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 8. TEXAS JUDICIAL COUNCIL

CHAPTER 174. INDIGENT DEFENSE POLICIES AND STANDARDS

SUBCHAPTER C. POLICY MONITORING REQUIREMENTS

DIVISION 2. POLICY MONITORING PROCESS AND BENCHMARKS

1 TAC §174.28

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission proposes amendments to Texas Administrative Code, Title 1, Part 8, Chapter 174, Subchapter C, Division 2, §174.28, concerning On-Site Monitoring Process.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed amendment to §174.28(c)(4) requires the policy monitor to make a finding if the monitor finds the court did not explain the procedures for requesting counsel or identifies cases in which a defendant entered an uncounseled plea while having a pending counsel request.

The proposed amendments to §174.28(c)(5) provide that in counties with a public defender's office, the monitor will determine if appointments to the office are made in accordance with Article 26.04(f), Code of Criminal Procedure, the priority appointment of public defender's statute.

The proposed amendments to §174.28(c)(5) add requirements related to attorney appointments in capital felony cases. In a county with a public defender's office that accepts capital appointments, the monitor will verify that the office is appointed in each capital case. If the office was not appointed in each case, the policy monitor shall determine whether the court or its designee made a finding of good cause on the record for appointing other counsel in accordance with Article 26.04(f)(1).

The proposed amendments to §174.28(c)(5) also require that in capital felony cases where a public defender's office was not appointed, the policy monitor shall determine if two attorneys were appointed and whether at least one attorney was qualified to serve as lead counsel under Article 26.052(e), Code of Criminal Procedure. If one attorney was appointed, the policy monitor shall determine whether the State filed written notice that it is not seeking the death penalty and the date the notice was filed.

The proposed amendments to §174.28(d)(1) provide that staff shall submit draft policy monitoring reports to the Policies and Standards Committee, rather than to the county, for review within 60 days after the date staff receives all required data for the review, rather than within 60 days of a site visit. The first part of the amendment is proposed since the Committee review process can sometimes take a few weeks to complete, especially when changes to a report are needed. The second part of the amendment is proposed because some monitoring reviews are now fully remote and because delays in receiving needed data from counties often leads to staff not meeting the timeline in the current version of the rule.

The proposed amendments to §174.28(d)(3) provide that in the case of a follow-up review report, a county may receive an extension beyond the two 30-day periods provided for in the current rule if the county demonstrates it has extenuating circumstances that are approved by the Executive Director.

The proposed amendments to §174.28(d)(4) require only formula grant payments, rather than all grant payments, be withheld if a county does not respond to a policy monitoring report within 10 days of receipt of a certified letter notifying the local officials. This would assure that improvement grant-funded programs such as public defender offices are not immediately jeopardized.

The proposed amendments to §174.28(d)(5) specify the Commission may require regular reporting of data to determine if process changes are being implemented and their impact on compliance when counties fail to come into compliance after multiple reviews. Currently, the only processes specified are to impose a remedy for noncompliance under §173.307, Texas Administrative Code, such as withholding grant funds.

FISCAL NOTE

Mr. Scott Ehlers, Executive Director, Texas Indigent Defense Commission, has determined that for each year of the first five years the proposed amendments are in effect, enforcing or administering the sections will have no fiscal impact on state or local governments.

PUBLIC BENEFIT AND COSTS

Mr. Ehlers has determined that for each of the first five-year period the amendment is in effect the public benefit will be an improvement in the indigent defense services by helping the Commission assure the requirements of federal and state law related to indigent defense are followed. There are no anticipated economic costs to persons required to comply with the proposed amendments. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Ehlers has determined that for each year of the first five years in which the proposed amendments are in effect, the amendments will have the following effect on government growth. The proposed amendments will not create or eliminate any government programs or employee positions. Additionally, the proposed amendments will not require an increase or decrease in future legislative appropriations to the Commission or change any fees paid to the Commission. The proposed amendments do not create a new regulation. The proposed amendments expand certain existing regulations, including by providing for a monitoring visit to be conducted as a result of findings from a previous visit, a complaint, or media reports indicating a potential violation of laws related to indigent defense. The proposed amendments would not repeal any rules, nor increase or decrease the number of individuals subject to the applicability of the rules. The proposed amendments are not anticipated to affect this state's economy.

