildlife resource until it reaches the possessor's residence and is finally processed. The WRD must contain the following information:

(A) the name, signature, address, and fishing license number, as required of the person who killed or caught the wildlife resource;

(B) the name of the person receiving the wildlife resource;

(C) a description of the wildlife resource (number and type of species or parts); and

(D) the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county).

(5) Except as provided in subsection (d) of this section, the statewide daily bag and length limits shall be as follows.

(A) Amberjack, greater.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 38 inches.

(iii) Maximum length limit: No limit.

(B) Bass:

(i) The daily bag limit for largemouth, smallmouth, spotted, Alabama, and Guadalupe is 5, in any combination.

(ii) Alabama, Guadalupe, and spotted.

(I) No minimum length limit.

(II) No maximum length limit.

(iii) Largemouth and smallmouth.

(I) Minimum length limit: 14 inches.

(II) No maximum length limit.

(iv) Striped and their hybrids.

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: 18 inches.

(III) No maximum length limit.

(v) White.

(I) Daily bag limit: 25.

(II) Minimum length limit: 10 inches.

(III) No maximum length limit.

(C) Catfish:

(i) channel and blue (including hybrids and subspecies).

(I) Daily bag limit: 25 (in any combination).

(II) No minimum length limit.

(III) No maximum length limit.

(IV) It is unlawful to retain more than 10 channel and blue catfish, in the aggregate, of 20 inches or greater in length.

(ii) flathead.

(I) Daily bag limit: 5.

(II) Minimum length limit: 18 inches.

(III) No maximum length limit.

(iii) gafftopsail.

(I) No daily bag limit.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(D) Cobia.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 40 inches.

(iii) No maximum length limit.

(E) Crappie, black and white (including hybrids and subspecies).

(i) Daily bag limit: 25.

(ii) Minimum length limit: 10 inches.

(iii) No maximum length limit.

(F) Drum, black.

(i) Daily bag limit: 5.

(ii) Minimum length limit: 14 inches.

(iii) Maximum length limit: 30 inches.

(iv) One black drum over 52 inches may be retained per day as part of the five-fish bag limit.

(G) Drum, red.

(i) Daily bag limit: 3.

(ii) Minimum length limit: 20 inches.

(iii) Maximum length limit: 28 inches.

(iv) During a license year, one red drum exceeding the maximum length limit established by this subparagraph may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Angler Red Drum Tag, or with a properly executed Duplicate Exempt Red Drum Tag, and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Angler Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as provided in this section.

(v) A person who lawfully takes a red drum under a digital license issued under the provisions of §53.3(a)(12) this title (relating to Super Combination Hunting and Fishing License Packages) or under a lifetime license with the digital tagging option provided by §53.4(a)(1) of this title (relating to Lifetime Licenses) that exceeds the maximum length limit established by this subparagraph is exempt from any requirement of Parks and Wildlife Code or this subchapter regarding the use of license tags for that species; however, that person shall immediately upon take ensure that a harvest report is created and submitted via a mobile or web application provided by the department for that purpose. If the absence of data connectivity prevents the receipt of a confirmation number from the department following the report required by this subparagraph, the person who took the red drum is responsible for ensuring that the report required by this subparagraph is uploaded to the department immediately upon the availability of network connectivity.

(vi) It is an offense for any person to possess a red drum exceeding the maximum length established by this subparagraph under a digital license or digital tagging option without being in immediate physical possession of an electronic device that is:

(I) loaded with the mobile or web application designated by the department for harvest reporting under this subsection; and

(II) capable of uploading the harvest report required by this subsection.

(vii) A person who is fishing under a license identified in §53.4(a)(1) of this title and selected the fulfilment of physical tags must comply with the tagging requirements of this chapter that are applicable to the tagging of red drum under a license that is not a digital license.

(H) Flounder: all species (including hybrids and subspecies).

(i) Daily bag limit: 5.

(ii) Minimum length limit: 15 inches.

(iii) No maximum length limit.

(iv) During November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two. For the first 14 days in December, the bag and possession limit is two, and flounder may be taken by any legal means. On September 1, 2021, the provisions of this clause cease effect.

(v) Beginning September 1, 2021, the season for flounder is closed from November 1 through December 14 every year.

(I) Gar, alligator.

(i) Daily bag limit: 1.

(ii) No minimum length limit.

(iii) No maximum length limit.

(iv) During May, no person shall take alligator gar from, or possess alligator gar while on, the Red River (including Lake Texoma) and all tributaries that drain directly or indirectly to the Red River on the Texas/Oklahoma border in Cooke, Grayson, Fannin, Lamar, Red River, and Bowie counties.

(v) Any person who takes an alligator gar in the public waters of this state other than Falcon International Reservoir shall report the harvest via the department's website or mobile application within 24 hours of take.

(vi) Between one half-hour after sunset and one half-hour before sunrise, any lawful means other than lawful archery equipment and crossbow may be used to take an alligator gar in the portion of the Trinity River described in subsection (d)(1)(L)(ii) of this section, except for persons selected for opportunity as provided in §57.972(j) of this title (relating to General Provisions).

(vii) Except for persons selected for opportunity as provided in §57.972(j) of this title, no person in the portion of the Trinity River described in subsection (d)(1)(L)(ii) of this section may take an alligator gar by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise, or possess an alligator gar taken by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise.

(J) Grouper.

(i) Black.

(I) Daily bag limit: 4.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(ii) Gag.

(I) Daily bag limit: 2.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) Goliath. The take of Goliath grouper is prohibited.

(iv) Nassau. The take of Nassau grouper is prohibited.

(K) Mackerel.

(i) King.

(I) Daily bag limit: 3.

(II) Minimum length limit: 27 inches.

(III) No maximum length limit.

(ii) Spanish.

(I) Daily bag limit: 15.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(L) Marlin.

(i) Blue.

(I) No daily bag limit.

(II) Minimum length limit: 131 inches.

(III) No maximum length limit.

(ii) White.

(I) No daily bag limit.

(II) Minimum length limit: 86 inches.

(III) No maximum length limit.

(M) Mullet: all species (including hybrids and subspecies).

(i) No daily bag limit.

(ii) No minimum length limit.

(iii) From October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.

(N) Sailfish.

(i) No daily bag limit.

(ii) Minimum length limit: 84 inches.

(iii) No maximum length limit.

(O) Seatrout, spotted.

(i) Daily bag limit: 5.

(ii) Minimum length limit: 15 inches.

(iii) Maximum length limit: 25 inches.

(iv) Only one spotted seatrout greater than 25 inches may be retained per day. A spotted seatrout retained under this subclause counts as part of the daily bag and possession limit.

(P) Shark: all species (including hybrids and subspecies).

(i) all species other than the species listed in clauses (ii) - (iv) of this subparagraph:

(I) Daily bag limit: 1.

(II) Minimum length limit: 64 inches.

(III) No maximum length limit.

(ii) Atlantic sharpnose, blacktip, and bonnethead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) great, scalloped, and smooth hammerhead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 99 inches.

(III) No maximum length limit.

(iv) The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time:

(I) Atlantic angel;

(II) Basking;

(III) Bigeye sand tiger;

(IV) Bigeye sixgill;

(V) Bigeye thresher;

(VI) Bignose;

(VII) Caribbean reef;

(VIII) Caribbean sharpnose;

(IX) Dusky;

(X) Galapagos;

(XI) Longfin mako;

(XII) Narrowtooth;

(XIII) Night;

(XIV) Sandbar;

(XV) Sand tiger;

(XVI) Sevengill;

(XVII) Shortfin mako;

(XVIII) Silky;

(XIX) Sixgill;

(XX) Smalltail;

(XXI) Whale; and

(XXII) White.

(v) Except for the species listed in clauses (ii) - (iv) of this subparagraph, sharks may be taken using pole and line, but must be taken by non-offset, non-stainless-steel circle hook when using natural bait.

(Q) Sheepshead.

(i) Daily bag limit: 5.

(ii) Minimum length limit: 15 inches.

(iii) No maximum length limit.

(R) Snapper.

(i) Lane.

(I) Daily bag limit: None.

(II) Minimum length limit: 8 inches.

(III) No maximum length limit.

(ii) Red.

(I) Daily bag limit: 4.

(II) Minimum length limit: 15 inches.

(III) No maximum length limit.

(IV) Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook baited with natural bait.

(V) During the period of time when the federal waters in the Exclusive Economic Zone (EEZ) are open for the recreational take of red snapper:

(-a-) the bag limit for red snapper caught in the EEZ is two, and the minimum length limit is 16 inches; and

(-b-) red snapper caught in the EEZ shall count as part of the bag limit established in subclause (I) of this clause.

(iii) Vermilion.

(I) Daily bag limit: None.

(II) Minimum length limit: 10 inches.

(III) No maximum length limit.

(S) Snook.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 24 inches.

(iii) Maximum length limit: 28 inches.

(T) Tarpon.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 85 inches.

(iii) No maximum length limit.

(U) Triggerfish, gray.

(i) Daily bag limit: 20.

(ii) Minimum length limit: 16 inches.

(iii) No maximum length limit.

(V) Tripletail.

(i) Daily bag limit: 3.

(ii) Minimum length limit: 17 inches.

(iii) No maximum length limit.

(W) Trout (rainbow and brown trout, including their hybrids and subspecies).

(i) Daily bag limit: 5 (in any combination).

(ii) No minimum length limit.

(iii) No maximum length limit.

(X) Walleye and Saugeye.

(i) Daily bag limit: 5.

(ii) No minimum length limit.

(iii) No maximum length limit.

(iv) Two walleye or saugeye of less than 16 inches may be retained.

(d) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(1) Freshwater species.

(A) Bass: largemouth, smallmouth, spotted, and Guadalupe (including their hybrids and subspecies). Devils River (Val Verde County) from State Highway 163 bridge crossing (Bakers Crossing) to the confluence with Big Satan Creek including all tributaries within these boundaries and all waters in the Lost Maples State Natural Area (Bandera County).

(i) Daily bag limit: 0.

(ii) No minimum length limit.

(iii) Catch and release only.

(B) Bass: largemouth and spotted.

(i) Caddo Lake (Marion and Harrison counties).

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 14 - 18 inch slot limit (largemouth bass); no limit for spotted bass.

(III) It is unlawful to retain largemouth bass between 14 and 18 inches. No more than 4 largemouth bass 18 inches or longer may be retained. Possession limit is 10.

(ii) Toledo Bend Reservoir (Newton, Sabine, and Shelby counties).

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 14 inches (largemouth bass); no limit for spotted bass. Possession limit is 10.

(iii) Sabine River (Newton and Orange counties) from Toledo Bend dam to a line across Sabine Pass between Texas Point and Louisiana Point.

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 12 inches (largemouth bass); no limit for spotted bass. Possession limit is 10.

(C) Bass: largemouth

(i) Chambers, Hardin, Galveston, Jefferson, Liberty (south of U.S. Highway 90), Newton (excluding Toledo Bend Reservoir), and Orange counties including any public waters that form boundaries with adjacent counties.

(I) Daily bag limit: 5.

(II) Minimum length limit: 12 inches.

(ii) Lake Conroe (Montgomery and Walker counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: 16 inches.

(iii) Lakes Bellwood (Smith County), Bois d'Arc (Fannin County), Davy Crockett (Fannin County), Kurth (Angelina County), Mill Creek (Van Zandt County), Moss (Cooke), Nacogdoches (Nacogdoches County), Naconiche (Nacogdoches County), Purtis Creek State Park (Henderson and Van Zandt counties), and Raven (Walker).

(I) Daily bag limit: 5.

(II) Maximum length limit: 16 inches.

(III) It is unlawful to retain largemouth bass of greater than 16 inches in length. Largemouth bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing but may not be removed from the immediate vicinity of the lake. After weighing the bass must be released imme-

diately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.

(iv) Lakes Casa Blanca (Webb County), Fairfield (Freestone County), Gilmer (Upshur County), Marine Creek Reservoir (Tarrant County), Pflugerville (Travis County), and Welsh (Titus County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 18 inches.

(v) Generations Park (Tarrant County), Buck Lake (Kimble County), Lake Forest Park (Denton County), Lake Kyle (Hays County), and Nelson Park Lake (Taylor County).

(I) Daily bag limit: 0.

(II) Minimum length limit: No limit.

(III) Catch and release only.

(vi) Lakes Alan Henry (Garza County), Grapevine (Denton and Tarrant counties), Jacksonville (Cherokee County), and O.H. Ivie Reservoir (Coleman, Concho, and Runnels counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: No limit.

(III) It is unlawful to retain more than two bass of less than 18 inches in length.

(vii) Lakes Athens (Henderson County), Bastrop (Bastrop County), Houston County (Houston County), Joe Pool (Dallas, Ellis, and Tarrant counties), Lady Bird (Travis County), Murvaul (Panola County), Pinkston (Shelby County), Timpson (Shelby County), Walter E. Long (Travis County), and Wheeler Branch (Somervell County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 14 - 21 inch slot limit.

(III) It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.

(viii) Lakes Fayette County (Fayette County), Fork (Wood Rains and Hopkins counties), and Monticello (Titus County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 16 - 24 inch slot limit.

(III) It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.

(D) Bass: striped and their hybrids.

(i) Sabine River (Newton and Orange counties) from Toledo Bend dam to I.H. 10 bridge and Toledo Bend Reservoir (Newton, Sabine, and Shelby counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: No limit.

(III) No more than 2 striped bass 30 inches or greater in length may be retained each day.

(ii) Lake Texoma (Cooke and Grayson counties).

(I) Daily bag limit: 10 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 20.

(iii) Red River (Grayson County) from Denison Dam downstream to and including Shawnee Creek (Grayson County).

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: No limit.

(III) Striped bass caught and placed on a stringer in a live well or any other holding device become part of the daily bag limit and may not be released.

(iv) Trinity River (Polk and San Jacinto counties) from the Lake Livingston dam downstream to the F.M. 3278 bridge.

(I) Daily bag limit: 2 (in any combination).

(II) Minimum length limit: 18 inches.

(E) Bass: white. Lakes Caddo (Harrison and Marion counties), Texoma (Cooke and Grayson counties), and Toledo Bend (Newton Sabine and Shelby counties) and Sabine River (Newton and Orange counties) from Toledo Bend dam to I.H. 10 bridge.

(i) Daily bag limit: 25.

(ii) Minimum length limit: No limit.

(F) Carp: common. Lady Bird Lake (Travis County).

(i) Daily bag limit: No limit.

(ii) Minimum length limit: No limit.

(iii) It is unlawful to retain more than one common carp of 33 inches or longer per day.

(G) Catfish: channel and blue catfish, their hybrids and subspecies.

(i) Lake Kyle (Hays County).

(I) Daily bag limit: 0.

(II) Minimum length limit: No limit.

(III) Catch and release and only.

(ii) Trinity River (Polk and San Jacinto counties) from the Lake Livingston dam downstream to the F.M. 3278 bridge.

(I) Daily bag limit: 10 (in any combination).

(II) Minimum length limit: 12 inches.

(III) No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.

(iii) Lakes Caddo (Harrison and Marion counties), Livingston (Polk, San Jacinto, Trinity, and Walker counties), Sam Rayburn (Angelina, Jasper, Nacogdoches, Sabine, and San Augustine counties), and Toledo Bend (Newton, Sabine and Shelby counties) and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 50 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than five catfish 30 inches or greater in length may be retained each day.

(IV) Possession limit is 50.

(iv) Lake Texoma (Cooke and Grayson counties) and the Red River (Grayson County) from Denison Dam to and including Shawnee Creek (Grayson County).

(I) Daily bag limit: 15 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than one blue catfish 30 inches or greater in length may be retained each day.

(v) Lakes Belton (Bell and Coryell counties), Bob Sandlin (Camp, Franklin, and Titus counties), Conroe (Montgomery and Walker counties), Hubbard Creek (Stephens County), Kirby (Taylor County), Lavon (Collin County), Lewisville (Denton County), Palestine (Cherokee, Anderson, Henderson, and Smith counties), Ray Hubbard (Collin, Dallas, Kaufman, and Rockwall counties), Richland-Chambers (Freestone and Navarro counties), Tawakoni (Hunt, Rains, and Van Zandt counties), and Waco (McClennan).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than five blue or channel catfish 20 inches or greater may be retained each day, and of these, no more than one can be 30 inches or greater in length.

(vi) Lakes Abilene (Taylor County), Braunig (Bexar County), Calaveras (Bexar County), Choke Canyon (Live Oak and McMullen counties), Fayette County (Fayette County), Proctor (Comanche County), Raven (Walker County), and Sheldon (Harris County).

(I) Daily bag limit: 15 (in any combination).

(II) Minimum length limit: 14 inches.

(H) Catfish: flathead.

(i) Lake Texoma (Cooke and Grayson counties) and the Red River (Grayson County) from Denison Dam to and including Shawnee Creek (Grayson County).

(I) Daily bag limit: 5.

(II) Minimum length limit: No limit.

(ii) Lakes Caddo (Harrison and Marion counties) and Toledo Bend (Newton, Sabine, and Shelby) and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 10.

(II) Minimum length limit: 18 inches.

(III) Possession limit: 10.

(I) Crappie: black and white crappie their hybrids and subspecies.

(i) Caddo Lake (Harrison and Marion counties), Toledo Bend Reservoir (Newton Sabine and Shelby counties), and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(ii) Lake Fork (Wood, Rains, and Hopkins counties) and Lake O' The Pines (Camp, Harrison, Marion, Morris, and Upshur counties).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: 10 inches.

(III) From December 1 through the last day in February there is no minimum length limit. All crappie caught during this period must be retained.

(iii) Lake Texoma (Cooke and Grayson counties).

(I) Daily bag limit: 37 (in any combination).

(II) Minimum length limit: 10 inches.

(III) Possession limit is 50.

(iv) Lake Nasworthy (Tom Green County).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(III) Possession limit is 50.

(J) Drum, red. Lakes Braunig and Calaveras (Bexar County).

(i) Daily bag limit: 3.

(ii) Minimum length limit: 20.

(iii) No maximum length limit.

(K) Gar, alligator.

(i) Falcon International Reservoir (Starr and Zapata counties).

(I) Daily bag limit: 5.

(II) No minimum length limit.

(III) No maximum length limit.

(ii) On the Trinity River and all tributary waters from the I-30 bridge in Dallas County downstream through Anderson, Ellis, Freestone, Henderson, Houston, Kaufman, Leon, Liberty, Madison, Navarro, Polk, San Jacinto, Trinity, and Walker counties to the I-10 bridge in Chambers County, including the East Fork of the Trinity River and all tributaries upstream to the Lake Ray Hubbard dam, the maximum length limit is 48 inches, except for persons selected by a department-administered drawing authorizing the take of a gar in excess of 48 inches in length.

(iii) During May, no person shall take alligator gar from, or possess alligator gar while on, the Red River (including Lake Texoma) and all tributaries that drain directly or indirectly to the Red River on the Texas/Oklahoma border in Cooke, Grayson, Fannin, Lamar, Red River, and Bowie counties.

(L) Shad gizzard and threadfin. Trinity River below Lake Livingston (Polk and San Jacinto counties).

(i) Daily bag limit: 500 (in any combination).

(ii) No minimum length limit.

(iii) Possession limit: 1000 (in any combination).

(M) Sunfish: all species. Lake Kyle (Hays County).

(i) Daily bag limit: 0.

(ii) Minimum length limit: No limit.

(iii) Catch and release and only.

(N) Trout: rainbow and brown trout (including hybrids and subspecies).

(i) Guadalupe River (Comal County) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. 306.

(I) Daily bag limit: 1.

(II) Minimum length limit: 18 inches.

(ii) Guadalupe River (Comal County) from the easternmost bridge crossing on F.M. 306 upstream to 800 yards below the Canyon Lake dam.

(I) Daily bag limit: 5.

(II) Minimum length limit: 12 - 18 inch slot limit.

(III) It is unlawful to retain trout between 12 and 18 inches in length. No more than one trout 18 inches or greater in length may be retained each day.

(2) Except as specifically provided elsewhere in this subchapter, the daily bag limit on the waterbodies enumerated in this paragraph is 5 fish (all species combined), to include not more than 1 black bass (Micropterus spp.) of 14 inches or greater in length.

(A) All CFLs;

(B) Brushy Creek (Williamson County) from the Brushy Creek Reservoir dam downstream to the Williamson/Milam county line;

(C) Canyon Lake Project #6 (Lubbock County);

(D) Deputy Darren Goforth Park Lake (Harris County);

(E) Elm (Brazos Bend State Park in Fort Bend County);

(F) Pilant (Brazos Bend State Park in Fort Bend County);

(G) Tucker Lake (Stephens and Palo Pinto counties);

(H) North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam; and

(I) South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(3) Saltwater species. There are no exceptions to the provisions established in subsection (c)(5) 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.

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

TRD-202302238
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: July 11, 2023
Proposal publication date: February 17, 2023
For further information, please call: (512) 389-4775

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31 TAC §57.985

The repeal is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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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James Murphy
General Counsel
Texas Parks and Wildlife Department
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♦ ♦ ♦

DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

31 TAC §57.992

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§57.992. Bag, Possession, and Length Limits.

(a) The possession limit applies to all aquatic animal life in the possession of or stored by any person, but does not apply to aquatic animal life that has been lawfully obtained and for which a person possesses an invoice or sales ticket showing the name and address of the seller or person from whom the aquatic animal life was obtained, the amount of aquatic animal life by number and species, date of the sale, and any other information required on a sales ticket or invoice.

(b) There are no bag, possession, or length limits on game fish, non-game fish, or shellfish, except as otherwise provided in this subchapter.

(1) Possession limits are twice the daily bag limit on game fish, non-game fish, and shellfish, except as provided in this subchapter.

(2) For flounder, the possession limit is the daily bag limit.

(3) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested.

(4) The statewide daily bag and length limits for commercial fishing shall be as follows.

(A) Amberjack, greater.

(i) Daily bag limit: 1.

(ii) Minimum length: 34 inches.

(iii) Maximum length limit: No limit.

(B) Catfish.

(i) channel and blue (including hybrids and subspecies). The provisions of subclauses (I) - (III) of this clause apply on all waters for which an exception is not provided under subclause (IV) of this clause.

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(IV) Exceptions.

(-a-) Lakes Caddo (Harrison and Marion counties), Livingston (Polk, San Jacinto, Trinity, and Walker counties), Sam Rayburn (Angelina, Jasper, Nacogdoches, Sabine, and San Augustine counties), and Toledo Bend (Newton Sabine, and Shelby counties), and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(-1-) 50 (in any combination).

(-2-) No more than five catfish 30 inches or greater in length may be retained each day.

(-b-) Any lake lying totally within a state park and community fishing lakes: 5 (in any combination).

(-c-) Counties where sale and purchase of catfish taken from public fresh water is allowed under the provisions of Parks and Wildlife Code, §66.111(b)(5): 25 (in any combination).

(ii) Gaffstopsail.

(I) No daily bag limit.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(C) Cobia.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 40 inches.

(iii) No maximum length limit.

(D) Drum, black.

(i) Daily bag limit: None.

(ii) Minimum length limit: 14 inches.

(iii) Maximum length limit: 30 inches.

(E) Flounder: all species (including hybrids and subspecies).

(i) Daily bag limit: 30. Possession limit is equal to the daily bag limit.

(ii) Minimum length limit: 15 inches.

(iii) No maximum length limit.

(iv) During November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two. For the first 14 days in December, the bag and possession limit is two, and flounder may be taken by any legal means. On September 1, 2021, the provisions of this clause cease effect.

(v) Beginning September 1, 2021, the season for flounder is closed from November 1 through December 14 every year.

(F) Gar, alligator.

(i) Daily bag limit:

(I) On Falcon International Reservoir: 5.

(II) Remainder of the state: 1.

(ii) No minimum length limit.

(iii) No maximum length limit except that on the Trinity River and all tributary waters from the I-30 bridge in Dallas County downstream through Anderson, Ellis, Freestone, Henderson, Houston, Kaufman, Leon, Liberty, Madison, Navarro, Polk, San Jacinto, Trinity, and Walker counties to the I-10 bridge in Chambers County, including the East Fork of the Trinity River and all tributaries upstream to the Lake Ray Hubbard dam, the maximum length limit is 48 inches.

(iv) During May, no person shall take alligator gar from, or possess alligator gar while on, the Red River (including Lake Texoma) and all tributaries that drain directly or indirectly to the Red River on the Texas/Oklahoma boundary in Cooke, Grayson, Fannin, Lamar, Red River, and Bowie counties.

(v) any person who takes an alligator gar in the public waters of this state other than Falcon International Reservoir shall report the harvest via the department's website or mobile application within 24 hours of take.

(vi) Between one half-hour after sunset and one half-hour before sunrise, any lawful means other than lawful archery equipment and crossbow may be used to take an alligator gar in the portion of the Trinity River described in subsection (d)(1)(L)(ii) of this section. In the portion of the Trinity River described in §57.981(d)(1)(L)(ii) of this title (relating to Bag, Possession and Length Limits), no person may take an alligator gar by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise, or possess an alligator gar taken by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise.

(G) Grouper.

(i) Black.

(I) Daily bag limit: 4.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(ii) Gag.

(I) Daily bag limit: 2.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) Goliath. The take of Goliath grouper is prohibited.

(iv) Nassau. The take of Nassau grouper is prohibited.

(H) Mackerel.

(i) King.

(I) Daily bag limit: 3.

(II) Minimum length limit: 27 inches.

(III) No maximum length limit.

(ii) Spanish.

(I) Daily bag limit: 15.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(I) Mullet: all species (including hybrids, and subspecies).

(i) No daily bag limit.

(ii) No minimum length limit.

(iii) From October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.

(J) Shark: all species (including hybrids and subspecies).

(i) all species other than the species listed in clauses (ii) - (iv) of this subparagraph:

(I) Daily bag limit: 1.

(II) Minimum length limit: 64 inches.

(III) No maximum length limit.

(ii) Atlantic sharpnose, blacktip, and bonnethead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) great, scalloped, and smooth hammerhead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 99 inches.

(III) No maximum length limit.

(iv) The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time:

(I) Atlantic angel;

(II) Basking;

(III) Bigeye sand tiger;

(IV) Bigeye sixgill;

(V) Bigeye thresher;

(VI) Bignose;

(VII) Caribbean reef;

(VIII) Caribbean sharpnose;

(IX) Dusky;

(X) Galapagos;

(XI) Longfin mako;

(XII) Narrowtooth;

(XIII) Night;

(XIV) Sandbar;

(XV) Sand tiger;

(XVI) Sevengill;

(XVII) Shortfin mako;

(XVIII) Silky;

(XIX) Sixgill;

(XX) Smalltail;

(XXI) Whale; and

(XXII) White.

(v) Except for the species listed in clause (ii) - (iv) of this subparagraph, sharks may be taken using pole and line, but must be taken by non-offset, non-stainless-steel circle hook when using natural bait.

(K) Sheepshead.

(i) Daily bag limit: No limit.

(ii) Minimum length limit: 15 inches.

(iii) No maximum length limit.

(L) Snapper.

(i) Lane.

(I) Daily bag limit: None.

(II) Minimum length limit: 8 inches.

(III) No maximum length limit.

(ii) Red.

(I) Daily bag limit: 4.

(II) Minimum length limit: 15 inches.

(III) No maximum length limit.

(IV) Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook baited with natural bait.

(iii) Vermilion.

(I) Daily bag limit: None.

(II) Minimum length limit: 10 inches.

(III) No maximum length limit.

(M) Triggerfish, gray.

(i) Daily bag limit: 20.

(ii) Minimum length limit: 16 inches.

(iii) No maximum length limit.

(N) Tripletail.

(i) Daily bag limit: 3.

(ii) Minimum length limit: 17 inches.

(iii) No maximum length limit.

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 June 21, 2023.

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 16. COMPTROLLER GRANT PROGRAMS

SUBCHAPTER C. TEXAS OPIOID ABATEMENT FUND PROGRAM

34 TAC §§16.200 - 16.222

The Comptroller of Public Accounts adopts new §16.200, concerning definitions, §16.201, concerning opioid abatement strategies, §16.202, concerning grant issuance plan, §16.203, concerning notice and applications, §16.204, concerning availability of funds, §16.205, concerning engage in business in Texas, §16.206, concerning peer review panel members, §16.207, concerning authorized officials, §16.208, concerning grant application review, §16.209, concerning amount of grant award, §16.210, concerning financial responsibility, §16.211, concerning allowable costs; disbursement of grant funds, §16.212, concerning grant requirements, §16.213, concerning use of council's grant management system, §16.214, concerning code of ethics, §16.215, concerning reporting, §16.216, concerning grant reduction or termination, §16.217, concerning extensions, §16.218 concerning noncompliance, §16.219, concerning monitoring grant award performance and expenditures, §16.220, concerning records retention; audit, §16.221, concerning forms and other documents, and §16.222, concerning references, with changes to the proposed text as published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1811). The rules will be republished.

These rules will be located in 34 Texas Administrative Code, Chapter 16, new Subchapter C (Texas Opioid Abatement Fund Program). Additionally, the title of Chapter 16 will be changed from "Broadband Development" to "Comptroller Grant Programs" to allow these rules to be included in Chapter 16 along with the broadband development rules.

Section 16.200 provides definitions.

Section 16.201 describes the council's process for determining and approving opioid abatement strategies that are eligible for grant funding, and for categorizing and prioritizing each strategy.

Section 16.202 describes the council's process for adopting a grant issuance plan that allocates grant funds among one or more grant cycles. The council will establish various grant cycles based on the categories established in §16.201 and will describe the details of each cycle. This section also incorporates the regional allocations as provided by the 87th Legislative Session, General Appropriations Act, article IX, §17.18(b).

Section 16.203 requires a notice of funding availability (NOFA) to be published, as necessary, on the *Texas.gov eGrants* website and the comptroller's website, and describes the information that may be included in a NOFA. The section also describes grant application requirements.

Section 16.204 states that grant funding is contingent upon the availability of funds and upon approval of a grant application by the council, and that neither the rules nor a grant agreement create any right to receive a grant award.

Section 16.205 requires grant recipients to be engaged in business in Texas.

Section 16.206 allows the council to select and compensate individuals who live and work outside the state of Texas to serve as peer review panel members for purposes of a peer review analysis for each grant application, unless a special need justifies selecting one or more individuals living and working in Texas. This panel will minimize the potential for conflicts of interest in the peer review of grant applications. This section requires a peer review panel member who has a present relationship with, or has received or will receive any benefit from, a grant applicant to disclose this relationship or benefit. This section also prohibits a member from reviewing a grant application of a grant applicant if such a relationship or benefit exists.

Section 16.207 requires each grant applicant to designate a person to act on behalf of the grant applicant.

Section 16.208 describes the process for reviewing grant applications. Program staff will review the applications during an initial screening to determine compliance with the necessary administrative requirements. Then grant applications will be scored by the peer review panel members. The council will make the final decision on all grant awards based on the council's review and the information provided by peer review panel members.

Section 16.209 establishes the council as the sole entity permitted to set the grant award amount and establishes that the council is not required to fund any grant at the amount the grant applicant requests.

Section 16.210 requires the grant recipient to manage the day-to-day operations and activities of the grant and to maintain a sound financial management system to account for the grant award funds.

Section 16.211 requires costs to be reasonable and necessary for the proper and efficient performance and administration of the grant project and requires grant funds to be disbursed on a reimbursement basis.

Section 16.212 details grant requirements, including compliance with the provisions outlined in the grant agreement and state and federal law. This section also establishes the grant recipient as the entity legally and financially responsible for compliance with the grant agreement and state and federal law, and prohibits grant funds from being used for costs that will be reimbursed by another funding source.

Section 16.213 explains how the grant applicant or grant recipient's use of the electronic grant management system requires certain affirmations, including that the information submitted is true and correct and that the signatures are valid.

Section 16.214 requires all council members, peer review panel members, and program staff members to avoid acts which are improper or give the appearance of impropriety in the disposition of grant funds. This section also requires the council to adopt a

code ethics to provide guidance related to the ethical conduct of the council members, peer review panel members, and program staff. The code of ethics will be distributed to each council member, peer review panel member, and program staff member.

Section 16.215 requires grant recipients to submit periodic reporting in accordance with the grant agreement. This section also authorizes the director, upon reasonable notice, to request any additional information necessary to show that grant funds are being used for the intended purpose and that the grant recipient has complied with the grant agreement.

Section 16.216 allows the council to reduce or terminate a grant award based on circumstances described in this section.

Section 16.217 allows the council to approve no cost time extensions for a grant recipient requesting additional time to complete a grant project.

Section 16.218 allows the council to hold a grant recipient accountable for noncompliance with the grant agreement and any applicable law, and sets forth the penalties for noncompliance.

Section 16.219 requires the council to monitor grant awards to ensure compliance and proper stewardship of grant award funds.

Section 16.220 requires grant recipients to maintain all records regarding the grant project and provides records retention and audit review requirements.

Section 16.221 authorizes the council to prescribe forms or other documents necessary for the implementation of this program and to require these forms or other documents to be submitted electronically.

Section 16.222 specifies which subchapter in Government Code, Chapter 403 applies to this program because Chapter 403 contains two subchapters entitled "Subchapter R."

Comments were received regarding adoption of the amendments from Joe Powell, President/CEO at the Association of Persons Affected by Addiction; Ed Sinclair at SAS; Preston Poole, Policy Coordinator at the Texas Association of Community Health Centers; Elizabeth Henry, Substance Use Disorder (SUD) Workgroup Chair at the Texas Coalition for Healthy Minds; John Henderson, CEO at the Texas Organization of Rural and Community Hospitals; and Katharine Neill Harris, Ph.D., of the Drug Policy Program at the Rice University Baker Institute for Public Policy.

Joe Powell, President/CEO at the Association of Persons Affected by Addiction, states that it appears that the council has not identified allocation strategies to support underserved communities. He recommends that the council consider allocating funding to target communities of color, which most often have higher addiction and overdose rates resulting from low access to services, support, and resources. Mr. Powell proposes two possible options for doing so. First, in cases where larger organizations are funded to serve in those communities, the council could include a provision in the grant opportunity that requires the organization to subcontract with smaller organizations, if available, which are often already providing the same or similar services in underserved communities and are trusted by residents in those communities. Second, the council could include funding opportunities for a consortium of organizations in underserved communities to leverage the strength of the trusted resources that already exist in the community. According to Mr. Powell, by including funding for these organizations around capacity building and sustainability planning, the council would strengthen and equip the community with long term support and resources necessary to address the opioid crisis in underserved communities.

The council thanks Mr. Powell for engaging on this important issue that merits further discussion and consideration as the program is implemented. The council notes that §16.201 requires the council to adopt evidence-based strategies, §16.202 authorizes the council to set parameters for each grant cycle including limitations to geographic areas or strategies based on opioid incidence information, and §16.203 authorizes a NOFA to include criteria such as those suggested by Mr. Powell. Therefore, the council does not believe a change to the proposed rules is necessary based on this comment.

Ed Sinclair at SAS recommends adding language to §16.213 and §16.215 to allow the director of the council, upon reasonable notice, to request, gather and evaluate data from grantees regarding the outcomes and any identified barriers to substance use disorder (SUD) prevention and treatment programs and recovery services in order to determine which populations are not being reached in current interventions as well as which geographic areas of the state have programmatic gaps in addressing SUD. Specifically, Mr. Sinclair proposes adding language to §16.213 stating that by utilizing the council's electronic grant management system, a grant applicant or grant recipient "{a}grees that all requested data and performance metrics will be submitted in the agreed upon, standard format and frequency." He also suggests adding language to §16.215 stating that "{t}his section authorizes the council to develop standardized grant reporting metrics for all grantees to submit data measuring the impact of the opioid crisis at the county level," which could include reporting on outcomes and barriers to substance use disorder prevention and treatment programs and recovery services for the purpose of understanding underserved geographic areas. Mr. Sinclair also provides a sample reporting metric template (OMB1 No. 0930-0391, SAMSHA, Center for Substance Abuse Prevention, Harm Reduction Annual Targets and Quarterly Progress Report).

The council appreciates the comments provided by Mr. Sinclair, but declines to revise the proposed rules in response to the comments because the council already has authority to require grant recipients to provide this information under §16.215(a), which states that "{g}rant recipients must submit to a program staff member designated by the director periodic reports for each funded grant project for the duration of the grant agreement," and further authorizes the program to determine the frequency, format and requirements of the report. The council may also include such requirements in the grant agreement.

Preston Poole, Policy Coordinator at the Texas Association of Community Health Centers, recommends that the council either ensure that a member of the peer review panel has a background from a federally qualified health center (FQHC) or that the peer review panel hold a permanent position for a member from a FQHC, due to the unique offerings of health centers, including use of evidence-based trauma-informed training and practices to successfully work upstream to address opioid use disorders.

The council appreciates the input provided by Mr. Poole, but declines to revise the proposed rules in response to the comments described above because, under §16.206, the council may consider specific experience when selecting peer review panel members, including a person with a FQHC background. Additionally, the council will consider how the specific experi-

ences of the peer review panel affect any ethical issues, specifically recusal and/or ability to apply for grants.

Mr. Poole also recommends that the council consider prioritizing the needs of marginalized communities as one of the defined factors for permanent consideration when selecting applications for award as listed in §16.208(d)(3).

The council notes that §16.202 authorizes the council to set parameters for each grant cycle including limitations to geographic areas or strategies based on opioid incidence information, and §16.203 authorizes a NOFA to include additional criteria. Therefore, the council declines to revise the proposed rules in response to this comment.

Elizabeth Henry, SUD Workgroup Chair at the Texas Coalition for Healthy Minds, recommends realigning the core strategies listed in §16.201(b) with the continuum of care. She proposes placing treatment and recovery into separate strategies because they serve different purposes. According to Ms. Henry, treatment and recovery should be separated into different strategies to ensure that the strategies complement each other rather than compete against each other so that funding is applied in a more equitable manner when the priority ranking of activities has begun. As a result, she proposes changing the strategies to prevention and public safety training, treatment and coordination of care, and recovery support services.

The council appreciates the comments provided by Ms. Henry. In response to the comments described above, the council revises the proposed rules to place treatment and recovery into separate strategies and realign the core strategies by changing the strategies in §16.201(b) to treatment and coordination of care, prevention and public safety, recovery support services, and workforce development and training.

Ms. Henry also recommends that the council prioritize funding for organizations established in Texas by changing the language in §16.205(a) to require organizations to be previously established in Texas for at least two years before being eligible to receive abatement funds, to consider if the funds are the sole source of funding for the organization's program in Texas, and to give preference to organizations and programs already established in the state. According to Ms. Henry, this change would support existing organizations in Texas, which understand the unique culture and needs of Texans, and help build out and support new and existing infrastructure to promote the sustainability of SUD services across the state.

The council declines to revise the proposed rules in response to this comment because the council has authority to include this recommendation in a NOFA under §16.203 to further implement the requirements established under §16.205, and has authority to consider this recommendation when evaluating an applicant's experience under §16.208.

John Henderson, CEO at the Texas Organization of Rural and Community Hospitals, recommends rural stakeholders have a seat at the table throughout the process because of the degree of harmful impact of opioids in their communities. He also recommends that peer review panel members described in §16.206, who may reside outside the state, understand the scale and scope of rural Texas to fairly evaluate grant applications.

The council appreciates the input provided by Mr. Henderson. No revisions to the proposed rules are required at this time in response to the comments described above because the council may consider including a rural stakeholder or a person who understands the scale and scope of rural Texas on the peer review panel when the council selects the peer review panel members or through other evolving community engagement by the council.

Mr. Henderson recommends that the council distribute funds to strategies under §16.202(c) quickly and allow for all of the categories to be considered for funding within the same grant cycle.

In response to this comment, the council revises proposed §16.202 to allow grant awards made each grant cycle to include one or more of the categories listed in §16.201(b), instead of only one category. This revision will assist the council to fund strategies more quickly.

Mr. Henderson recommends that the council prioritize treatment and recovery activities when ranking each strategy in order of priority for grant funding under §16.201(c).

No revisions to the proposed rules are required at this time in response to this comment because this recommendation may be considered when the council ranks each strategy in order of priority for grant funding under §16.201(c) or §16.202 in the grant issuance plan.

Mr. Henderson recommends that the council establish a more definite process before funds are reallocated under Government Code, §403.509, such as a second round look at grant applications. He urges a process to ensure funds are allocated fairly and allow a region to get every opportunity to use its allocation before funds are redistributed to another region.

The council declines to revise the proposed rules in response to these comments because the process for reallocating funds under Government Code, §403.509 was not addressed in the proposed rules. The council may consider addressing this recommendation in a future rulemaking.

Dr. Katharine Neill Harris of the Drug Policy Program at the Rice University Baker Institute for Public Policy states that it is not clear what criteria will be used to prioritize the strategies, though she assumes prioritization will vary with different grant opportunities.

The council appreciates the comments provided by Dr. Harris. No revisions to the proposed rules are required at this time in response to the comment described above. The NOFA will include the requirements of the grant project.

Dr. Harris recommends adding "growth potential for small organizations" to the list of factors that the council may consider in making grant awards under §16.208(d)(3)(B). She states that an organization's potential for growth, particularly in areas with large gaps in available services, should be a factor considered in grant award decisions. Dr. Harris believes that, although this could fall under the "additional factors" umbrella category, it is less likely to be considered if it is not explicitly mentioned. According to Dr, Harris, providing funds to expand the operational potential of organizations in the low-barrier, harm-reduction service space, which are typically small in staff size and budgets, has the strong potential to improve the state's overdose response because they often have an outsized impact on the vulnerable populations they serve.

The council notes that §16.201 requires the council to adopt evidence-based strategies, §16.202 authorizes the council to set parameters for each grant cycle including limitations to geographic areas or strategies based on opioid incidence informa-

tion, and §16.203 authorizes a NOFA to include additional criteria. The council declines to revise the proposed rules in response to these comments because this factor may be considered by the council when the council proposes a NOFA for a grant funding opportunity.