SUBMITTAL OF COMMENTS

Comments on the proposed amendments may be submitted in writing to Wesley Shackelford, Deputy Director, Texas Indigent Defense Commission, 209 West 14th Street, Room 202, Austin, Texas 78701 or by email to wshackelford@tidc.texas.gov no later than 30 days from the date that these proposed amendments are published in the *Texas Register.*

STATUTORY AUTHORITY

The amendments are proposed under the Texas Government Code §79.037(a) and (b), which requires the Commission to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense.

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

§174.28. On-Site Monitoring Process.

(a) Purpose. The monitoring process promotes local compliance with the requirements of the Fair Defense Act and Commission rules and provides technical assistance to improve processes where needed.

(b) Monitoring Process. The policy monitor examines the local indigent defense plans and local procedures and processes to determine if the jurisdiction meets the statutory requirements and rules adopted by the Commission. The policy monitor also attempts to randomly select samples of actual cases from the period of review by using a 15% confidence interval for a population at a 95% confidence level.

(c) Core Requirements. On-site policy monitoring focuses on the six core requirements of the Fair Defense Act and related rules. Policy monitoring may also include a review of statutorily required reports to the Office of Court Administration and Commission. This rule establishes the process for evaluating policy compliance with a requirement and sets benchmarks for determining whether a county is in substantial policy compliance with the requirement. For each of these elements, the policy monitor shall review the local indigent defense plans and determine if the plans are in compliance with each element.

(1) Prompt and Accurate Magistration.

(A) The policy monitor shall check for documentation indicating that the magistrate or county has:

(i) Informed and explained to an arrestee the rights listed in Article 15.17(a), Code of Criminal Procedure, including the right to counsel;

(ii) Maintained a process to magistrate arrestees within 48 hours of arrest;

(iii) Maintained a process for magistrates not authorized to appoint counsel to transmit requests for counsel to the appointing authority within 24 hours of the request; and

(iv) Maintained magistrate processing records required by Article 15.17(a), (e), and (f), Code of Criminal Procedure, and records documenting the time of arrest, time of magistration, whether the person requested counsel, and time for transferring requests for counsel to the appointing authority.

(B) A county is presumed to be in substantial compliance with the prompt magistration requirement if magistration in at least 98% of the policy monitor's sample is conducted within 48 hours of arrest.

(2) Indigence Determination. The policy monitor checks to see if procedures are in place that comply with the indigent defense plan and the Fair Defense Act.

(3) Minimum Attorney Qualifications. The policy monitor shall check that attorney appointment lists are maintained according to the requirements set in the indigent defense plans. Only attorneys approved for an appointment list are eligible to receive appointments.

(4) Prompt Appointment of Counsel.

(A) The policy monitor shall check for documentation of timely appointment of counsel in criminal and juvenile cases.

(i) Criminal Cases. The policy monitor shall determine if counsel was appointed or denied for arrestees within one working day of receipt of the request for counsel in counties with a population of 250,000 or more, or three working days in other counties. If the policy monitor cannot determine the date the appointing authority received a request for counsel, then the timeliness of appointment will be based upon the date the request for counsel was made plus 24 hours for the transmittal of the request to the appointing authority plus the time allowed to make the appointment of counsel. The policy monitor will determine if any waivers of counsel do not comply with the requirements of Article 1.051, Code of Criminal Procedure. The policy monitor will make a finding if the monitor finds the court did not always explain the procedures for requesting counsel to unrepresented defendants or identifies any cases where a defendant requested counsel and later entered an uncounseled plea without their counsel request being ruled upon.

(ii) Juvenile Cases. The policy monitor shall determine if counsel was appointed prior to the initial detention hearing for eligible in-custody juveniles. If counsel was not appointed, the policy monitor shall determine if the court made a finding that appointment of counsel was not feasible due to exigent circumstances. If exigent circumstances were found by the court and the court made a determination to detain the child, then the policy monitor shall determine if counsel was appointed for eligible juveniles immediately upon making this determination. For out-of-custody juveniles, the policy monitor shall determine if counsel was appointed within five working days of service of the petition on the juvenile.

(B) A county is presumed to be in substantial compliance with the prompt appointment of counsel requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), at least 90% of appointments of counsel and denials of indigence determinations in the policy monitor's sample are timely.

(5) Attorney Selection Process. The policy monitor shall check for the following documentation indicating:

(A) In the case of a contract defender program, that all requirements of §§174.10 - 174.25 of this title are met;

(B) In the case of a public defender's office, that appointments to the office are made in accordance with Article 26.04(f), Code of Criminal Procedure.