Dr. Harris also provides additional comments related to eligible strategies. First, she recommends that the council closely follow its requirement that eligible strategies be supported with evidence-based data under §16.201(a)(2). Second, she recommends that strategies that do not have a strong evidence base should be categorized as a low priority, if they are categorized at all. Third, Dr. Harris recommends that the council be flexible when reviewing and amending eligible strategies under §16.201(d) because new developments in the overdose crisis, as well as stakeholder experiences and input, will demonstrate the need for different strategies or different strategy prioritization. Fourth, she recommends that the council provide sufficient periods of time between a request for proposals and proposal deadline and provide flexibility or assistance with the application process to increase the ability of smaller, majority volunteer-based organizations, which are less likely to have staff dedicated to applying for grants, to meet all grant requirements.

No revisions to the proposed rules are required at this time in response to these comments. The council will follow the requirements of §16.201(a)(2) and §16.202 and has authority under the rules to consider Dr. Harris's recommendations as they proceed through the grant process.

Although the comptroller submits these amendments as the presiding officer of the council under Government Code, §403.503(b)(6), and pursuant to the comptroller's duty to provide the staff necessary to assist the council in performing its duties under Government Code, §403.503(e), the amendments are adopted by the council under Government Code, §403.511, which authorizes the council to adopt rules to implement Government Code, Chapter 403, Subchapter R, as added by 87th Legislature, 2021, R.S., Chapter 781 (Senate Bill 1827), §1, concerning the statewide opioid settlement agreement.

The amendments implement Government Code, Chapter 403, Subchapter R, as added by 87th Legislature, 2021, R.S., Chapter 781 (Senate Bill 1827), §1, concerning the statewide opioid settlement agreement.

§16.200. Definitions.

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

(1) Authorized official--The individual, including designated alternates, named by a grant applicant or grant recipient, who is authorized to act for the grant applicant or grant recipient in submitting the grant application and executing the grant agreement and associated documents or requests.

(2) Comptroller--The Texas Comptroller of Public Accounts.

(3) Council--The Texas Opioid Abatement Fund Council established by Government Code, §403.503, to manage the distribution of money allocated to the council from the Opioid Abatement Trust Fund, established by Government Code, §403.506 in accordance with a statewide opioid settlement agreement. A reference in this subchapter to the council includes the director and program staff members unless the provision indicates otherwise.

(4) Council member--A member of the council.

(5) Director--The program staff member designated by the comptroller to serve as the director for the council who performs duties as necessary to manage the day-to-day operations of the council.

(6) Grant agreement--A legal agreement executed by a grant recipient and the director, on behalf of the council, setting forth the terms and conditions for a grant award approved by the council.

(7) Grant applicant--A person or entity that has submitted through an authorized official an application for a grant award under this subchapter.

(8) Grant application--A written proposal submitted by a grant applicant to the director in the form required by the council that, if successful, will result in a grant award.

(9) Grant award--Funding awarded by the council pursuant to a grant agreement providing money to the grant recipient to carry out a grant project in accordance with statutes, rules, regulations, and guidance provided by the council.

(10) Grant recipient--A grant applicant that receives a grant award under this subchapter.

(11) NOFA--Notice of funding availability.

(12) Peer review--The review process performed by the peer review panel and used to provide guidance and recommendations to the council in making decisions for grant awards. The process involves the consistent application of standards and procedures to produce a fair, equitable, and objective evaluation of grant applications, based on the evidence-based opioid abatement strategies developed by the council under Government Code, §403.509, as well as other relevant requirements of the NOFA and the grant application.

(13) Peer review panel--A group of experts in the field of opioid abatement who are selected to conduct peer review of grant applications.

(14) Peer review panel member--A member of the peer review panel.

(15) Program staff member--A member of the comptroller's staff assigned by the comptroller to provide assistance to the council. This term includes the director.

(16) Statewide opioid settlement agreement--A settlement agreement and related documents entered into by this state through the attorney general, political subdivisions that have brought a civil action for an opioid-related harm claim against an opioid manufacturer, distributor, or retailer, and opioid manufacturers, distributors, or retailers relating to illegal conduct in the marketing, promotion, sale, distribution, and dispensation of opioids that provide relief for this state and political subdivisions of this state.

§16.201. Opioid Abatement Strategies.

(a) The council shall determine and approve one or more evidence-based opioid abatement strategies that are eligible for grant funding. To be approved as eligible for funding, a strategy must be:

(1) an opioid abatement strategy provided in the opioid abatement settlement agreements;

(2) supported with evidence-based data; and

(3) in compliance with all applicable state and federal law.

(b) For each strategy approved as an eligible strategy, the council shall categorize the strategy as:

(1) treatment and coordination of care;

(2) prevention and public safety;

(3) recovery support services; or

(4) workforce development and training.

(c) Within each category, the council shall rank each strategy in order of priority for grant funding.

(d) The council may, from time to time, review and amend the list of eligible strategies, the categorization of strategies, or the ranking of strategies within each category.

§16.202. Grant Issuance Plan.

(a) The council shall adopt a grant issuance plan that allocates grant funds among one or more grant cycles.

(b) The grant issuance plan shall include:

(1) the number and order of grant cycles;

(2) the category or categories, and one or more eligible strategies within each category, that will be eligible for grant funding during each grant cycle;

(3) the amount of grant funds allocated to each grant cycle;

(4) the parameters for the regional component of each grant cycle;

(5) the parameters for the targeted intervention component of each grant cycle; and

(6) any other information necessary to implement the grant issuance plan, such as any matching or volunteer requirements, any limitations to the types of eligible applicants, or other requirements.

(c) Grant awards made each grant cycle will include one or more of the categories listed in §16.201(b) of this subchapter.

(d) The council shall designate one or more eligible strategies within each category for each grant cycle in accordance with the priority ranking adopted under §16.201(c) of this subchapter.

(e) Each grant cycle will be divided into two main funding components:

(1) Of the funds allocated to a grant cycle, 75% shall be allocated among the regional healthcare partnership regions using the following regional allocations:

(A) Each region's allocation will be determined using the following regional allocations:

(i) 5.515633% allocated to region 1.

(ii) 7.813739% allocated to region 2.

(iii) 17.455365% allocated to region 3.

(iv) 3.902955% allocated to region 4.

(v) 2.542550% allocated to region 5.

(vi) 9.845317% allocated to region 6.

(vii) 7.285670% allocated to region 7.

(viii) 3.495025% allocated to region 8.

(ix) 9.594819% allocated to region 9.

(x) 9.457202% allocated to region 10.

(xi) 1.372268% allocated to region 11.

(xii) 3.390769% allocated to region 12.

(xiii) 0.749727% allocated to region 13.

(xiv) 1.749546% allocated to region 14.

(xv) 2.596578% allocated to region 15.

(xvi) 1.363928% allocated to region 16.

(xvii) 3.325101% allocated to region 17.

(xviii) 5.741368% allocated to region 18.

(xix) 1.827600% allocated to region 19.

(xx) 0.974842% allocated to region 20.

(B) Within each region and provided there are a sufficient number of eligible grant applicants, no single grant recipient will receive 100% of the funds allocated to a respective region.

(2) Of the funds allocated to a grant cycle, 25% shall be allocated for targeted interventions. The council shall establish parameters for the authorized uses of the targeted intervention component of each grant cycle.

(A) The parameters may include:

(i) a limitation to one or more geographic areas based on opioid incidence information; and

(ii) a limitation to one or more eligible strategies based on opioid incidence information.

(B) The council shall rank the parameters relating to geographic areas and eligible strategies in order of priority for grant funding. For example, if the council limits targeted intervention grants to, in order of priority, locations A, B, C, and D and to, in order of priority, strategies X and Y, the council shall also specify whether a grant application from location A for strategy Y is a higher priority than a grant application from location B for strategy X.

(f) The council may, from time to time, review and amend the grant issuance plan.

§16.203. Notice and Applications.

(a) For each grant cycle in the grant issuance plan adopted under §16.202 of this subchapter, the council shall, as necessary, publish a NOFA on the *Texas.gov eGrants* website and the comptroller's website.

(b) The NOFA may include:

(1) the amount of grant funds available for grant awards for each regional healthcare partnership region under the regional component;

(2) the amount of grant funds available for grant awards and any limitations on the number of grant awards under the targeted intervention component;

(3) the strategy or strategies that are eligible for grant funding and the order of priority for grant funding;

(4) the minimum and maximum amount of grant funds available for each grant application;

(5) limitations on the geographic distribution of grant funds under the regional component and under the targeted intervention component;

(6) eligibility requirements;

(7) grant application requirements;

(8) grant award and evaluation criteria;

(9) the date by which grant applications must be submitted to the council;

(10) the anticipated date of grant awards;

(11) any preferred criteria relevant to the grant application;

(12) parameters for allowable costs reimbursable under the grant awards; and

(13) any other necessary information.

(c) All grant applications submitted under this subchapter must comply with the requirements contained in this subchapter and in the relevant NOFA published by the council.

(d) Grant applicants must apply for a grant award using the procedures, forms, and certifications prescribed by the council.

(e) During the review of a grant application, a program staff member may require a grant applicant to submit additional information necessary to complete the review. Such requests for information do not serve as notice that the council intends to fund a grant application; however, failure to respond to requests for additional information may impact the ability to review and evaluate the grant application.

(f) Grant applications shall:

(1) seek to remediate the opioid crisis in this state by using efficient and cost-effective methods that are directed to regions of this state experiencing opioid-related harms; and

(2) satisfy the requirements set forth in this subchapter; Government Code, Chapter 403, Subchapter R; and the relevant NOFA published by the council.

§16.204. Availability of Funds.

All grant funding is contingent upon the availability of funds and upon approval of a grant application by the council. Neither this subsection nor a grant agreement creates any entitlement or right to grant funds by a grant applicant.

§16.205. Engage in Business in Texas.

(a) Except as addressed by a NOFA, to be eligible to receive a grant award, a grant applicant must engage in business in the state of Texas by:

(1) maintaining employees in the state of Texas;

(2) having a fixed place of business in the state of Texas; or

(3) providing any service in the state of Texas, whether or not the individuals performing the service are residents of the state.

(b) Grant applicants responding to a NOFA may be located outside the state of Texas when the grant application is submitted and reviewed; however, the grant applicant must demonstrate that it engages in business in the state of Texas as a condition of the grant award.

(c) A grant recipient's failure to engage in business in the state of Texas is a violation of these rules for the purpose of §16.218 of this subchapter.

§16.206. Peer Review Panel Members.

(a) To minimize the potential for conflicts of interest in the peer review of grant applications, the council may select and compensate individuals who live and work outside of the state of Texas to serve as peer review panel members, unless a special need justifies selecting one or more individuals living or working in Texas.

(b) If an individual who lives or works in Texas is selected to serve as a peer review panel member, the director must provide an explanation of the special need and how any potential for conflict of interest will be mitigated to the council at the time the peer review panel member is selected.

(c) A peer review panel member shall immediately disclose to the director a present relationship with a grant applicant or any benefit the peer review panel member has received or knows the member will receive from a grant applicant.

(d) A peer review panel member who has a present relationship with a grant applicant, or has received or knows the member will receive any benefit from a grant applicant, may not review that grant application.

§16.207. Authorized Officials.

(a) Each grant applicant must designate an authorized official and must submit to the director:

(1) a resolution from the grant applicant's governing body that, at a minimum, designates an authorized official to act on the grant applicant's behalf and authorizes the authorized official to submit a grant application;

(2) the authorized official's title, mailing address, telephone number, and email address; and

(3) the grant applicant's physical address.

(b) A grant applicant or grant recipient must notify the director as soon as practicable of any change in the information provided under subsection (a) of this section. If there is a change of authorized official, a grant applicant or grant recipient must also submit to the director a new resolution from the grant applicant's governing body that, at a minimum, designates an authorized official to act on the grant applicant's behalf.

§16.208. Grant Application Review.

(a) The grant application review process shall consist of three steps:

(1) initial screening;

(2) peer review; and

(3) council review and approval.

(b) Initial screening.

(1) Program staff members shall review each grant application to determine whether the grant application complies with the requirements contained in this subchapter and the relevant NOFA published by the council. Grant applications that do not meet these requirements will not be eligible for review under this section.

(2) A program staff member shall submit each grant application that meets the requirements described in subsection (b)(1) of this section to the peer review panel for review.

(c) Peer review.

(1) Peer review panel members shall review each grant application that is submitted for review by program staff as described in subsection (b)(2) of this section.

(2) Peer review panel members shall assign a score for the application based on the application's merit and accounting for the criteria in the relevant NOFA published by the council, and shall submit this information to a program staff member.

(3) If a peer review panel member recommends changes to the grant funds amount requested by the grant applicant or to the goals and objectives or timeline for the proposed grant project, the recommended changes and explanation shall be submitted to a program staff member.

(4) The peer review panel's scores, rankings and other information submitted for the council's consideration are recommendations and are advisory only.

(d) Council review and approval.

(1) After receipt of the peer review scores and recommendations described in subsection (c) of this section, program staff members shall compile a list of grant applications reviewed by the peer review panel ranked in order by the final overall evaluation score. The final evaluation score is determined by averaging together the scores assigned by the peer review panel members under subsection (c)(2) of this section.

(2) For each application, a program staff member shall submit to council members:

(A) the grant application's final overall peer review evaluation score;

(B) the grant application's peer review ranking;

(C) a summary of the grant application;

(D) other information submitted by the peer review panel for the council's consideration; and

(E) any other information required for the council's consideration of the grant application.

(3) In making grant award decisions, the council:

(A) shall ensure that grant funds are allocated fairly and spent to remediate the opioid crisis in this state by using efficient and cost-effective methods in accordance with the opioid strategies approved by the council under Government Code, §403.509(a)(1) and §16.201 of this subchapter, and the grant issuance plan adopted by the council under §16.202 of this subchapter; and

(B) may consider factors including:

(i) a grant applicant's experience;

(ii) a grant project's estimated timeline;

(iii) matching funds or sustainability plan, if any;

(iv) cost effectiveness, efficacy and overall impact of the grant project;

(v) geographic location of the grant project;

(vi) community partnerships; and

(vii) any additional factors listed in the relevant NOFA published by the council.

(4) The council shall vote on each grant application in accordance with Government Code, §403.509(c). The council may vote on multiple grant applications at one time.

(5) If the council approves a grant award, the council shall specify the total amount of money approved to fund the grant project.

(6) All grant funding decisions are final and are not subject to appeal.

(7) The approval of a grant award shall not obligate the council to make any additional, supplemental, or other grant award.

§16.209. Amount of Grant Award.

(a) The amount of a grant award is determined solely by the council.

(b) The council is not obligated to fund a grant at the amount requested by the grant applicant.

§16.210. Financial Responsibility.

(a) The grant recipient is responsible for managing the day-to-day operations and activities supported by the grant agreement and is accountable to the council for the performance of the grant agreement, including the appropriate expenditure of grant award funds and all other obligations of the grant recipient.

(b) The grant recipient must maintain a sound financial management system that provides appropriate fiscal controls and accounting procedures to ensure accurate preparation of reports required by the grant agreement and adequate identification of the source and application of grant funds awarded to the grant recipient.

§16.211. Allowable Costs; Disbursement of Grant Funds.

(a) Allowable costs are costs that are reasonable and necessary for the proper and efficient performance and administration of the grant project, and allocable to the grant project.

(b) The council disburses grant funds by reimbursing the grant recipient for allowable costs already expended.

(c) The relevant NOFA published by the council may provide additional information on allowable costs by grant project and a schedule for disbursement of grant funds.

§16.212. Grant Requirements.

(a) Grant recipients must comply with:

(1) the terms and conditions of the grant agreement;

(2) the requirements of Government Code, Chapter 403, Subchapter R;

(3) the relevant provisions of the Texas Grant Management Standards and the State of Texas Procurement and Contract Management Guide, or their successors, adopted in accordance with Texas law; and

(4) all applicable state or federal statutes, rules, regulations, or guidance applicable to the grant award.

(b) A grant recipient is the entity legally and financially responsible for compliance with the grant agreement, and state and federal laws, rules, regulations, and guidance applicable to the grant award.

(c) Grant funds may not be used for costs that will be reimbursed by another funding source. The director may require a grant applicant or grant recipient to demonstrate through accounting records that funds received from another funding source are not used for costs that will be reimbursed by the council.

§16.213. Use of Council's Grant Management System.

By utilizing the council's electronic grant management system to create, exchange, execute, submit, and verify legally binding grant agreement documents, grant award reports, and other grant information, a grant applicant or grant recipient:

(1) certifies that all information submitted is true and correct;

(2) agrees that the authorized official's electronic signature is the legal equivalent of the authorized official's manual signature;

(3) agrees that the council may rely upon the authorized official's electronic signature as evidence that the grant recipient consents to be legally bound by the terms and conditions of the grant agreement or related form as if the document was manually signed; and

(4) agrees to provide prompt written notification to the director of any changes regarding the status or authority of the individual(s) designated by the grant applicant or grant recipient to be the grant applicant's or grant recipient's authorized official.

§16.214. Code of Ethics.

(a) All council members, peer review panel members, and program staff members shall avoid acts which are improper or give the

appearance of impropriety in the disposition of funds administered by the council.

(b) The council shall adopt a code of ethics to provide guidance related to the ethical conduct required of council members, peer review panel members, and program staff members.

(c) The code of ethics shall be distributed to each council member, peer review panel member, and program staff member.

§16.215. Reporting.

(a) Grant recipients must submit to a program staff member designated by the director periodic reports for each funded grant project for the duration of the grant agreement. The frequency, format and requirements of the reports shall be determined at the discretion of the director at the direction of the council.

(b) At the director's sole discretion and at any time, the director, upon reasonable notice, may request any additional data and reporting information that the director deems necessary to substantiate that grant funds are being used for the intended purpose and that the grant recipient has complied with the terms, conditions, and requirements of the grant agreement.

§16.216. Grant Reduction or Termination.

(a) If a grant recipient seeks to terminate any grant award before the termination date listed in the grant agreement, the grant recipient must notify the director in writing immediately.

(b) The council may reduce or terminate any grant award when circumstances require reduction or termination, including when:

(1) the grant recipient is found to be noncompliant under §16.218 of this subchapter;

(2) the grant recipient and the council agree to the reduction or termination of a grant award;

(3) grant funds are no longer available to the council; or

(4) conditions exist that make it unlikely that objectives of the grant award will be accomplished.

(c) If a grant award is reduced or terminated by the council, the director must notify the grant recipient in writing.

§16.217. Extensions.

(a) The director may approve a grant recipient's written request for a no cost time extension of the termination date of the grant agreement to permit the grant recipient additional time to complete the work of the grant project if the grant recipient is in good fiscal and programmatic standing.

(b) A written request for a no cost time extension must include:

(1) a timeline of events beginning on the date of grant award;

(2) a detailed explanation why the grant project is not expected to be completed within the grant term; and

(3) if applicable, supporting documentation demonstrating extenuating circumstances.

(c) The director may approve one or more no cost time extensions. The duration of each no cost time extension may be no longer than six months from the termination date of the grant agreement, unless the director finds that special circumstances justify authorizing additional time to complete the work of the grant project.

(d) Approval of a no cost time extension request must be supported by a finding of good cause and the grant agreement shall be amended to reflect the change.

(e) The director's decision to grant or deny a no cost time extension request is final and is not subject to appeal.

§16.218. Noncompliance.

(a) If the council has reason to believe that a grant recipient has violated any term or condition of the grant recipient's grant agreement or any applicable laws, rules, regulations, or guidance relating to the grant award, the director shall provide written notice of the allegations to the grant recipient and provide the grant recipient with an opportunity to respond to the allegations.

(b) If the council finds that a grant recipient has failed to comply with any term or condition of a grant agreement, or any applicable laws, rules, regulations, or guidance relating to the grant award, the council may:

(1) require the grant recipient to refund the grant award or a portion of the grant award;

(2) withhold grant award amounts to a grant recipient pending correction of the deficiency;

(3) disallow all or part of the cost of the activity or action that is not in compliance;

(4) terminate the grant award in whole or in part;

(5) bar the grant recipient from future consideration for grant funds under this subchapter; or

(6) exercise any other legal remedies available at law.

(c) A grant recipient shall not be required to forfeit grant funds received if it fails to perform due to acts of war, terrorism, natural disaster declared by the governor of this state, an act of God, force majeure, a catastrophe, or such other occurrence over which the grant recipient has no control.

§16.219. Monitoring Grant Award Performance and Expenditures.

The council shall monitor grant awards to ensure that grant recipients comply with applicable financial, administrative, and programmatic terms and conditions and exercise proper stewardship over grant award funds. Such terms and conditions include requirements set forth in the grant agreement, and applicable laws, rules, regulations, or guidance relating to the grant award.

§16.220. Records Retention; Audit.

(a) Grant recipients must maintain all financial records, supporting documents, and all other records pertinent to the grant project or grant award for the later of:

(1) five years following the submission of a final report; or

(2) if any litigation, claim, or audit is started, or any open records request is received, before the expiration of the five-year records retention period, one year after the completion of the litigation, claim, audit, or open records request and resolution of all issues which arise from it.

(b) At any time during the grant agreement and during the retention period described in subsection (a) of this section, the director or the director's designee may, upon reasonable notice, request any records from or audit the books and records of a grant recipient or conduct an on-site review at a grant recipient's location to verify that the grant recipient has complied with the terms, conditions, and requirements of the grant agreement, and any applicable laws, rules, regulations, or guidance relating to the grant award.

(c) During an on-site review, a grant recipient must provide the director or the director's designee with access to all records, information, and assets that the director or the director's designee determines are reasonably relevant to the scope of the on-site review.

(d) If the director or the director's designee requests records or information from the grant recipient, the grant recipient must provide the requested records or information to the director or the director's designee not later than 30 days after a written request is made by the director or the director's designee.

§16.221. Forms and Other Documents.

Unless otherwise required by law, the council may prescribe all forms or other documents required to implement this subchapter and may require that the forms or other documents be submitted electronically.

§16.222. References.

All references in this subchapter to statutory provisions in Government Code, Chapter 403, Subchapter R, refer to the provisions added by 87th Legislature, 2021, R.S., Chapter 781 (Senate Bill 1827), §1.

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 June 20, 2023.

TRD-202302214
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Effective date: July 10, 2023
Proposal publication date: April 7, 2023
For further information, please call: (512) 475-2220

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.

Adopted Rule Reviews

Department of Savings and Mortgage Lending

Title 7, Part 4

The Department of Savings and Mortgage Lending (department) has completed its review of the following chapters of 7 TAC Part 4:

Chapter 52, Charter Applications (§§52.1 - 52.15);

Chapter 53, Additional Offices (§§53.1 - 53.5, 53.7 - 53.10, 53.17, 53.18);

Chapter 57, Change of Office Location or Name (§§57.1 - 57.4);

Chapter 61, Hearings (§§61.1 - 61.3);

Chapter 63, Fees and Charges (§§63.1 - 63.9, 63.11 - 63.13, 63.15);

Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints (§§64.1 - 64.10);

Chapter 65, Loans and Investments (§§65.1 - 65.21, 65.23, 65.24);

Chapter 67, Savings and Deposit Accounts (§§67.1 - 67.3, 67.6 - 67.13, 67.15, 67.17);

Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion (§§69.1 - 69.11);

Chapter 71, Change of Control (§§71.1 - 71.8); and

Chapter 73, Subsidiary Corporations (§§73.1 - 73.6).

The review was conducted in accordance with Government Code §2001.039. Notice of the review was published in the February 3, 2023, issue of the *Texas Register* (48 TexReg 525). The notice recited a deadline of 30 days to receive public comments. No comments were received.

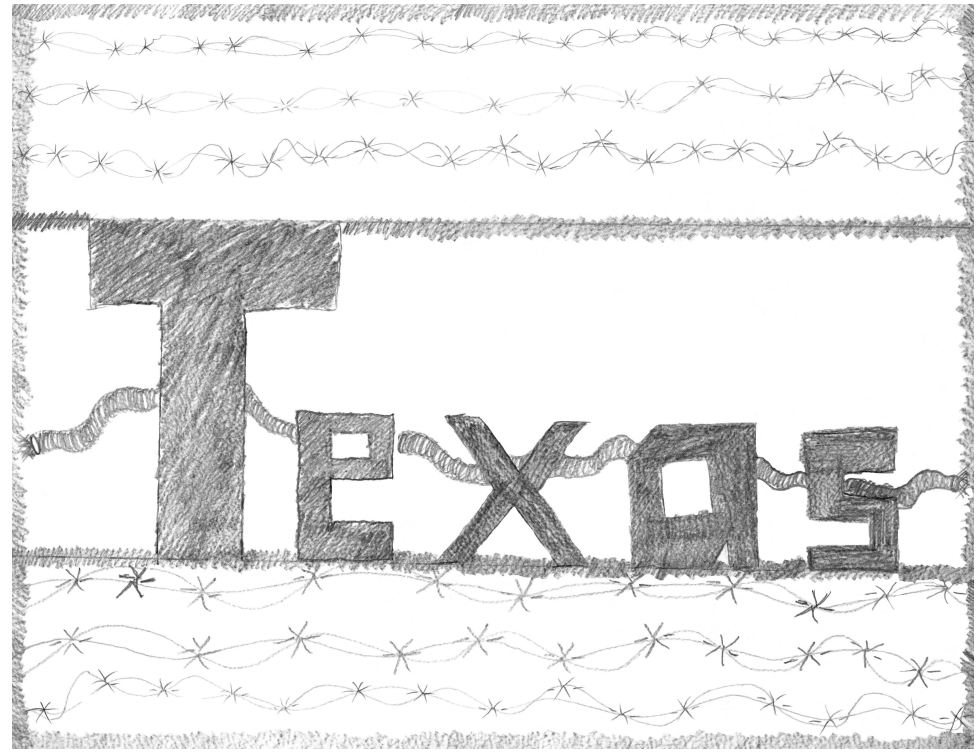
The rules reviewed were adopted by the Finance Commission of Texas (commission) on behalf of the department.

As a result of the rule review conducted by the department, the commission determined certain changes to the rules were appropriate and necessary. The commission's proposal for such changes was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2267, et seq.). The rule changes are adopted in the adopted rules section in this issue of the *Texas Register.*

The commission, after considering the results of the rule review conducted by the department, finds that the reasons for initially adopting the rules reviewed continue to exist and readopts 7 TAC Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73.

TRD-202302311
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Filed: June 26, 2023

♦ ♦ ♦


TEXAS

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 22 TAC §102.1(a)	Board Fee	Texas Online	NPDB	PMP	Peer Assistance	Total Fee
DENTIST						
Application by Exam	$ 330.00	$ 5.00		$ 15.00	$ 10.00	$ 360.00
Renewal	$ 411.00	$ 20.00	$ 2.00	$ 15.00	$ 10.00	$ 458.00
Renewal - Late 1 to 90 days	$ 486.00	$ 20.00	$ 2.00	$ 15.00	$ 10.00	$ 533.00
Renewal - Late 91 to 365 days	$ 561.00	$ 20.00	$ 2.00	$ 15.00	$ 10.00	$ 608.00
Licensure by Credentials	$ 2,915.00	$ 5.00		$ 15.00	$ 10.00	$ 2,945.00
Temporary Licensure by Credentials	$ 865.00	$ 5.00		$ 15.00	$ 10.00	$ 895.00
Temporary Licensure by Credentials renewal	$ 261.00	$ 4.00	$ 2.00	$ 15.00	$ 10.00	$ 292.00
Provisional License	$ 100.00					$ 100.00
Faculty Initial Application	$ 230.00	$ 3.00		$ 15.00	$ 10.00	$ 258.00
Faculty Renewal	$ 305.00	$ 8.00	$ 2.00	$ 15.00	$ 10.00	$ 340.00
Faculty Renewal - Late 1 to 90 days	$ 352.00	$ 8.00	$ 2.00	$ 15.00	$ 10.00	$ 387.00
Faculty Renewal - Late 91 to 365 days	$ 399.00	$ 8.00	$ 2.00	$ 15.00	$ 10.00	$ 434.00
Conversion Fee - Faculty to Full Privilege	$ 161.00	$ 2.00	$ 2.00	$ 15.00	$ 10.00	$ 190.00
Nitrous Oxide Permit	$ 32.00					$ 32.00
Level 1 Permit	$ 32.00					$ 32.00
Level 2 Permit	$ 260.00					$ 260.00
Level 3 Permit	$ 260.00					$ 260.00
Level 4 Permit	$ 260.00					$ 260.00
Nitrous Level 1 Permit Renewal	$ 10.00					$ 10.00
Level 2 Permit Renewal	$ 60.00					$ 60.00
Level 3 Permit Renewal	$ 60.00					$ 60.00
Level 4 Permit Renewal	$ 60.00					$ 60.00
Application to Reactivate a Retired License	$ 186.00	$ 3.00		$ 15.00	$ 10.00	$ 214.00
Reinstatement of a Canceled Dental License	$ 411.00	$ 5.00		$ 15.00	$ 10.00	$ 441.00
Duplicate License / Renewal	$ 25.00	$ 2.00				$ 27.00
Conversion Fee - Full Privilege to Faculty	$ 161.00	$ 2.00	$ 2.00	$ 15.00	$ 10.00	$ 190.00
Conversion Fee - Temporary Licensure by Credentials to Full Privilege	$ 2,165.00	$ 5.00	$ 2.00	$ 15.00	$ 10.00	$ 2,197.00
DENTAL HYGIENIST						
Application by Exam	$ 120.00	$ 3.00			$ 2.00	$ 125.00
Renewal	$ 216.00	$ 6.00	$ 2.00		$ 2.00	$ 226.00
Renewal - Late 1 to 90 days	$ 266.00	$ 6.00	$ 2.00		$ 2.00	$ 276.00
Renewal - Late 91 to 365 days	$ 316.00	$ 6.00	$ 2.00		$ 2.00	$ 326.00
Licensure by Credentials	$ 635.00	$ 5.00			$ 2.00	$ 642.00
Temporary Licensure by Credentials	$ 225.00	$ 5.00			$ 2.00	$ 232.00
Temporary Licensure by Credentials renewal	$ 101.00	$ 3.00	$ 2.00		$ 2.00	$ 108.00

	Board Fee	Texas Online	NPDB	PMP	Peer Assistance	Total Fee
Faculty Initial Application	$ 120.00	$ 3.00			$ 2.00	$ 125.00
Faculty Renewal	$ 201.00	$ 6.00	$ 2.00		$ 2.00	$ 211.00
Faculty Renewal - Late 1 to 90 days	$ 243.00	$ 6.00	$ 2.00		$ 2.00	$ 253.00
Faculty Renewal - Late 91 to 365 days	$ 285.00	$ 6.00	$ 2.00		$ 2.00	$ 295.00
Conversion Fee - Faculty to Full Privilege	$ 51.00	$ 2.00	$ 2.00		$ 2.00	$ 57.00
Application to Reactivate a Retired License	$ 76.00	$ 3.00			$ 2.00	$ 81.00
Reinstatement of a Canceled Dental Hygiene Li	$ 213.00	$ 5.00			$ 2.00	$ 220.00
Duplicate License / Renewal	$ 25.00	$ 2.00				$ 27.00
Nitrous Oxide Monitoring Application	$ 25.00					$ 25.00
Conversion Fee - Full Privilege to Faculty	$ 55.00	$ 2.00	$ 2.00		$ 2.00	$ 61.00
Conversion Fee - Temporary Licensure by Credentials to Full Privilege	$ 415.00	$ 5.00	$ 2.00		$ 2.00	$ 424.00
DENTAL ASSISTANT						
Initial Application	$ 36.00	$ 2.00			$ 1.00	$ 39.00
Renewal	$ 63.00	$ 4.00	$ 2.00		$ 1.00	$ 70.00
Renewal - Late 1 to 90 days	$ 78.00	$ 4.00	$ 2.00		$ 1.00	$ 85.00
Renewal - Late 91 to 365 days	$ 93.00	$ 4.00	$ 2.00		$ 1.00	$ 100.00
Duplicate License / Renewal	$ 25.00	$ 2.00				$ 27.00
Nitrous Oxide Monitoring Renewal	$ 63.00	$ 4.00	$ 2.00			$ 69.00
Nitrous Oxide Monitoring Late 1 to 90 days	$ 78.00	$ 4.00	$ 2.00			$ 84.00
Nitrous Oxide Monitoring Late 91 to 365 days	$ 93.00	$ 4.00	$ 2.00			$ 99.00
Nitrous Oxide Monitoring Application	$ 25.00					$ 25.00
RDA Course Provider Application Fee	$ 100.00					$ 100.00
DENTAL LABORATORIES						
Application	$ 125.00					$ 125.00
Renewal	$ 134.00	$ 4.00				$ 138.00
Renewal - Late 1 to 90 days	$ 200.00	$ 5.00				$ 205.00
Renewal - Late 901 to 365 days	$ 266.00	$ 5.00				$ 271.00
Duplicate Certificate	$ 25.00	$ 2.00				$ 27.00
OTHER						
Mobile Application	$ 121.00					$ 121.00
Mobile Renewal	$ 63.00	$ 2.00				$ 65.00
Mobile Renewal - 1 to 90 days	$ 93.00	$ 2.00				$ 95.00
Mobile Renewal - 91 to 365 days	$ 123.00	$ 2.00				$ 125.00
Duplicate Certificate Mobile Certificate	$ 25.00	$ 2.00				$ 27.00
Dentist Intern / Resident Prescription Privileges	$ 51.00		$ 2.00	$ 15.00	$ 15.00	$ 83.00
Jurisprudence	$ 54.00					$ 54.00
Licensure Verification with Seal	$ 9.00	$ 2.00				$ 11.00
Criminal History Evaluation	$ 25.00					$ 25.00
Board Scores	$ 25.00					$ 25.00
CE Provider Application Fee	$ 100.00					$ 100.00

Figure: 31 TAC §27.1(a)

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.

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - May 2023

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period May 2023 is $48.94 per barrel for the three-month period beginning on February 1, 2023, and ending April 30, 2023. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of May 2023, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period May 2023 is $1.32 per mcf for the three-month period beginning on February 1, 2023, and ending April 30, 2023. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of May 2023, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of May 2023 is $71.62 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of May 2023, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of May 2023 is $2.30 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of May 2023, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

Issued in Austin, Texas, on June 26, 2023.

TRD-202302274
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Filed: June 26, 2023

♦ ♦ ♦

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 07/03/23 - 07/09/23 is 18% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/03/23 - 07/09/23 is 18% for commercial[2] credit.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202302326
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 27, 2023

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 7, 2023.** 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 **August 7, 2023.** 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: Camo Chemical LLC; DOCKET NUMBER: 2022-0024-AIR-E; IDENTIFIER: RN100880400; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical blending facility; RULES VIOLATED: 30 TAC §101.201(f) and Texas Health

and Safety Code (THSC), §382.085(b), by failing to provide additional or more detailed information regarding the emissions event when requested by the Executive Director within the time established in the request; and 30 TAC §116.115(c), New Source Review Permit Number 72848, Special Conditions Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $12,875; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: City of Hedley; DOCKET NUMBER: 2022-1348-UTL-E; IDENTIFIER: RN101215770; LOCATION: Hedley, Donley County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service ; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $450; ENFORCEMENT COORDINATOR: Ronica Rodriguez-Scott, (361) 881-6990; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: City of La Feria dba La Feria City Shop; DOCKET NUMBER: 2021-1204-PST-E; IDENTIFIER: RN102449063; LOCATION: La Feria, Cameron County; TYPE OF FACILITY: fleet refueling; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $12,000; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: Clariant Corporation; DOCKET NUMBER: 2023-0025-AIR-E; IDENTIFIER: RN105499420; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c), New Source Review Permit Number 22872, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $3,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $1,350; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: GULF COAST FIBER SERVICES LLC; DOCKET NUMBER: 2023-0777-WR-E; IDENTIFIER: RN103182952; LOCATION: Livingston, Polk County; TYPE OF FACILITY: operator; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to appropriating any state water or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: $350; ENFORCEMENT COORDINATOR: John Thibodeaux, (409) 899-8753; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: KINNEY COUNTY; DOCKET NUMBER: 2023-0287-WR-E; IDENTIFIER: RN106125495; LOCATION: Brackettville, Kinney County; TYPE OF FACILITY: operator; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain authorization prior to diverting, storing, impounding, taking, or using state water, or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: $350; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(7) COMPANY: MVP Players, LLC; DOCKET NUMBER: 2022-0190-WR-E; IDENTIFIER: RN111149233; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: golf course; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121 , by failing to obtain authorization prior to diverting, impounding, storing, taking, or using state water; PENALTY: $450; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Phillips 66 Company; DOCKET NUMBER: 2021-0897-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 111.111(a)(1)(B), 116.115(c), and 122.143(4), New Source Review Permit Numbers 5920A, 7467A, 22086, 30513, and PSDTX103M4, Special Conditions Number 1, Federal Operating Permit Number O1626, General Terms and Conditions and Special Terms and Conditions Number 29, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $45,850; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $22,925; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: PURE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2022-0275-PWS-E; IDENTIFIER: RN102674850; LOCATION: Waco, McLennan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §§290.41(c)(3)(O), 290.42(m) and 290.43(e), by failing to provide an intruder-resistant fence or well house around each water treatment plant, well unit, potable water storage tank, pressure maintenance facility, and related appurtenances that remains locked during periods of darkness and when the facility is unattended; 30 TAC §290.43(c)(1), by failing to provide the ground storage tank with a gooseneck roof vent or a roof ventilator designed by an engineer and installed in strict accordance with American Water Works Association standards and equipped with a corrosion-resistant 16-mesh or finer screen; 30 TAC §290.46(f)(2) and (3)(A)(i)(II), (ii) and (iv), (B)(iii), (iv), and (v), and (D)(i), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exist, or after any material improvements, corrections, or additions to the private water distribution facilities; 30 TAC §290.46(m)(1)(B), by failing to inspect the interior of the facility's pressure tanks at least once every five years; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $5,800; ENFORCEMENT COORDINATOR: Ronica Rodriguez-Scott, (361) 881-6990; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: W4-A HOLDINGS LLC; DOCKET NUMBER: 2023-0762-WQ-E; IDENTIFIER: RN111628103; LOCATION:

Whitehouse, Smith County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: $875; ENFORCEMENT COORDINATOR: Monica Larina, (512) 239-0184; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202302320
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: June 27, 2023

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Enforcement Orders

An agreed order was adopted regarding ETC Texas Pipeline, Ltd., Docket No. 2017-0562-AIR-E on June 28, 2023 assessing $209,510 in administrative penalties with $41,902 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 Skipper Beverage Company, LLC dba Circle K Store 2742069, Docket No. 2019-0563-PST-E on June 28, 2023 assessing $19,901 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, 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 U.S. Minerals, Inc., Docket No. 2020-0060-AIR-E on June 28, 2023 assessing $26,135 in administrative penalties with $5,227 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.

A default and shutdown order was adopted regarding Jamal Jafari dba J & K Food Store, Docket No. 2021-0083-PST-E on June 28, 2023 assessing $18,356 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Pence, 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 EAS OIL, LLC dba Stagecoach Stop, Docket No. 2020-0103-PST-E on June 28, 2023 assessing $67,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Marilyn Norrod, 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 TEXAS CONCRETE SAND AND GRAVEL ENTERPRISE INC, Docket No. 2021-0362-WQ-E on June 28, 2023 assessing $8,751 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Megan L. Grace, 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 Targa Midstream Services LLC, Docket No. 2021-0412-AIR-E on June 28, 2023 assessing $6,975 in administrative penalties. 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 Enterprise Products Operating LLC, Docket No. 2021-0460-AIR-E on June 28, 2023 assessing $40,188 in administrative penalties with $1,637 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 Arkema Inc., Docket No. 2021-0461-AIR-E on June 28, 2023 assessing $18,871 in administrative penalties with $3,774 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 Ambers Construction, LLC, Docket No. 2021-0518-MLM-E on June 28, 2023 assessing $10,945 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, 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 SI Group, Inc., Docket No. 2021-0747-AIR-E on June 28, 2023 assessing $11,050 in administrative penalties with $2,210 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 Braskem America, Inc., Docket No. 2021-0874-AIR-E on June 28, 2023 assessing $74,536 in administrative penalties. 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 Adrian Gutierrez, Docket No. 2021-0903-LII-E on June 28, 2023 assessing $11,400 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Sixto Delafuente and Martiza Delafuente, Docket No. 2021-0939-OSS-E on June 28, 2023 assessing $1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, 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 WOODLAKE-JOSSERAND WATER SUPPLY CORPORATION, Docket No. 2021-0979-PWS-E on June 28, 2023 assessing $14,415 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, 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 INEOS Styrolution America LLC, Docket No. 2021-1127-AIR-E on June 28, 2023 assessing $38,125 in administrative penalties with $7,625 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 City of Plano, Docket No. 2021-1491-WQ-E on June 28, 2023 assessing $18,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Monica Larina, 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 FOUNDATION ENERGY MANAGEMENT, L.L.C., Docket No. 2021-1622-AIR-E on June 28, 2023 assessing $16,375 in administrative penalties with $3,275 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 G. P. Transport, Inc., Docket No. 2022-0439-WQ-E on June 28, 2023 assessing $12,500 in administrative penalties with $2,500 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202302342
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 28, 2023

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Notice of Correction to Agreed Order Number 3

In the April 21, 2023, issue of the *Texas Register* (48 TexReg 2149), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 3, for Ben Adams dba Old Town Water Supply Corporation, Terry Adams dba Old Town Water Supply Corporation, and David Hicks dba Old Town Water Supply Corporation; Docket Number 2022-1512-UTL-E. The error is as submitted by the commission.

The reference to the company should be corrected to read: "Old Town Water Supply Corporation, Ben Adams dba Old Town Water Supply Corporation, Terry Adams dba Old Town Water Supply Corporation, and David Hicks dba Old Town Water Supply Corporation."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202302321
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: June 27, 2023

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Notice of District Petition

Notice issued June 21, 2023

TCEQ Internal Control No. D-01272023-036; Maxwell Special Utility District of Hays County (the "District") filed an application with the Texas Commission on Environmental Quality (TCEQ) for authority to levy a revised impact fee of $12,940 per standard residential connection within the District's service area. The District files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293, and the procedural rules of the TCEQ. The purpose of impact fees is to generate revenue to recover the costs of capital improvements or facility expansions made necessary by and attributable to serving new development in the District's service area. At the direction of the District, a registered engineer has prepared a capital improvements plan for the system that identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed. The impact fee application and supporting information are available for inspection and copying during regular business hours in the Districts Section of the Water Supply Division, Third Floor of Building F (in the TCEQ Park 35 Office Complex located between Yager and Braker lanes on North IH-35), 12100 Park 35 Circle, Austin, Texas 78753. A copy of the impact fee application and supporting information, as well as the capital improvements plan, is available for inspection and copying at the District's office during regular business hours.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202302335
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 28, 2023

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Notice of District Petition

Notice issued June 22, 2023

TCEQ Internal Control No. D-05102023-022; BGM Land Investments, Ltd., a Texas limited partnership, (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 583 (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 323.023 acres located within Harris County, Texas; and (4) the land within the proposed District is within the extraterritorial jurisdiction of the City of Houston. By Ordinance No. 2022-873, passed and approved on November 9, 2022, the City of Houston, Texas, 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, own, operate, repair, improve and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate such additional facilities, including road facilities, park 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 Petitioners that the cost of said project will be approximately $111,950,000 ($67,790,000 for water, wastewater, and drainage, $38,580,000 for roads, and $5,580,000 for recreational).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202302336

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 28, 2023

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Notice of District Petition

Notice issued June 28, 2023

TCEQ Internal Control No. D-04282023-042; Lawman, LLC, a Texas Limited Liability Company, (Petitioner) filed a petition for creation of Burks Ranch Municipal Utility District No. 1 of Grayson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner 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 510 acres of land located within Grayson County, Texas; and (4) the Property to be included in the proposed district is not within the corporate boundaries or extraterritorial jurisdiction of any municipality. The petition further states that the proposed District will purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; to collect, transport, process, dispose of and control domestic, and commercial wastes; to gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District; to design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and to purchase, construct, acquire, improve, or extend inside or outside of its boundaries 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 Petitioner, from the information available at this time, that the cost of said project will be approximately $93,055,000 (including $63,715,000 for water, wastewater, and drainage and $29,340,000 for road improvements).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition un-

less a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202302340
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 28, 2023

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Notice of Intent to Reissue General Permit TXG530000 Authorizing the Discharge of Wastewater

The Texas Commission on Environmental Quality (TCEQ) is proposing to reissue Texas Pollutant Discharge Elimination System General Permit Number TXG530000 which authorizes the discharge of wastewater from on-site treatment systems connected to single family residences located in Harris County, Texas. The draft general permit applies to the entire state of Texas. General permits are authorized by Texas Water Code, §26.040.

The existing general permit is scheduled to expire on January 30, 2024. This notice is being published to comply with 30 TAC §205.5(d), which requires the TCEQ to propose reissuance of an existing general permit at least 90 days prior to expiration. The existing general permit will remain in effect for dischargers authorized under the general permit until the date the commission takes final action on the revised draft general permit. However, no new notices of intent will be accepted or authorizations issued under the existing general permit after January 20, 2024. TCEQ will provide the additional public notice required by 30 TAC §205.3 following the United States Environmental Protection Agency approval of the revised draft general permit.

INFORMATION. If you need more information about this general permit or the permitting process, please call the TCEQ Office of Public Assistance, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at: *http://www.tceq.texas.gov.*

Further information may also be obtained by calling the TCEQ's Water Quality Division, Municipal Permits Team, at (512) 239-4671.

Si desea información en español, puede llamar (800) 687-4040.

TRD-202302333
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 27, 2023

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 7, 2023.** 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 August 7, 2023.** 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: Ashton Holdings, Inc.; DOCKET NUMBER: 2020-0218-WQ-E; TCEQ ID NUMBER: RN109765495; LOCATION: northeast of Liberty School Road and Sandy Beach Road, Pelican Bay, Tarrant County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §281.25(a)(4), and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with construction activities; PENALTY: $8,362; STAFF ATTORNEY: David Keagle, Litigation, MC 175, (512) 239-3923; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: EliteCurb & Concrete, LLC; DOCKET NUMBER: 2021-1603-AIR-E; TCEQ ID NUMBER: RN111364568; LOCATION: 6615 Farm-to-Market Road 482, New Braunfels, Comal County; TYPE OF FACILITY: concrete materials storage site; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $1,875; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202302322
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: June 27, 2023

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Notice of Opportunity to Comment on Default 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 Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 7, 2023.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 7, 2023.** The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: Advanced Powder Solutions Inc.; DOCKET NUMBER: 2020-0565-MLM-E; TCEQ ID NUMBER: RN100652312; LOCATION: 12245 Farm-to-Market Road 529, Suite H, Houston, Harris County; TYPE OF FACILITY: metal component fabrication center; RULES VIOLATED: 30 TAC §335.2(b), by causing, suffering, allowing, or permitting the unauthorized storage and/or disposal of industrial hazardous waste at an unauthorized facility; 30 TAC §335.503 and §335.504, and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct hazardous waste determinations and waste classifications at the point of generation; Texas Health and Safety Code, §382.0518 and §382.085(b), and 30 TAC §116.110(a), by failing to obtain authorization prior to constructing or modifying a facility; and 30 TAC §324.6 and 40 CFR §279.22(c)(1), by failing to label or clearly mark used oil storage containers with the words "Used Oil"; PENALTY: $88,325; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: SAM RAYBURN WATER, INC.; DOCKET NUMBER: 2022-1352-UTL-E; TCEQ ID NUMBER: RN101256949; LOCATION: the end of Farm-to-Market Road 1751, San Augustine, San Augustine County; TYPE OF FACILITY: water utility; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to TCEQ for approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations; PENALTY: $510; STAFF ATTORNEY: Megan L. Grace, Litigation, MC 175, (512) 239-3334; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Village Creek Church of Christ, Inc.; DOCKET NUMBER: 2021-1209-PWS-E; TCEQ ID NUMBER: RN111296455; LOCATION: 10786 Highway 69 North near Kountze, Hardin County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.46(n)(1), by failing to maintain at the PWS accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $2,500; STAFF ATTORNEY: Megan L. Grace, Litigation, MC 175, (512) 239-3334; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202302323
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: June 27, 2023

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of ABRAXAS CORPORATION SOAH Docket No. 582-23-21632 TCEQ Docket No. 2021-0206-MWD-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 via Zoom videoconference at:

10:00 a.m. - July 27, 2023

To join the Zoom meeting via computer or smart device:

https://soah-texas.zoomgov.com

Meeting ID: 161 984 0712

Password: TCEQDC1

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 161 984 0712

Password: 5247869

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed May 5, 2022, concerning assessing administrative penalties against and requiring certain actions of ABRAXAS CORPORATION, for violations in Parker County, Texas, of: 30 Texas Administrative Code §§30.350(d), 217.33(c)(1)(B), 217.63(c), and 305.125(1) and (5); and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0015010001 Monitoring and Reporting Requirement No. 7.c., Operational Requirement No. 1, and Other Requirement No. 1.

The hearing will allow ABRAXAS CORPORATION, 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, af-

ford ABRAXAS CORPORATION, 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** ABRAXAS CORPORATION **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.** ABRAXAS CORPORATION, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code § 7.054, Tex. Water Code chs. 7, 26, and 37, and 30 Texas Administrative Code chs. 30, 70, 217, and 305; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Megan L. Grace, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Sheldon Wayne, Staff Attorney, Office of 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: June 27, 2023

TRD-202302341
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 28, 2023

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions on ANITRIO, INC. DBA Mr Discount SOAH Docket No. 582-23-22138 TCEQ Docket No. 2021-0873-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 via Zoom videoconference at:

10:00 a.m. - July 27, 2023

To join the Zoom meeting via computer or smart device:

https://soah-texas.zoomgov.com

Meeting ID: 161 984 0712

Password: TCEQDC1

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 161 984 0712

Password: 5247869

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed February 9, 2022 concerning assessing administrative penalties against and requiring certain actions of ANITRIO, INC. dba Mr Discount, for violations in Ellis County, Texas, of: Tex. Water Code § 26.3475(c)(1), Tex. Health & Safety Code § 382.085(b), and 30 Texas Administrative Code §§115.225, 334.45(c)(3)(A), 334.50(b)(1)(A) and (d)(9)(A)(v), 334.72 and 334.74.

The hearing will allow ANITRIO, INC. dba Mr Discount, 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 ANITRIO, INC. dba Mr Discount, 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** ANITRIO, INC. dba Mr Discount **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.** ANITRIO, INC. dba Mr Discount, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code § 7.054, Tex. Water Code chs. 7 and 26, Tex. Health & Safety Code ch. 382 and 30 Texas Administrative Code chs. 70, 115 and 334; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Megan L. Grace, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Garrett T. Arthur, 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: June 27, 2023

TRD-202302339
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 28, 2023

♦ ♦ ♦

Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of JOHARSKY MOTORS LLC dba Pro Auto Fix SOAH Docket No. 582-23-22292 TCEQ Docket No. 2021-1014-AIR-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 via Zoom videoconference at:

10:00 a.m. - July 27, 2023

To join the Zoom meeting via computer or smart device:

https://soah-texas.zoomgov.com

Meeting ID: 161 984 0712

Password: TCEQDC1

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 161 984 0712

Password: 5247869

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed January 5, 2023 concerning assessing administrative penalties against and requiring certain actions of JOHARSKY MOTORS LLC dba Pro Auto Fix, for violations in Dallas County, Texas, of: Texas Health & Safety Code §§ 382.0518(a) and 382.085(b) and 30 Texas Administrative Code §116.110(a).

The hearing will allow JOHARSKY MOTORS LLC dba Pro Auto Fix, 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 JOHARSKY MOTORS LLC dba Pro Auto Fix, 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 JOHARSKY MOTORS LLC dba Pro Auto Fix 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.** JOHARSKY MOTORS LLC dba Pro Auto Fix, 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, Texas Water Code ch. 7, Texas Health & Safety Code ch. 382, and 30 Texas Administrative Code chs. 70 and 116; 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 Erandi Ratnayake, 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 Sheldon Wayne, Staff Attorney, Office of 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: June 27, 2023

TRD-202302338
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 28, 2023

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Water Rights Notices

Notices Issued June 23, 2023

NOTICE OF AN APPLICATION TO AMEND A CERTIFICATE OF ADJUDICATION

APPLICATION NO. 12-4226A

Kerwin B. Stephens, 515 4th Street, Graham, Texas 76450, Applicant, seeks to amend Certificate of Adjudication No. 12-4226 to change the three currently authorized diversion points to four new diversion reaches on the Clear Fork Brazos River and add a place of use for agricultural purposes in Young and Stephens counties. More information on the application and how to participate in the permitting process is given below.

The application and partial fees were received on October 7, 2020. Additional information and fees were received on December 1, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on December 30, 2020. Additional information was received on December 1, 2022.

The Executive Director completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by July 10, 2023. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by July 10, 2023. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by July 10, 2023.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering ADJ 4226 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

APPLICATION NO. 10-3959C

The Woodlands Land Development Company, L.P., 1790 Hughes Landing Blvd., Suite 600, The Woodlands, Texas, 77380-1691, (Owner/Applicant), seeks to amend its portion of Certificate of Adjudication No. 10-3959 to add a diversion point on the perimeter of Lake Woodlands and to store its diverted water in two additional off-channel reservoirs in the San Jacinto River Basin, Montgomery County. More information on the application and how to participate in the permitting process is given below.

The application and fees were received on December 23, 2020. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 12, 2021.

The Executive Director completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, maintaining a measurement device. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps.

Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by July 10, 2023. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by July 10, 2023. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by July 10, 2023.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering ADJ 3959 in the search field. For information concerning the hearing process,

please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at http://www.tceq.texas.gov./ Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202302337
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 28, 2023

♦ ♦ ♦

Texas Ethics Commission

List of Delinquent Filers

LIST OF LATE FILERS

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Dave Guilianelli at (512) 463-5800.

Deadline: Monthly Report due December 7, 2020

Grant R. Cottingham, Frisco Police Officers Association Political Action Committee, 5212 Briarwood Drive, McKinney, Texas 75071

Devin D. Tutor, Deputy Sheriff's Association of Bexar County Political Action Committee, 1539 Sandalwood Lane, San Antonio, Texas 78209

Deadline: Monthly Report due October 5, 2021

Devin D. Tutor, Deputy Sheriff's Association of Bexar County Political Action Committee, 1539 Sandalwood Lane, San Antonio, Texas 78209

Deadline: Monthly Report due February 7, 2022

Stephen Foster, CURO Financial Technologies Corp Political Action Committee, 3615 N. Ridge Road, Wichita, Kansas 67205

Deadline: Monthly Report due June 6, 2022

Stephen Foster, CURO Financial Technologies Corp Political Action Committee, 3615 N. Ridge Road, Wichita, Kansas 67205

Deadline: Monthly Report due July 5, 2022

Stephen Foster, CURO Financial Technologies Corp Political Action Committee, 3615 N. Ridge Road, Wichita, Kansas 67205

Sally A. McFeron, Better Together Project, P.O. Box 722, Liberty Hill, Texas 78642

Steve Oglesby, Bowie County Patriots, P.O. Box 55, Nash, Texas 75569

Blake C. Bearden, Round Rock Police Officers Association Political Action Committee, P.O. Box 6273, Round Rock, Texas 78683

Deadline: Monthly Report due August 5, 2022

Sally A. McFeron, Better Together Project, P.O. Box 722, Liberty Hill, Texas 78642

Steve Oglesby, Bowie County Patriots, P.O. Box 55, Nash, Texas 75569

Blake C. Bearden, Round Rock Police Officers Association Political Action Committee, P.O. Box 6273, Round Rock, Texas 78683

Deadline: Monthly Report due September 6, 2022

Sally A. McFeron, Better Together Project, P.O. Box 722, Liberty Hill, Texas 78642

Steve Oglesby, Bowie County Patriots, P.O. Box 55, Nash, Texas 75569

Blake C. Bearden, Round Rock Police Officers Association Political Action Committee, P.O. Box 6273, Round Rock, Texas 78683

Deadline: Monthly Report due October 5, 2022

Eugene H. Soslow, Park Cities / Central Dallas Democrats, 3982 Dunhaven Rd., Dallas, Texas 75220

Sally A. McFeron, Better Together Project, P.O. Box 722, Liberty Hill, Texas 78642

Steve Oglesby, Bowie County Patriots, P.O. Box 55, Nash, Texas 75569

Blake C. Bearden, Round Rock Police Officers Association Political Action Committee, P.O. Box 6273, Round Rock, Texas 78683

Deadline: Monthly Report due November 7, 2022

Stephen Foster, CURO Financial Technologies Corp Political Action Committee, 3615 N. Ridge Road, Wichita, Kansas 67205

Eugene H. Soslow, Park Cities / Central Dallas Democrats, 3982 Dunhaven Rd., Dallas, Texas 75220

John R. Clay Jr., TX Bitcoin PAC, 401 W. 15th St., Suite 870, Austin, Texas 78701

Sally A. McFeron, Better Together Project, P.O. Box 722, Liberty Hill, Texas 78642

Steve Oglesby, Bowie County Patriots, P.O. Box 55, Nash, Texas 75569

Blake C. Bearden, Round Rock Police Officers Association Political Action Committee, P.O. Box 6273, Round Rock, Texas 78683

Deadline: Monthly Report due December 5, 2022

Eugene H. Soslow, Park Cities / Central Dallas Democrats, 3982 Dunhaven Rd., Dallas, Texas 75220

Grant R. Cottingham, Frisco Police Officers Association Political Action Committee, 5212 Briarwood Drive, McKinney, Texas 75071

Blake C. Bearden, Round Rock Police Officers Association Political Action Committee, P.O. Box 6273, Round Rock, Texas 78683

John R. Clay Jr., TX Bitcoin PAC, 401 W. 15th St., Suite 870, Austin, Texas 78701

Melissa Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

Joy Miller, Save Corpus Christi Bay for the Greater Good, 413 Waco St., Corpus Christi, Texas 78401

Deadline: Monthly Report due January 5, 2023

Eugene H. Soslow, Park Cities / Central Dallas Democrats, 3982 Dunhaven Rd., Dallas, Texas 75220

Grant R. Cottingham, Frisco Police Officers Association Political Action Committee, 5212 Briarwood Drive, McKinney, Texas 75071

John R. Clay Jr., TX Bitcoin PAC, 401 W. 15th St., Suite 870, Austin, Texas 78701

Blake C. Bearden, Round Rock Police Officers Association Political Action Committee, P.O. Box 6273, Round Rock, Texas 78683

John R. Clay Jr., Texas Early Childcare PAC, 401 W. 15th Street, Suite 870, Austin, Texas 78701

Melissa Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

Joy Miller, Save Corpus Christi Bay for the Greater Good, 413 Waco St., Corpus Christi, Texas 78401

Deadline: Monthly Report due February 7, 2023

Eugene H. Soslow, Park Cities / Central Dallas Democrats, 3982 Dunhaven Rd., Dallas, Texas 75220

Grant R. Cottingham, Frisco Police Officers Association Political Action Committee, 5212 Briarwood Drive, McKinney, Texas 75071

Blake C. Bearden, Round Rock Police Officers Association Political Action Committee, P.O. Box 6273, Round Rock, Texas 78683

Melissa Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

Joy Miller, Save Corpus Christi Bay for the Greater Good, 413 Waco St., Corpus Christi, Texas 78401

Deadline: Monthly Report due March 6, 2023

Eugene H. Soslow, Park Cities / Central Dallas Democrats, 3982 Dunhaven Rd., Dallas, Texas 75220

Grant R. Cottingham, Frisco Police Officers Association Political Action Committee, 5212 Briarwood Drive, McKinney, Texas 75071

Blake C. Bearden, Round Rock Police Officers Association Political Action Committee, P.O. Box 6273, Round Rock, Texas 78683

John R. Clay Jr., Texas Early Childcare PAC, 401 W. 15th Street, Suite 870, Austin, Texas 78701

Devin D. Tutor, Deputy Sheriff's Association of Bexar County Political Action Committee, 1539 Sandalwood Lane, San Antonio, Texas 78209

Melissa Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

Deadline Monthly Report due April 5, 2023

Eugene H. Soslow, Park Cities / Central Dallas Democrats, 3982 Dunhaven Rd., Dallas, Texas 75220

Grant R. Cottingham, Frisco Police Officers Association Political Action Committee, 5212 Briarwood Drive, McKinney, Texas 75071

Blake C. Bearden, Round Rock Police Officers Association Political Action Committee, P.O. Box 6273, Round Rock, Texas 78683

Melissa Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

TRD-202302312
Aidan Shaughnessy
Program Specialist
Texas Ethics Commission
Filed: June 26, 2023

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 19, 2023 to June 23, 2023. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.25, 30.32, and 30.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, June 30, 2023. The public comment period for this project will close at 5:00 p.m. on Sunday, July 30, 2023.

FEDERAL AGENCY ACTIONS:

Applicant: Epic Crude Terminal

Location: The project site is located in the Inner Harbor of the Corpus Christi Ship Channel, within the Epic Crude Terminal at the intersection of Lantana Street and Up River Road, in Corpus Christi, Nueces County, Texas.

Latitude and Longitude: 27.816600, -97.470351

Project Description: The applicant proposes improvements at the EPIC West Dock - Dock Slip Improvements project (Project) will consist of the installation of six new mooring structures with 30-inch steel piles, two new breasting structures installed with 30-inch steel piles, and a new 35-foot by 20-foot platform to support equipment to transfer bulk liquids to/from an existing ship dock facility within the Corpus Christi Ship Channel (CCSC). The breasting and mooring structures will be constructed with steel monopiles. The new platform will be constructed with approximately eight 24-inch steel pipe piles will be installed with a single strike impact hammer. Work will be performed with barge mounted equipment. The applicant will also perform maintenance dredging of the previously existing basin.

The applicant has stated that they have avoided and minimized the environmental impacts with use of best management practices which will be employed during construction to minimize potential sedimentation into adjacent waterways from dredged material placement area. Decreasing the frequency of dredging events will reduce overall environmental impacts. By performing silt blading within the slip will reduce the amount of dredge material that will be removed for maintenance dredging. The applicant will also install turbidity curtains during the installation of the 30-inch steel pipes for the proposed mooring facility. The applicant has not proposed to mitigate for the proposed impacts.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-1991-01796. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

CMP Project No: 23-1305-F1

Applicant: Port of Galveston

Location: The project site is located in Galveston Bay/Harbor, at various locations between Galveston Island and Pelican Island, in Galveston County, Texas.

Latitude and Longitude: 29.312325, -94.798677

Project Description: The applicant requesting to modify and expand existing structures and is not seeking an extension of time for permitted work set to expire 31 December 2026. The proposed work includes the following:

Pier 22:

- Installation of a new 28-foot mooring dolphin platform

- Installation of one, 200 metric ton (MT) bollard

- Installation of four, 48-inch-diameter typical (TYP) steel pipe piles

Repair and Replacement of Existing Structures at Piers 23-25:

- Remove 10 existing bollards

- Installation of four, 150 MT bollards

- Installation of two, 100 MT bollards

- Installation of new decking to bring back-set areas approximately 20' 7" x 10' and 12' 9" x 96' 11" in line with the existing pier face

- Installation of twenty-nine, 36-inch-diameter steel pipe piles (TYP)

- Installation of ten, 24-inch-diameter steel pipe piles (TYP)

- Installation of 3 new fenders

- Removal of approximately 224' x 50.5' of existing decking and installation of new decking

- Below deck removal

-- Cut existing pile (approximately 100)

-- Replace with new 18-inch-diameter steel piles (approximately 52)

The applicant has stated that they have avoided and minimized the environmental impacts by situating a work platform or barge below the construction area to catch any falling debris, as well as deploy safety netting, silt fences, and booms to capture falling debris and fine particulates in areas where the barge is not able to access. The applicant is not proposing mitigation as the project only requires the modification and expansion of existing structures with no 404 impacts and no impacts to special aquatic sites.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2011-00162. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

CMP Project No: 23-1306-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202302313
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: June 26, 2023

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Updates to Medicaid Reimbursement Rules Related to Inpatient Hospital Reimbursement, Outpatient Hospital Reimbursement, Ambulatory Surgical Centers Reimbursement and Renal Dialysis Reimbursement

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 19, 2023, from 10:00 a.m. to noon to receive public comments on proposed rule amendments to 1 Texas Administrative Code §§355.8052, 355.8061, 355.8121, 355.8610, and 355.8660. This hearing will be conducted online only. There is no physical location for this hearing.

To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

https://register.gotowebinar.com/register/8884898809325909082

After registering, you will receive a confirmation email containing information about joining the hearing. You can also dial in using your phone by calling +1 (415) 655-0060.

If you are new to GoToWebinar, please download the GoToMeeting app at https://global.gotomeeting.com/install/626873213 before the hearing starts.

A recording of the hearing will be archived and can be accessed on-demand at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

Proposal. HHSC proposes rule amendments to the following: §355.8052 concerning Inpatient Hospital Reimbursement effective September 1, 2023, and §355.8061 concerning Outpatient Hospital Reimbursement, §355.8121 concerning Ambulatory Surgical Centers Reimbursement, §355.8610 concerning Reimbursement for Clinical Laboratory Services, and §355.8660 concerning Renal Dialysis Reimbursement, effective the date that the modernized Medicaid Management Information System becomes operational.

Briefing Packet: Interested parties may obtain a copy of the proposed preambles and rule amendments in the June 23, 2023, and the July 7, 2023, issues of the *Texas Register* at https://www.sos.texas.gov/texreg/index.shtml or by contacting HHSC Provider Finance by telephone at (737) 867-7817, by fax at (512) 730-7475, or by email at PFD_hospitals@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed amendments may be submitted instead of, or in addition to, oral testimony until 5:00 p.m. on July 28, 2023, for the Inpatient Hospital Reimbursement and July 24, 2023, for all other rules listed in this notice. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by email to pfd_hospitals@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 W. Guadalupe St., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact the HHSC Provider Finance Department by calling (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202302332
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 27, 2023

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Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Medically Dependent Children Program (MDCP) program. HHSC administers the MDCP Program under the authority of Section 1915(c) of the Social Security Act. The proposed effective date for this amendment is September 1, 2023.

The amendment request proposes to make the changes described below based on the 2024-2025 General Appropriations Act, House Bill 1, 88th Legislature, Regular Session, 2023, (Article II, HHSC Rider 30(a)) which appropriated funding to increase attendant base wages in the MDCP program.

Appendix J

HHSC revised the calculations for the overall projected cost of waiver services (Factor D) for waiver years two (9/1/23-8/31/24) through five (9/1/27-8/31/27). The updated projections in Appendix J account for rate increases for the following services provided by the waiver provider and through the consumer directed services option: Flexible Family Support Services and Respite.

A public rate hearing will be held on July 11, 2023, at 9:00 a.m. in Austin, Texas. The hearing will be held in the HHSC, John H Winters Building, Public Hearing Room 125, First Floor, 701 W. 51st Street, Austin, Texas 78751. Members of the public may attend the rate hearing in person. HHSC will also broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and accessible on demand at the same website.

The proposed amendment is estimated to result in an annual aggregate expenditure of $1,359,403 for federal fiscal year (FFY) 2023, consisting of $817,409 in federal funds and $541,994 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is $16,312,841 consisting of $9,808,911 in federal funds and $6,503,930 in state general revenue. For FFY 2025, the estimated annual aggregate expenditure is $17,226,578 consisting of $10,361,786 in federal funds and $6,864,792 in state general revenue.

The MDCP waiver provides home and community-based services to medically fragile individuals from birth through age 20 who, without the waiver, would require institutionalization in a nursing facility. Services in the MDCP waiver include respite, adaptive aids, minor home modifications, employment assistance, supported employment, financial management services, transition assistance services, and flexible family support services. Texas uses the MDCP waiver to provide services to Texans in the least restrictive environment possible. These environments include the individual's or a family member's home, or a Child Protective Services foster care home which can meet the individual's complex medical needs.

Written Comments. Written comments regarding the proposed payment rates may be submitted instead of, or in addition to, oral testimony until 5:00 p.m. on the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by email to PFD-LTSS@hhs.texas.gov. In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 W. Guadalupe St., Austin, Texas 78751.

The HHSC local offices of social services will post this notice for 30 days and will have copies of the proposed changes available for review.

To obtain a free copy of the proposed changes, ask questions, or obtain additional information, please contact Julyya Alvarez by U.S. mail, telephone, fax, or email at the addresses and numbers below.

Addresses:

U.S. Mail

Texas Health and Human Services Commission

Attention: Julyya Alvarez, Waiver Coordinator, Federal Coordination, Rules and Committees

701 West 51st Street, Mail Code H-310

Austin, Texas 78751

Telephone

(512) 438-4321

Fax

Attention: Julyya Alvarez, Waiver Coordinator at (512) 323-1905

Email

TX_Medicaid_Waivers@hhs.texas.gov

For the in-person hearing, persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202302345
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 28, 2023

Public Notice: Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The purpose of the amendment is to update the rate methodology and payment rates for Nursing Facilities (NF). HHSC is making these changes in accordance with the 2024-25 General Appropriations Act, House Bill 1, 88th Texas Legislature, Regular Session, 2023 (Article II, HHSC, Rider 24), which requires HHSC to implement NF reimbursement rate changes to increase the wages and benefits of direct care staff and ensure that at least 90 percent of appropriated funds are expended for the benefit of direct care staff wages and benefits. The proposed amendment also revises the initial cost report database to calculate the direct care cost component to be the most recent Texas Medicaid NF Cost Report database. The proposed amendment is effective September 1, 2023.

The proposed amendment is estimated to result in an annual aggregate fee-for-service expenditure of $6,437,477 for federal fiscal year 2023, consisting of $4,015,055 in federal funds and $2,422,423 in state general revenue. For federal fiscal year 2024, the estimated annual aggregate fee-for-service expenditure is $87,657,130, consisting of $52,725,764 in federal funds and $34,931,366 in state general revenue. For federal fiscal year 2025, the estimated annual aggregate fee-for-service expenditure is $91,350,441, consisting of $54,947,290 in federal funds and $36,403,151 in state general revenue.

Further detail on specific reimbursement rate changes is available on the HHSC Provider Finance Department (PFD) website under the proposed effective date at http://pfd.hhs.texas.gov/rate-packets.

A rate hearing will be held on July 11, 2023, at 9:00 a.m. in Austin, Texas. Information about the proposed rate change and the hearing can be found in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3342) at http://www.sos.state.tx.us/texreg/index.shtml.

Copy of Proposed Amendment(s). To obtain copies of the proposed amendment, interested parties may contact Nicole Hotchkiss, State

Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-5035; by facsimile at (512) 730-7472; or by email at medicaid_chip_spa_inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

Written Comments. Written comments and requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance, Mail Code H-400

North Austin Complex

4601 West Guadalupe Street

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFD-LTSS@hhs.texas.gov

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202302275
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 26, 2023

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Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendments will be effective September 1, 2023.The purpose of the proposed amendments is to modify the definition of rural hospitals to reflect the population updates in the 2020 U.S. Census, and to increase the minimum payment for the labor and delivery add-on rural hospitals as well as implement increases to outpatient reimbursement for rural hospitals. The modifications are to comply with House Bill 1 (H.B. 1) Rider 8 and Rider 16, 88th Legislature, Regular Session 2023.

The proposed amendment to Inpatient Hospital Reimbursement is estimated to result in an increased annual aggregate expenditure of $558,804 for federal fiscal year (FFY) 2023, consisting of $348,526 in federal funds and $210,278 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is $6,705,643 consisting of $2,646,717 in federal funds and $4,058,926 in state general revenue. For FFY 2025, the estimated annual aggregate expenditure is $6,705,643 consisting of $4,033,444 in federal funds and $2,672,199 in state general revenue.

The proposed amendment to Outpatient Hospital Reimbursement is estimated to result in an increased annual aggregate expenditure of $75,044 for federal fiscal year (FFY) 2023, consisting of $46,805 in federal funds and $28,239 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is $900,532 consisting of $545,092 in federal funds and $355,440 in state general revenue. For FFY 2025, the estimated annual aggregate expenditure is $990,585 consisting of $595,837 in federal funds and $394,748 in state general revenue.

Public Hearing

A public hearing to receive comments on the proposal will be held July 11, 2023, at the HHSC through a webinar. The meeting date and time will be posted on the HHSC Communications and Events Website at https://hhs.texas.gov/about-hhs/communications-events and on the HHSC Provider Finance Hospitals website at https://pfd.hhs.texas.gov/provider-finance-communications.

Copy of Proposed Amendment.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Kenneth Anzaldua, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, TX 78711; by telephone at (512) 438-4326; by facsimile at (512) 323-1905; or by email 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, 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 pfd_hospitals@hhsc.state.tx.us

Preferred Communication.

For quickest response, please use email or phone, if possible, for communication with HHSC related to this state plan amendment.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact the HHSC Provider Finance Department by calling (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202302343
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 28, 2023

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Public Notice - The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Home and Community-based Services (HCS) program.

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Home and Community-based Services (HCS) program. HHSC administers the HCS Program under the authority of Section 1915(c) of the Social Security Act. The proposed effective date for this amendment is September 1, 2023.

The amendment request proposes to make the changes described below based on the 2024-2025 General Appropriations Act, House Bill 1, 88th Legislature, Regular Session, 2023, (Article II, HHSC Rider 30(a)) which appropriated funding to increase attendant base wages in the HCS program.

Appendix J

HHSC revised the calculations for the overall projected cost of waiver services (Factor D) for waiver years one (9/1/23-8/31/24) through five (9/1/27-8/31/28). The updated projections in Appendix J account for rate increases for the following services provided by the waiver provider: Respite, Residential Support, Supervised Living, and Supported Home Living; and the following services delivered through the consumer directed services option: Respite and Supported Home Living.

A public rate hearing will be held on July 11, 2023, at 9:00 a.m. in Austin, Texas. The hearing will be held in the HHSC, John H Winters Building, Public Hearing Room 125, First Floor, 701 W. 51st Street, Austin, Texas 78751. Members of the public may attend the rate hearing in person. HHSC will also broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and accessible on demand at the same website.

The proposed amendment is estimated to result in an annual aggregate expenditure of $3,203,747 for federal fiscal year (FFY) 2023, consisting of $1,929,280 in federal funds and $1,274,468 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is $38,444,968 consisting of $23,151,357 in federal funds and $15,293,611 in state general revenue. For FFY 2025, the estimated annual aggregate expenditure is $38,423,120 consisting of $23,145,885 in federal funds and $15,277,235 in state general revenue.

The HCS waiver program provides services and supports to individuals with intellectual disabilities who live in their own homes, in the home of a family member, or another community setting such as a three-person or four-person residence operated by an HCS program provider. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to supplement, rather than replace, existing informal or formal supports and resources. Services in the HCS waiver program include respite, supported employment, adaptive aids, audiology, occupational therapy, physical therapy, prescribed drugs, speech and language pathology, financial management services, support consultation, behavioral support, cognitive rehabilitation therapy, dental treatment, dietary services, employment assistance, individualized skills and socialization, minor home modifications, nursing, residential assistance, social work, supporting home living, and transition assistance services.

Written Comments. Written comments regarding the proposed payment rates may be submitted instead of, or in addition to, oral testimony until 5:00 p.m. on the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by email to PFD-LTSS@hhs.texas.gov. In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 W. Guadalupe St., Austin, Texas 78751.

The HHSC local offices of social services will post this notice for 30 days and will have copies of the proposed changes available for review.

To obtain a free copy of the proposed changes, ask questions, or obtain additional information, please contact Julyya Alvarez by U.S. mail, telephone, fax, or email at the addresses and numbers below.

Addresses:

U.S. Mail

Texas Health and Human Services Commission

Attention: Julyya Alvarez, Waiver Coordinator, Federal Coordination, Rules and Committees

701 West 51st Street, Mail Code H-310

Austin, Texas 78751

Telephone

(512) 438-4321

Fax

Attention: Julyya Alvarez, Waiver Coordinator at (512) 323-1905

Email

TX_Medicaid_Waivers@hhs.texas.gov

For the in-person hearing, persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202302344
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 28, 2023

♦ ♦ ♦

Department of State Health Services

Order Placing Brorphine and Eutylone in Schedule I

The Drug Enforcement Administration issued a final order permanently placing brorphine (1–(1–(1–(4-bromophenyl)ethyl)piperidin-4–yl)–1,3-dihydro-2*H*-benzo[*d*]imidazol-2-one), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts is possible within the specific chemical designation, in schedule I of the Controlled Substances Act. This final order was published on April 5, 2023, in the *Federal Register*, Volume 88, Number 43, pages 13692-13694. This action was taken based on the following:

1. Brorphine has a pharmacological profile similar to fentanyl (schedule II) and other schedule I and II synthetic opioids;
2. The use of brorphine presents a high risk of abuse and has negatively affected users and communities;
3. Brorphine has no currently accepted medical use in treatment in the United States;
4. There is a lack of accepted safety for use of brorphine under medical supervision; and,
5. This scheduling action discharges the United States' obligations under the Single Convention on Narcotic Drugs (1961).

The Drug Enforcement Administration issued a final rule establishing a specific listing for eutylone (Other names: 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)butan-1-one; bk-EBDB) in schedule I of the Controlled Substances Act with its own unique drug code. This final rule was published on April 10, 2023, in the *Federal Register*, Volume 88, Number 68, pages 21101-21102. This action is taken based on the following:

1. Eutylone has been controlled in the United States as a positional isomer of pentylone, a schedule I hallucinogen. This action establishes a specific listing for eutylone with its own unique drug code; and,
2. Placement of eutylone in schedule I enables the United States to meet its obligations under the 1971 Convention on Psychotropic Substances.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at

least thirty-one days have expired since notice of the above referenced actions were published in the *Federal Register*. In the capacity as Commissioner of the Texas Department of State Health Services, Jennifer Shuford, M.D., does hereby order that the substances brorphine and eutylone be placed in schedule I.

-Schedule I opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts are possible within the specific chemical designation:

(1) Acetyl-α-methylfentanyl (*N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide);
(2) Acetylmethadol;
(3) Acetyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide);
(4) Acryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacrylamide) (Other name: acryloylfentanyl);
(5) AH-7921 (3,4-dichloro-*N*-[1-(dimethylamino) cyclohexymethyl]benzamide);
(6) Allylprodine;
(7) Alphacetylmethadol (except levo-α-cetylmethadol, levo-α-acetylmethadol, levomethadyl acetate, or LAAM);
(8) α-Methylfentanyl or any other derivative of fentanyl;
(9) α-Methylthiofentanyl (*N*-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl] *N*-phenylpropanamide);
(10) Benzethidine;
(11) β-Hydroxyfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide);
(12) β-Hydroxy-3-methylfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-*N*-phenylpropanamide);
(13) β-hydroxythiofentanyl (Other names: *N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylproprionamide; *N*-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidnyl]-*N*-phenylpropanamide);

(14) β-Methyl fentanyl (*N*-phenyl-*N*-(1-(2-phenylpropyl)piperidin-4-yl)propionamide);
(15) β′-Phenyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*,3-diphenylpropanamide) (Other name: 3-phenylpropanoyl fentanyl);
(16) Betaprodine;
*(17) Brorphine (1–(1–(1–(4-bromophenyl)ethyl)piperidin-4–yl)–1,3-dihydro-2*H*-benzo[*d*]imidazol-2-one);
(18) Butyryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbutanamide);
(19) Clonitazene;
(20) Crotonyl fentanyl (Other name: (6-2-5) (E)-*N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylbut-2-enamide);
(21) Cyclopentyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-Phenylcyclopentanecarboxamide;
(22) Cyclopropyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopropanecarboxamide);
(23) Diampromide;
(24) Diethylthiambutene;
(25) Difenoxin;
(26) Dimenoxadol;
(27) Dimethylthiambutene;
(28) Dioxaphetyl butyrate;
(29) Dipipanone;
(30) Ethylmethylthiambutene;
(31) Etonitazene;
(32) Etoxeridine;
(32) Fentanyl carbamate (ethyl (1-phenethylpiperidin-4-yl)(phenyl)carbamate);
(34) 4-Fluoroisobutyryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide) (Other name: *p*-fluoroisobutyryl fentanyl);
(35) 2′-Fluoro *o*-fluorofentanyl (*N*-(1-(2-fluorophenethyl)piperidin-4-yl)-*N*-(2-fluorophenyl)propionamide (Other name: 2′-fluoro 2-fluorofentanyl);
(36) Furanyl fentanyl (*N*-(1-phenethylpiperdin-4-yl)-*N*-phenylfuran-2-carboxamide);
(37) Furethidine;
(38) Hydroxypethidine;
(39) Isobutyryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylisobutyramide;
(40) Isotonitazene (*N,N*-diethyl-2-(2-(4-isopropoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine);

(41) Ketobemidone;
(42) Levophenacylmorphan;
(43) Meprodine;
(44) Methadol;
(45) Methoxyacetyl fentanyl (2-methoxy-*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide);
(46) 4'-Methyl acetyl fentanyl (*N*-(1-(4-methylphenethyl)piperidin-4-yl)-*N*-phenylacetamide;
(47) 3-Methylfentanyl (*N*-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-*N*-phenylpropanamide);
(48) 3-Methylthiofentanyl (*N*-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide);
(49) Moramide;
(50) Morpheridine;
(51) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(52) MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine);
(53) Noracymethadol;
(54) Norlevorphanol;
(55) Normethadone;
(56) Norpipanone;
(57) Ocfentanil (*N*-(2-fluorophenyl)-2-methoxy-*N*-(1-phenethylpiperidin-4-yl)acetamide);
(58) *o*-Fluoroacryl fentanyl (*N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)acrylamide);
(59) *o*-Fluorobutyryl fentanyl (*N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide (Other name:2-fluorobutyryl fentanyl);
(60) *o*-Fluorofentanyl (*N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide) (Other name: 2-fluorofentanyl);
(61) *o*-Fluoroisobutyryl fentanyl (*N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide);
(62) *o*-Methyl acetylfentanyl (*N*-(2-methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)acetamide (Other name: 2-methyl acetylfentanyl);
(63) *o*-Methyl methoxyacetyl fentanyl (2-methoxy-*N*-(2-methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)acetamide (Other name: 2-methyl methoxyacetyl fentanyl);
(64) *p*-Chloroisobutyryl fentanyl (*N*-(4-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide;
(65) *p*-Fluorobutyryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide);
(66) *p*-Fluorofentanyl (*N*-(4-fluorophenyl)-*N*-[1-(2-phenethyl)-4 piperidinyl] propanamide);

(67) *p*-Fluoro furanyl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)furan-2-carboxamide);
(68) *p*-Methoxybutyryl fentanyl (*N*-(4-methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide;
(69) *p*-Methylfentanyl (*N*-(4-methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide (Other name: 4-methylfentanyl);
(70) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(71) Phenadoxone;
(72) Phenampromide;
(73) Phencyclidine;
(74) Phenomorphan;
(75) Phenoperidine;
(76) Phenyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbenzamide (Other name: benzoyl fentanyl);
(77) Piritramide;
(78) Proheptazine;
(79) Properidine;
(80) Propiram;
(81) Tetrahydrofuranyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenyltetrahydrofuran-2-carboxamide);
(82) Thiofentanyl (*N*-phenyl-*N*-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
(83) Thiofuranyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylthiophene-2-carboxamide (Other names: 2-thiofuranyl fentanyl; thiophene fentanyl);
(84) Tilidine;
(85) Trimeperidine;
(86) U-47700 (3,4-dichloro-*N*-[2-(dimethylamino)cyclohexyl]-*N*-methylbenzamide;
(87) Valeryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylpentanamide); and,
(88) Zipeprol (1-methoxy-3-[4-(2-methoxy-2-phenylethyl)piperazin-1-yl]-1-phenylpropan-2-ol).

-Schedule I temporarily listed substances subject to emergency scheduling by the U.S. Drug Enforcement Administration.

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's isomers, esters, ethers, salts and salts of isomers, esters, and ethers if the existence of the

salts, esters, ethers isomers, and salts of isomers, esters, ethers is possible within the specific chemical designation:

(1) Fentanyl-related substances.

(1-1) Fentanyl-related substance means any substance not otherwise listed under another Administration Controlled Substance Code Number, and for which no exemption or approval is in effect under Section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355], that is structurally related to fentanyl by one or more of the following modifications:

(1-1-1) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle,

(1-1-2) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino or nitro groups,

(1-1-3) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups,

(1-1-4) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle, and/or

(1-1-5) Replacement of the *N*-propionyl group by another acyl group.

(1-2) This definition includes, but is not limited to, the following substances:

(1-2-1) *N*-(1-(2-Fluorophenethyl)piperidin-4-yl)-*N*-(2-fluorophenyl)propionamide (Other name: 2′-fluoro-*o*-fluorofentanyl);

(1-2-2) *N*-(2-Methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)acetamide (Other name:*o*-methyl acetylfentanyl);

(1-2-3) *N*-(1-Phenethylpiperidin-4-yl)-*N*,3-diphenylpropanamide (Other names: β′-phenyl fentanyl; hydrocinnamoyl fentanyl); and,

(1-2-4) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylthiophene-2-carboxamide (Other name: thiofuranyl fentanyl).

*(2) 1-(1-(1-(4-Bromophenyl)ethyl)piperidin-4-yl)-1,3-dihydro-2*H*-benzo[d]imidazol-2-one (Other names: brorphine; 1-[1-[1-(4-bromophenyl)ethyl]-4-piperidinyl]-1,3-dihydro-2*H*-benzimidazol-2-one);

(3) 2-(2-(4-Butoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)-*N*,*N*-diethylethan-1-amine (Other name: butonitazene);

(4) 2-(2-(4-Ethoxybenzyl)-1*H*-benzimidazol-1-yl)-*N*,*N*-diethylethan-1-amine (Other names: etodesnitazene; etazene);

(5) *N*,*N*-Diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine (Other name: flunitazene);

(6) *N*,*N*-Diethyl-2-(2-(4-methoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine (Other name: metodesnitazene);

(7) *N*,*N*-Diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine (Other name: metonitazene);

(8) 2-(4-Ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1*H*-benzimidazole (Other names: *N*-pyrrolidino etonitazene; etonitazepyne); and,

(9) *N*,*N*-Diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine (Other name: protonitazene).

-Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

(1) α-Ethyltryptamine (Other names: etryptamine; Monase; α-ethyl-1*H*-indole-3-ethanamine; 3-(2-aminobutyl) indole; α-ET; AET);

(2) 4-Bromo-2,5-dimethoxyamphetamine (Other names: 4-bromo-2,5-dimethoxy-α-methylphenethylamine; 4-bromo-2,5-DMA);

(3) 4-Bromo-2,5-dimethoxyphenethylamine (Other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; α-desmethyl DOB);

(4) 2,5-Dimethoxyamphetamine (Other names: 2,5-dimethoxy-α-methylphenethylamine; 2,5-DMA);

(5) 2,5-Dimethoxy-4-ethylamphetamine (Other name: DOET);

(6) 2,5-Dimethoxy-4-(n)-propylthiophenethylamine, its optical isomers, salts and salts of isomers (Other name: 2C-T-7);

(7) 4-Methoxyamphetamine (Other names: 4-methoxy-α-methylphenethylamine; paramethoxyamphetamine; PMA);

(8) 5-Methoxy-3,4-methylenedioxyamphetamine (Other name: MMDA);

(9) 4-Methyl-2,5-dimethoxyamphetamine (Other names: 4-methyl-2,5-dimethoxy-α-methyl-phenethylamine; "DOM";"STP");

(10) 3,4-Methylenedioxyamphetamine (Other names: MDA; Love Drug);

(11) 3,4-Methylenedioxymethamphetamine (Other names: MDMA; MDM; Ecstasy; XTC);

(12) 3,4-Methylenedioxy-*N*-ethylamphetamine (Other names: *N*-ethyl-α-methyl-3,4(methylenedioxy)phenethylamine; *N*-ethyl MDA; MDE; MDEA);

(13) *N*-Hydroxy-3,4-methylenedioxyamphetamine (Other name: *N*-hydroxy MDA);

(14) 3,4,5-Trimethoxyamphetamine (Other name: TMA);

(15) 5-Methoxy-*N,N*-dimethyltryptamine (Other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT);

(16) α-Methyltryptamine (Other name: AMT);

(17) Bufotenine (Other names: 3-β-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; *N,N*-dimethylserotonin; 5-hydroxy-*N,N*-dimethyltryptamine; mappine);

(18) Diethyltryptamine (Other names: *N,N*-Diethyltryptamine; DET);

(19) Dimethyltryptamine (Other name: DMT);

(20) 5-Methoxy-*N,N*-diisopropyltryptamine, its isomers, salts, and salts of isomers (Other name: 5-MeO-DIPT);

(21) Ibogaine (Other names: 7-Ethyl-6,6-β-7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5*H*-pyrido[1′,2′:1,2] azepino [5,4-b] indole; *Tabernanthe iboga);*

(22) Lysergic acid diethylamide;

(23) Marihuana, the term marihuana does not include hemp, as defined in Title 5, Agriculture Code, Chapter 121;

(24) Mescaline;

(25) Parahexyl (Other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6*H*-dibenzo[b,d]pyran; Synhexyl);

(26) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora williamsii Lemaire*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(27) *N*-ethyl-3-piperidyl benzilate;

(28) *N*-methyl-3-piperidyl benzilate;

(29) Psilocybin;

(30) Psilocyn;

(31) Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), except for tetrahydrocannabinols in hemp (as defined under Section 297A(1) of the Agricultural Marketing Act of 1946), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with

similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers;

6 cis or trans tetrahydrocannabinol, and their optical isomers;

3,4 cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(32) Ethylamine analog of phencyclidine (Other names: *N*-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; *N*-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE);

(33) Pyrrolidine analog of phencyclidine (Other names: 1-(1 phenyl-cyclohexyl)-pyrrolidine; PCPy; PHP; rolicyclidine);

(34) Thiophene analog of phencyclidine (Other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienyl analog of phencyclidine; TPCP; TCP);

(35) 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (Other name: TCPy);

(36) 4-Methylmethcathinone (Other names: 4-methyl-*N*-methylcathinone; mephedrone);

(37) 3,4-Methylenedioxypyrovalerone (Other name: MDPV);

(38) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (Other name: 2C-E);

(39) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (Other name: 2C-D);

(40) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-C);

(41) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-I);

(42) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-2);

(43) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-4);

(44) 2-(2,5-Dimethoxyphenyl)ethanamine (Other name: 2C-H);

(45) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (Other name: 2C-N);

(46) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (Other name: 2C-P);

(47) 3,4-Methylenedioxy-*N*-methylcathinone (Other name: Methylone);

(48) (1-Pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144; 1-pentyl-3-(2,2,3,3-tetramethylcyclopropoyl)indole);

(49) [1-(5-Fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144; 5-F-UR-144; XLR11; (5-flouro-pentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole);

(50) *N*-(1-Adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (Other names: APINACA; AKB48);

(51) Quinolin-8-yl 1-pentyl-1*H*-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: PB-22; QUPIC);

(52) Quinolin-8-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5-fluoro-PB-22; 5F-PB-22);

(53) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other name: AB-FUBINACA);

(54) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (Other name: ADB-PINACA);

(55) 2-(4-Iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25I-NBOMe; 2CI-NBOMe; 25I; Cimbi-5);

(56) 2-(4-Chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82);

(57) 2-(4-Bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36);

(58) Marihuana extract, meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, other than separated resin (whether crude or purified) obtained from the plant;

(59) 4-Methyl-*N*-ethylcathinone (Other name: 4-MEC);

(60) 4-Methyl-α-pyrrolidinopropiophenone (Other name: 4-MePPP);

(61) α-Pyrrolidinopentiophenone (Other name: [α]-PVP);

(62) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)butan-1-one (Other names: butylone; bk-MBDB);

(63) 2-(Methylamino)-1-phenylpentan-1-one (Other name: pentedrone);

(64) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)pentan-1-one (Other names: pentylone; bk-MBDP);

(65) 4-Fluoro-*N*-methylcathinone (Other names: 4-FMC; flephedrone);

(66) 3-Fluoro-*N*-methylcathinone (Other name: 3-FMC);

(67) 1-(Naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (Other name: naphyrone);

(68) α-Pyrrolidinobutiophenone (Other name: α-PBP);

(69) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (Other name: AB-CHMINACA);

(70) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (Other name: AB-PINACA);

(71) [1-(5-Fluoropentyl)-1*H*-indazol-3-yl](naphthalen-1-yl)methanone (Other name: THJ-2201);

(72) 1-Methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (Other name: MPTP);

(73) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexyl-methyl)-1*H*-indazole-3-carboxamide (Other names: MAB-CHMINACA; ABD-CHMINACA);

(74) Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-ADB; 5F-MDMB-PINACA);

(75) Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-caboxamido)-3-methylbutanoate (Other name: 5F-AMB);

(76) *N*-(Adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other names: 5F-APINACA; 5F-AKB48);

(77) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other name: ADB-FUBINACA);

(78) Methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-CHMICA; MMB-CHMINACA);

(79) Methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: MDMB-FUBINACA);

(80) Methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (Other names: FUB-AMB; MMB-FUBINACA; AMB-FUBINACA);

(81) Naphthalen-1-yl-1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (Other names: NM2201; CBL2201);

(82) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other name: 5F-AB-PINACA);

(83) 1-(4-Cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL-BINACA; CUMYL-4CN-BINACA; SGT-78);

(84) Methyl 2-(1-(Cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (Other names: MMB-CHMICA; AMB-CHMICA);

(85) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-b]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA);

(86) 1-(1,3-Benzodioxol-5-yl)-2-(ethylamino)pentan-1-one (Other names: *N*-ethylpentylone; ephylone);

(87) Methyl 2-(1-(4-fluorobutyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate) (Other names: 4F-MDMB-BINACA; 4F-MDMB-BUTINACA);

(88) 1-(4-Methoxyphenyl)-*N*-methylpropan-2-amine (Other names: *p*-methoxymethamphetamine; PMMA);

(89) Ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-EDMB-PINACA);

(90) Methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-MDMB-PICA; 5F-MDMB-2201);

(91) *N*-(Adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other names: FUB-AKB48; FUB-APINACA; AKB48 *N*-(4-fluorobenzyl));

(92) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 5F-CUMYL-PINACA; SGT-25);

(93) (1-(4-Fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other name: FUB-144);

(94) *N*-Ethylhexedrone (Other name: 2-(ethylamino)-1-phenylhexan-1-one);

(95) α-Pyrrolidinohexanophenone (Other names: α-PHP; α-pyrrolidinohexiophenone; 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one);

(96) 4-Methyl-α-ethylaminopentiophenone (Other names: 4–MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one);

(97) 4′-Methyl-α-pyrrolidinohexiophenone (Other names: MPHP; 4′-methyl-α-pyrrolidinohexanophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one);

(98) α-Pyrrolidinoheptaphenone (Other names: PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one),

(99) 4′-Chloro-α-pyrrolidinovalerophenone (Other names: 4-chloro-α-PVP; 4′-chloro-α-pyrrolidinopentiophenone; 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one);

(100) 2-(ethylamino)-2-(3-methoxyphenyl)cyclohexan-1-one (Other names: methoxetamine; MXE); and,

*(101) 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)butan-1-one (Other names: eutylone; bk-EBDB).

Changes are marked by an asterisk(*)

TRD-202302347

Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: June 28, 2023

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Texas Higher Education Coordinating Board

Notice of Intent to Engage in Negotiated Rulemaking--Research Funds Implementation (Texas Public Universities and Health-Related Institutions)

The 88th Texas Legislature, Regular Session, passed House Bill 1595 and House Joint Resolution 3 (HJR 3), which redesignates the National Research University Fund as the Texas University Fund, or TUF. The bill adjusts the requirements for receipt of the Texas Comprehensive Research Fund (TCRF) and the Core Research Support Fund (CRSF), which would also be redesignated as the National Research Support Fund (NRSF). Contingent on passage of HJR 3, the vote for which would take place November 7, the provisions of the bill go into effect on January 1, 2024.

In preparation for implementation of this legislation, rules must be adopted to govern the distribution of funding and applicable performance metrics. New distribution criteria would be based on federal and private research expenditures for all three programs and on the number of doctoral degrees for TUF and NRSF.

The Texas Higher Education Coordinating Board ("THECB") intends to engage in negotiated rulemaking to develop these rules for Texas public universities and health-related institutions. This is in accordance with the provisions of Senate Bill 215 passed by the 83rd Texas Legislature, Regular Session.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via GovDelivery to all chancellors and presidents at Texas public universities and health-related institutions soliciting their interest and willingness to participate in the negotiated rulemaking process or nominate a representative from their system/institution.

From this effort 14 individuals responded (out of approximately 61 affected entities) and expressed an interest to participate or nominated a representative from their system/institution to participate on the negotiated rulemaking committee for research funds implementation. The positions held by the volunteers and nominees indicate a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for the research funds implementation:

1. Public universities;

2. Public health-related institutions; and

3. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 13 individuals to the negotiated rulemaking committee for research funds implementation to represent affected parties and the agency:

Public Health-Related Institutions

Amy L. Hazen, Director, Research Planning, Support, and Collaboration, The University of Texas Health Science Center at Houston (The University of Texas System)

Public Universities

Can (John) Saygin, Senior Vice President, Research, The University of Texas Rio Grande Valley (The University of Texas System)

Cris Milligan, Assistant Vice President, Research Administration, University of Houston (University of Houston System)

Diane Stearns, Provost and Executive Vice President, Academic Affairs, Tarleton State University (Texas A&M University System)

Emily Deardorff, Associate Vice Chancellor, Government Relations, University of North Texas System

Holly Hansen-Thomas, Vice Provost, Research, Innovation, and Corporate Engagement, Texas Woman's University System

Janet Donaldson, Associate Vice President, Research and Innovation, Texas A&M University-Corpus Christi (Texas A&M University System)

Kaaren Downey, Contract Manager, Sponsored Research, West Texas A&M University (Texas A&M University System)

Kimberly Andrews Espy, Provost and Senior Vice President, Academic Affairs, The University of Texas at San Antonio (The University of Texas System)

Kouider Mokhtari, Associate Vice President, Research, The University of Texas at Tyler (The University of Texas System)

Lorenzo M. Smith, Provost and Executive Vice President, Academic Affairs, Stephen F. Austin State University

Michael Blanda, Associate Vice President, Research and Federal Regulations, Texas State University (Texas State University System)

Texas Higher Education Coordinating Board

Emily Cormier, Assistant Commissioner, Funding and Resource Planning

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

1. Name and contact information of the person submitting the application;

2. Description of how the person is significantly affected by the rule and how their interests are different than those represented by the persons named above;

3. Name and contact information of the person being nominated for membership; and

4. Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for research funds implementation. Comments and applications for membership on the committee must be submitted by July 16, 2023, to Laurie A. Frederick, Convener, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email at Laurie.Frederick@highered.texas.gov.

TRD-202302324

Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Filed: June 27, 2023

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Notice of Intent to Engage in Negotiated Rulemaking--Texas Educational Opportunity Grant (TEOG) (Texas Public Community Colleges, State Colleges, and Technical Colleges)

The Texas Higher Education Coordinating Board ("THECB") intends to engage in negotiated rulemaking to amend Chapter 22, Subchapter M, §§22.254-22.261 rules for the Texas Educational Opportunity Grant (TEOG) allocation methodology for Texas public community colleges, state colleges, and technical colleges. This is in accordance with the provisions of Senate Bill 215 passed by the 83rd Texas Legislature, Regular Session.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via GovDelivery to all chancellors and presidents at Texas public community colleges, state colleges, and technical colleges soliciting their interest and willingness to participate in the negotiated rulemaking process or nominate a representative from their institution.

From this effort 21 individuals responded (out of approximately 93 affected entities) and expressed an interest to participate or nominated a representative from their institution to participate on the negotiated rulemaking committee for TEOG. The positions held by the volunteers and nominees indicate a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for the TEOG:

1. Public community colleges;

2. Public state colleges;

3. Public technical colleges; and

4. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 13 individuals to the negotiated rulemaking committee for TEOG to represent affected parties and the agency:

Public Community Colleges

Alan Pixley, Director, Financial Aid, Collin College

Bob Austin, Vice President, Enrollment Management, Amarillo College

Danny Bacot, Director, Continuing Education, Wharton County Junior College

Jason Smith, President, Texarkana College

Jeanne Ballard, Director, Financial Aid, Vernon College

Jennifer Kent, President, Victoria College

Ron Clinton, President, Northeast Texas Community College

Sandi Jones, Director, Financial Aid, McLennan Community College

Tevian Sides, Director, Financial Aid, Western Texas College

Thomas Ronk, Associate Vice Chancellor, Workforce Program Research and Development, Houston Community College

Yesenia M. Garcia, Coordinator of State and 3rd Party Programs, South Texas College

Public State Colleges

Linda Korns, Assistant Dean, Financial Aid and Compliance, Lamar Institute of Technology

Texas Higher Education Coordinating Board

Charles Contero-Puls, Assistant Commissioner, Student Financial Aid Programs

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

1. Name and contact information of the person submitting the application;

2. Description of how the person is significantly affected by the rule and how their interests are different than those represented by the persons named above;

3. Name and contact information of the person being nominated for membership; and

4. Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for TEOG. Comments and applications for membership on the committee must be submitted by July 16, 2023, to Laurie A. Frederick, Convener, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email at Laurie.Frederick@highered.texas.gov.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Filed: June 27, 2023

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Texas Lottery Commission

Scratch Ticket Game Number 2480 "$20,000,000 CA$H SPECTACULAR!"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2480 is "$20,000,000 CA$H SPECTACULAR!". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2480 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2480.

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, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MONEY BAG SYMBOL, $50 BILL SYMBOL, $100 BILL SYMBOL, $5.00, $10.00, $20.00, $25.00, $50.00, $100, $200, $500, $1,000, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2480 - 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
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV

28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
MONEY BAG SYMBOL	DBL
$50 BILL SYMBOL	WIN$50
$100 BILL SYMBOL	WIN$100
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$25.00	TWFV$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$5,000	FVTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2480), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2480-0000001-001.

H. Pack - A Pack of the "$20,000,000 CA$H SPECTACULAR!" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$20,000,000 CA$H SPECTACULAR!" Scratch Ticket Game No. 2480.

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 "$20,000,000 CA$H SPECTACULAR!" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a 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 DOUBLE the prize for that symbol. If the player reveals a "$50 Bill" Play Symbol, the player wins $50 instantly. If the player reveals a "$100 Bill" Play Symbol, the player wins $100 instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure. B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols. C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and $5). D. KEY NUMBER MATCH: There will be no

matching non-winning YOUR NUMBERS Play Symbols on a Ticket. E. KEY NUMBER MATCH: There will be no matching WINNING NUMBERS Play Symbols on a Ticket. F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol. G. KEY NUMBER MATCH: A Ticket may have up to two (2) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure. H. KEY NUMBER MATCH: The "MONEY BAG" (DBL) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure. I. KEY NUMBER MATCH: The "$50 BILL" (WIN$50) Play Symbol will only appear on intended winning Tickets and will only appear with the $50 Prize Symbol. J. The "$100 BILL" (WIN$100) Play Symbol will only appear on intended winning Tickets and will only appear with the $100 Prize Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "$20,000,000 CA$H SPECTACULAR!" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $25.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$20,000,000 CA$H SPECTACULAR!" Scratch Ticket Game prize of $1,000, $5,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$20,000,000 CA$H SPECTACULAR!" 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 "$20,000,000 CA$H SPECTACULAR!" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$20,000,000 CA$H SPECTACULAR!" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2480. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2480 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	802,400	8.82
$10.00	566,400	12.50
$20.00	141,600	50.00
$25.00	94,400	75.00
$50.00	94,400	75.00
$100	23,010	307.69
$200	2,950	2,400.00
$500	1,475	4,800.00
$1,000	180	39,333.33
$5,000	15	472,000.00
$100,000	6	1,180,000.00

*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 4.10. 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. 2480 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. 2480, 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-202302348

Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 28, 2023

♦ ♦ ♦

Scratch Ticket Game Number 2490 "$1,000,000 GOLD RUSH"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2490 is "$1,000,000 GOLD RUSH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2490 shall be $20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2490.

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: SAILBOAT SYMBOL, LEMON SYMBOL, HORSESHOE SYMBOL, MOON SYMBOL, PIGGY BANK SYMBOL, RING SYMBOL, STAR SYMBOL, LIGHTNING BOLT SYMBOL, CHERRY SYMBOL, SUN SYMBOL, HEART SYMBOL, HAT SYMBOL, RAINBOW SYMBOL, MELON SYMBOL, DICE SYMBOL, BELL SYMBOL, WISHBONE SYMBOL, CACTUS SYMBOL, HORSE SYMBOL, UMBRELLA SYMBOL, BOOT SYMBOL, ANCHOR SYMBOL, PINEAPPLE SYMBOL, DAISY SYMBOL, SAFE SYMBOL, POT OF GOLD SYMBOL, TREASURE CHEST SYMBOL, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, $20.00, $50.00, $75.00, $100, $200, $500, $1,000, $20,000 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. 2490 - 1.2D

PLAY SYMBOL	CAPTION
SAILBOAT SYMBOL	BOAT
LEMON SYMBOL	LEMON
HORSESHOE SYMBOL	HRSHOE
MOON SYMBOL	MOON
PIGGY BANK SYMBOL	PIGBNK
RING SYMBOL	RING
STAR SYMBOL	STAR
LIGHTNING BOLT SYMBOL	BOLT
CHERRY SYMBOL	CHERRY
SUN SYMBOL	SUN
HEART SYMBOL	HEART
HAT SYMBOL	HAT
RAINBOW SYMBOL	RNBOW
MELON SYMBOL	MELON
DICE SYMBOL	DICE
BELL SYMBOL	BELL
WISHBONE SYMBOL	WISHBN
CACTUS SYMBOL	CACTUS
HORSE SYMBOL	HORSE
UMBRELLA SYMBOL	UMBRLA
BOOT SYMBOL	BOOT
ANCHOR SYMBOL	ANCHOR
PINEAPPLE SYMBOL	PNAPLE
DAISY SYMBOL	DAISY
SAFE SYMBOL	WIN$
POT OF GOLD SYMBOL	WINX10
TREASURE CHEST SYMBOL	WINX20

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
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET

59	FFNI
60	SXTY
$20.00	TWY$
$50.00	FFTY$
$75.00	SVFV$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$20,000	20TH
$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 (2490), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2490-0000001-001.

H. Pack - A Pack of the "$1,000,000 GOLD RUSH" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$1,000,000 GOLD RUSH" Scratch Ticket Game No. 2490.

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 GOLD RUSH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-two (72) Play Symbols. $50 BONUS PLAY AREA: If a player reveals 2 matching Play Symbols in the $50 BONUS, the player wins $50. $100 BONUS PLAY AREA: If the player reveals 2 matching Play Symbols in the $100 BONUS, the player wins $100. $200 BONUS PLAY AREA: If the player reveals 2 matching Play Symbols in the $200 BONUS, the player wins $200. $1,000,000 GOLD RUSH PLAY AREA: 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 "SAFE" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "POT OF GOLD" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "TREASURE CHEST" 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-two (72) 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-two (72) 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-two (72) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the seventy-two (72) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to thirty-three (33) times.

D. GENERAL: The "SAFE" (WIN$), "POT OF GOLD" (WINX10) and "TREASURE CHEST" (WINX20) Play Symbols will never appear in the $50 BONUS, $100 BONUS or $200 BONUS play areas.

E. $50 BONUS: A non-winning $50 BONUS play area will have two (2) different Play Symbols.

F. $50 BONUS: Winning Tickets will contain two (2) matching Play Symbols in the $50 BONUS play area and will win $50.

G. $100 BONUS: A non-winning $100 BONUS play area will have two (2) different Play Symbols.

H. $100 BONUS: Winning Tickets will contain two (2) matching Play Symbols in the $100 BONUS play area and will win $100.

I. $200 BONUS: A non-winning $200 BONUS play area will have two (2) different Play Symbols.

J. $200 BONUS: Winning Tickets will contain two (2) matching Play Symbols in the $200 BONUS play area and will win $200.

K. $1,000,000 GOLD RUSH: No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

L. $1,000,000 GOLD RUSH: A non-winning Prize Symbol will never match a winning Prize Symbol.

M. $1,000,000 GOLD RUSH: On winning and Non-Winning Tickets, the top cash prizes of $1,000, $20,000 and $1,000,000 will each appear at least once, except on Tickets winning thirty-three (33) times and with respect to other parameters, play action or prize structure.

N. $1,000,000 GOLD RUSH: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

O. $1,000,000 GOLD RUSH: No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

P. $1,000,000 GOLD RUSH: All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., $20 and 20 and $50 and 50).

Q. $1,000,000 GOLD RUSH: On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

R. $1,000,000 GOLD RUSH: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

S. $1,000,000 GOLD RUSH: The "SAFE" (WIN$) Play Symbol will never appear on the same Ticket as the "POT OF GOLD" (WINX10) or "TREASURE CHEST" (WINX20) Play Symbols.

T. $1,000,000 GOLD RUSH: The "POT OF GOLD" (WINX10) Play Symbol will never appear more than once on a Ticket.

U. $1,000,000 GOLD RUSH: The "POT OF GOLD" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

V. $1,000,000 GOLD RUSH: The "POT OF GOLD" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

W. $1,000,000 GOLD RUSH: The "POT OF GOLD" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

X. $1,000,000 GOLD RUSH: The "TREASURE CHEST" (WINX20) Play Symbol will never appear more than once on a Ticket.

Y. $1,000,000 GOLD RUSH: The "TREASURE CHEST" (WINX20) Play Symbol will win 20 TIMES the prize for that Play Symbol and will win as per the prize structure.

Z. $1,000,000 GOLD RUSH: The "TREASURE CHEST" (WINX20) Play Symbol will never appear on a Non-Winning Ticket.

AA. $1,000,000 GOLD RUSH: The "TREASURE CHEST" (WINX20) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

BB. $1,000,000 GOLD RUSH: The "POT OF GOLD" (WINX10) and "TREASURE CHEST" (WINX20) Play Symbols can appear on the same Ticket as per the prize structure.

CC. $1,000,000 GOLD RUSH: The "SAFE" (WIN$) Play Symbol will win the prize for that Play Symbol.

DD. $1,000,000 GOLD RUSH: The "SAFE" (WIN$) Play Symbol will never appear more than once on a Ticket.

EE. $1,000,000 GOLD RUSH: The "SAFE" (WIN$) Play Symbol will never appear on a Non-Winning Ticket.

FF. $1,000,000 GOLD RUSH: The "SAFE" (WIN$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "$1,000,000 GOLD RUSH" Scratch Ticket Game prize of $20.00, $50.00, $75.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $75.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$1,000,000 GOLD RUSH" Scratch Ticket Game prize of $1,000, $20,000 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 GOLD RUSH" 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 GOLD RUSH" 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 GOLD RUSH" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 2490. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2490 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$20.00	771,840	10.42
$50.00	643,200	12.50
$75.00	128,640	62.50
$100	385,920	20.83
$200	87,167	92.24
$500	5,360	1,500.00
$1,000	268	30,000.00
$20,000	20	402,000.00
$1,000,000	4	2,010,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.98. 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. 2490 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. 2490, 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-202302327
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 27, 2023

♦ ♦ ♦

Scratch Ticket Game Number 2492 "VETERANS CASH"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2492 is "VETERANS CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2492 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2492.

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, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, $$ SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 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 Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2492 - 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
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV

28	TWET
29	TWNI
30	TRTY
$$ SYMBOL	DBL
$2.00	TWO$
$4.00	FOR$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$1,000	ONTH
$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 (2492), 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: 2492-0000001-001.

H. Pack - A Pack of the "VETERANS CASH" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

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 "VETERANS CASH" Scratch Ticket Game No. 2492.

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 "VETERANS CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-three (23) Play Symbols. If a 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 "$$" Play Symbol, the player wins DOUBLE 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 twenty-three (23) 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 twenty-three (23) 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 twenty-three (23) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-three (23) 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 ten (10) 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 will have three (3) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "$$" (DBL) Play Symbol will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "$$" (DBL) Play Symbol will only appear on winning Tickets as dictated by the approved prize structure.

I. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 02 and $2).

2.3 Procedure for Claiming Prizes.

A. To claim a "VETERANS CASH" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 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 "VETERANS CASH" Scratch Ticket Game prize of $1,000 or $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 "VETERANS CASH" 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 "VETERANS CASH" 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 "VETERANS CASH" 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. 2492. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2492 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	624,000	9.62
$4.00	480,000	12.50
$5.00	96,000	62.50
$10.00	72,000	83.33
$20.00	48,000	125.00
$50.00	40,000	150.00
$100	2,725	2,201.83
$1,000	50	120,000.00
$30,000	5	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.40. 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. 2492 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. 2492, 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-202302328
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 27, 2023

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Scratch Ticket Game Number 2500 "COWBOYS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2500 is "COWBOYS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2500 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2500.

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, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, FOOTBALL SYMBOL, TD SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $500, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2500 - 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
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV

28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
FOOTBALL SYMBOL	WIN$
TD SYMBOL	WINALL
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$

$50.00	FFTY$
$100	ONHN
$500	FVHN
$5,000	FVTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2500), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2500-0000001-001.

H. Pack - A Pack of "COWBOYS" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning 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 - A Texas Lottery "COWBOYS" Scratch Ticket Game No. 2500.

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 "COWBOYS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a 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 "FOOTBALL" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a Touchdown "TD" Play Symbol, the player WINS ALL 20 PRIZES INSTANTLY! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) 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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes $5,000 and $100,000 will each appear at least once, except on Tickets winning more than fifteen (15) times, with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Spots as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. The "TD" (WINALL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

J. The "TD" (WINALL) Play Symbol will instantly win all twenty (20) prize amounts and will win only as per the prize structure.

K. The "TD" (WINALL) Play Symbol will never appear more than once on a Ticket.

L. The "TD" (WINALL) Play Symbol will never appear on a Non-Winning Ticket.

M. On Tickets winning with the "TD" (WINALL) Play Symbol, the YOUR NUMBERS Play Symbols will not match any of the WINNING NUMBERS Play Symbols.

N. The "FOOTBALL" (WIN$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

O. The "FOOTBALL" (WIN$) Play Symbol will win the prize for that Play Symbol.

P. The "FOOTBALL" (WIN$) Play Symbol will never appear more than once on a Ticket.

Q. The "FOOTBALL" (WIN$) Play Symbol will never appear on a Non-Winning Ticket.

R. The "TD" (WINALL) Play Symbol and the "FOOTBALL" (WIN$) Play Symbol will never appear on the same Ticket.

S. On Tickets winning with the "FOOTBALL" (WIN$) Play Symbol, the YOUR NUMBERS Play Symbols will not match any of the WINNING NUMBERS Play Symbols.

T. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and $5, 10 and $10, 15 and $15, 20 and $20 and 50 and $50).

U. On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

V. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "COWBOYS" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "COWBOYS" Scratch Ticket Game prize of $5,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "COWBOYS" 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

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 "COWBOYS" 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 "COWBOYS" 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 Game 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "COWBOYS" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

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 Ticket Prizes. There will be approximately 9,720,000 Scratch Tickets in the Scratch Ticket Game No. 2500. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2500 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	1,209,600	8.04
$10.00	496,800	19.57
$15.00	388,800	25.00
$20.00	388,800	25.00
$50.00	75,600	128.57
$100	7,560	1,285.71
$500	378	25,714.29
$5,000	27	360,000.00
$100,000	4	2,430,000.00

*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 3.79. 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. 2500 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 Game 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. 2500, 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-202302330
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 27, 2023

♦ ♦ ♦

Scratch Ticket Game Number 2530 "JU$T 1 BUCK"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2530 is "JU$T 1 BUCK". The play style is "find symbol".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2530 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2530.

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: BELL SYMBOL, BOW SYMBOL, CANDLE SYMBOL, CANDY SYMBOL, CANE SYMBOL, CARD SYMBOL, COCOA SYMBOL, DRUM SYMBOL, GIFT SYMBOL, MITTEN SYMBOL, ORNAMENT SYMBOL, SNOWMAN SYMBOL, WREATH SYMBOL, STAR SYMBOL, SNOWFLAKE SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00, $100 and $500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2530 - 1.2D

PLAY SYMBOL	CAPTION
BELL SYMBOL	BELL
BOW SYMBOL	BOW
CANDLE SYMBOL	CANDLE
CANDY SYMBOL	CANDY
CANE SYMBOL	CANE
CARD SYMBOL	CARD
COCOA SYMBOL	COCOA
DRUM SYMBOL	DRUM
GIFT SYMBOL	GIFT
MITTEN SYMBOL	MITTEN
ORNAMENT SYMBOL	ORNMT
SNOWMAN SYMBOL	SNOMAN
WREATH SYMBOL	WREATH
STAR SYMBOL	WIN$
SNOWFLAKE SYMBOL	WIN$10
$1.00	ONE$
$2.00	TWO$
$4.00	FOR$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$40.00	FRTY$
$50.00	FFTY$
$100	ONHN
$500	FVHN

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2530), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2530-0000001-001.

H. Pack - A Pack of the "JU$T 1 BUCK" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "JU$T 1 BUCK" Scratch Ticket Game No. 2530.

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 "JU$T 1 BUCK" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twelve (12) Play Symbols. If a player reveals a "STAR" Play Symbol, the player wins the prize for that symbol. If the player reveals a "SNOWFLAKE" Play Symbol, the player wins $10 instantly! 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 twelve (12) 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 twelve (12) 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 twelve (12) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twelve (12) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to six (6) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless otherwise restricted by other parameters, play action or prize structure.

D. The "STAR" (WIN$) Play Symbol will only appear on winning Tickets as dictated by the prize structure.

E. The "STAR" (WIN$) Play Symbol may appear multiple times on winning Tickets, unless restricted by other parameters, play action or prize structure.

F. The "SNOWFLAKE" (WIN$10) Play Symbol will only appear on winning Tickets as dictated by the prize structure and will always appear with the $10 Prize Symbol.

G. Non-winning Play Symbols will be different.

H. Non-winning Prize Symbols will never appear more than one (1) time.

I. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "JU$T 1 BUCK" Scratch Ticket Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $40.00, $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "JU$T 1 BUCK" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "JU$T 1 BUCK" 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 $600 or more from the "JU$T 1 BUCK" 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 11,040,000 Scratch Tickets in Scratch Ticket Game No. 2530. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2530 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	1,251,200	8.82
$2.00	662,400	16.67
$4.00	294,400	37.50
$5.00	110,400	100.00
$10.00	110,400	100.00
$20.00	36,800	300.00
$40.00	4,140	2,666.67
$50.00	1,656	6,666.67
$100	1,840	6,000.00
$500	92	120,000.00

*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 4.46. 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. 2530 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. 2530, 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-202302329
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 27, 2023

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Texas Parks and Wildlife Department

Notice of an Extension to the Public Comment Period on an Application for a Sand and Gravel Permit

Bill Lane (Flat Rock Creek Ranch LLC) has applied to the Texas Parks and Wildlife Department (TPWD) for a General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86, to disturb up to 65 cubic yards of sedimentary material within Flat Rock Creek in Kerr County. The purpose of the disturbance is to construct a dam and low water crossing. The location is approximately 1,400 feet upstream of the confluence of Flat Rock Creek with the North Fork Guadalupe River and 3.24 miles upstream of the FM 1340 crossing of the North Fork Guadalupe River near MO Ranch. This notice is being published and mailed pursuant to 31 TAC §69.105(d).

TPWD originally provided notice of a public comment hearing regarding the application in the June 2, 2023, issue of the *Texas Register* (48 TexReg 2911). That hearing took place at 11:00 a.m. on Friday, June 23, 2023, at TPWD headquarters. The publication of that notice began a 30-day public comment period which is set to expire on July 2, 2023. In response to requests from the public, TPWD is now extending the public comment period for an additional 45 days until August 16, 2023.

Written comments may be submitted directly to TPWD and must be received no later than August 16, 2023. A written request for a

contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; or e-mail tom.heger@tpwd.texas.gov.

TRD-202302346
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: June 28, 2023

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application to Adjust High Cost Support Under 16 TAC §26.407(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 21, 2023, to adjust the high-cost support it receives from the Small and Rural Incumbent Local Exchange Company Universal Service Plan without effect to its current rates.

Docket Title and Number: Application of Cumby Telephone Cooperative, Inc. to Adjust High Cost Support under 16 Texas Administrative Code § 26.407(h), Docket Number 55165.

Cumby Telephone Cooperative, Inc. requests a high-cost support adjustment from its current level of $434,267 by an additional $156,039 to a total of $590,306 in annual high cost support. The requested adjustment complies with the cap of 140% of the annualized support the provider received in the previous 12 months, as required by 16 Texas Administrative Code §26.407(g)(1).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 55165.

TRD-202302259
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 2023

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Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 20, 2023, to relinquish designation as an eligible telecommunications carrier under 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Cebridge Telecom TX, LP dba Optimum to Relinquish its Eligible Telecommunications Carrier Designation, Docket Number 55158.

The Application: Cebridge Telecom TX, LP dba Optimum requests to relinquish its eligible telecommunications carrier (ETC) designation in Texas.

Persons who wish to file a motion to intervene or comments on the application should contact the commission as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 55158.

TRD-202302256
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2023

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Texas Racing Commission

Notice of Application Period for Class 2 Racetrack License in Jefferson County, Texas

The Texas Racing Commission hereby designates an application period for a Class 2 racetrack license in Jefferson County, Texas, in accordance with 16 TAC §309.3. The application period begins August 1, 2023, and ends August 31, 2023. Applications may be submitted to the Texas Racing Commission at 1801 N. Congress Ave., Ste. 7.600, Austin, Texas 78701 and received no later than 5:00 p.m. on September 29, 2023.

TRD-202302269
Virginia Fields
General Counsel
Texas Racing Commission
Filed: June 26, 2023

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Texas Department of Transportation

Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a virtual public hearing on Tuesday, July 25, 2023 at 2:00 p.m. Central Standard Time (CST) via electronic means. Instructions for accessing the hearing will be published on the department's website at: *https://www.txdot.gov/inside-txdot/get-involved/unified-transportation-program.html.* The purpose of the hearing is to receive public input on the proposed funding adjustments to certain fiscal year 2023 projects in the 2023 UTP, and the development of the 2024 Unified Transportation Program (UTP), including the highway project selection process related to the UTP.

Transportation Code, §201.991 provides that the department shall develop a UTP covering a period of 10 years to guide the development and authorize construction of transportation projects. Transportation Code, §201.602 requires the Texas Transportation Commission (commission) to annually conduct a hearing on its highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. The commission has adopted rules located in Title 43, Texas Administrative Code, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to the project selection process and the development of the UTP.

Information regarding the proposed funding adjustments to certain fiscal year 2023 projects in the 2023 UTP, the 2024 UTP and highway project selection process will be available on the department's web-

site at: *https://www.txdot.gov/inside-txdot/get-involved/unified-transportation-program.html.*

Persons wishing to speak at the hearing may register in advance by notifying the Transportation Planning and Programming Division at (800) 687-8108 no later than Friday, July 21, 2023. Speakers will be taken in the order registered and will be limited to three minutes. Speakers who do not register in advance will be taken at the end of the hearing. Any interested person may offer comments or testimony; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to participate are encouraged to contact the Transportation Planning and Programming Division at (800) 687-8108. Requests should be made at least three working days prior to the public hearing. Every reasonable effort will be made to accommodate these needs.

Interested parties who are unable to participate may submit written comments regarding either the proposed funding adjustments to certain fiscal year 2023 projects in the 2023 UTP or the proposed 2024 UTP to the Texas Department of Transportation, Attention: TPP-UTP, 125 E 11th Street, Austin, Texas 78701. Interested parties may also submit comments by e-mail to UTP-PublicComments@txdot.gov, phone at (800) 325-4463, or through the online options that will be available on the department's website at: *https://www.txdot.gov/inside-txdot/get-involved/unified-transportation-program.html.* In order to be considered, comments must be received by 4:00 p.m. CST on Monday, August 7, 2023.

TRD-202302257

Leonard Reese
Senior General Counsel
Texas Department of Transportation
Filed: June 21, 2023

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Workforce Solutions North Texas

RFP 2023-009 WSNT Program Monitoring Services

Workforce Resource, Inc. dba Workforce Solutions North Texas Board (WSNT) is soliciting proposals from qualified entities to perform program monitoring services of its contractors to satisfy Board's contract obligations with the Texas Workforce Commission (TWC) and the U.S. Department of Labor (DOL). Monitoring shall be consistent with the requirements set forth in the TWC Financial Manual for Grants and Contracts and Texas Administrative Code Chapter 802. Specifically, the RFP is soliciting entities who will monitor the following programs: Child Care, WIOA programs, TANF/Choices, SNAP and Trade Adjustment Act (TAA). The Respondent must be willing to monitor other applicable programs. If programs are added additional costs will be negotiated. The Board's case file system is completely paperless. Nearly all, if not all, monitoring could be accomplished remotely. WSNT serves the Texas Counties of Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, and Young. The RFP can be found on website at https://ntxworksolutions.org/business-opportunities/. Deadline for questions is July 7, 2023, by 5 p.m. Proposals are due no later than 4:00 p.m. (CDT) Friday, August 4, 2023, to email wsb@ntxworksolutions.org.

TRD-202302258
Sharon Hulcy
Board Contract Manager
Workforce Solutions North Texas
Filed: June 22, 2023

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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 48 (2023) is cited as follows: 48 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 "48 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 48 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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