(C) In capital felony cases, the policy monitor shall determine if appointments are made in accordance with Article 26.052, Code of Criminal Procedure.

(i) In counties with a public defender's office that handles capital felony cases, the policy monitor shall determine if a public defender's office is appointed in each capital case. If the office is not, the policy monitor will determine whether the court or its designee made a finding of good cause on the record for appointing other counsel in accordance with Article 26.04(f)(1), Code of Criminal Procedure.

(ii) In capital felony cases where a public defender's office is not appointed, the policy monitor shall determine if two attorneys were appointed, at least one of whom is qualified to serve as lead counsel under Article 26.052(e), Code of Criminal Procedure, unless the state gives notice in writing that the state will not seek the death penalty.

(D) [~~(B)~~] In the case of a managed assigned counsel program, that counsel is appointed according to the entity's plan of operation;

(E) [~~(C)~~] That the attorney selection process actually used matches what is stated in the indigent defense plans; and

(F) [~~(D)~~] For assigned counsel and managed assigned counsel systems, the number of appointments in the policy monitor's sample per attorney at each level (felony, misdemeanor, juvenile, and appeals) during the period of review and the percentage share of appointments represented by the top 10% of attorneys accepting appointments. A county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory attorney appointment system requirement of 26.04(b)(6), Code of Criminal Procedure, if, in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10% of recipient attorneys does not exceed three times their respective share. The top 10% of recipient attorneys is the whole attorney portion of the appointment list that is closest to 10% of the total list. For this analysis, the monitor will include only attorneys who were on an appointment list for the entire time period under review.

(6) Data Reporting. The policy monitor shall check for documentation indicating that the county has established a process for collecting and reporting itemized indigent defense expense and case information.

(d) Report.

(1) Report Issuance. For full and limited-scope reviews, the policy monitor shall submit a draft [~~issue a~~] report to the Commission's Policies and Standards Committee [~~authorized official~~] within 60 days after staff receives required data for the monitoring review [~~of the on-site monitoring visit to a county~~], unless a documented exception is provided by the director, with an alternative deadline provided, not later than 120 days from the date required data is received [~~on-site monitoring visit~~]. The report shall contain recommendations to address findings of noncompliance. For drop-in visits, the policy monitor may issue a letter with recommendations.

(2) County Response. Within 60 days of the date a report is issued by the policy monitor to the county, the authorized official shall respond in writing to each finding of noncompliance, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 60 days.

(3) Follow-up Reviews. The policy monitor shall conduct follow-up reviews of counties where a report included noncompliance findings. The follow-up review shall occur within a reasonable time but not more than two years following receipt of a county's response to a report. The policy monitor shall review a county's implementation of corrective actions and shall report to the county and to the Commission any remaining issues not corrected. Within 30 days of the date the follow-up report is issued by the policy monitor, the authorized official shall respond in writing to each recommendation, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 30 days. If the county provides extenuating circumstances, the Executive Director may grant an additional extension of time to respond.

(4) Failure to Respond to Report. If a county fails to respond to a monitoring report or follow-up report within the required time, then a certified letter shall [~~will~~] be sent to the authorized official, financial officer, county judge, local administrative district court judge, local administrative statutory county court judge, and chair of the juvenile board notifying them that all further formula grant payments will be withheld if no response to a report is received by the Commission within 10 days of receipt of the letter. If formula grant funds are withheld under this section, then the funds will not be reinstated until the Commission or the Policies and Standards Committee approves the release of the funds.

(5) Noncompliance. If a county fails to correct any noncompliance findings, the Commission may require regular additional reporting of data to determine if process changes are being implemented, and other requirements, as appropriate. The Commission may also impose a remedy under §173.307 of this title (relating to Remedies for Noncompliance).

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

Filed with the Office of the Secretary of State on September 19, 2024.

TRD-202404525
Wesley Shackelford
Deputy Director
Texas Judicial Council
Earliest possible date of adoption: November 3, 2024
For further information, please call: (737) 279-9208

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS SUBCHAPTER F. LICENSING PERSONS WITH CRIMINAL BACKGROUNDS

16 TAC §303.201

The Texas Racing Commission (TXRC) proposes to amend selected language in Texas Administrative Code, Title 16, Part 8, Chapter 303, Subchapter F, Licensing Persons with Criminal

Backgrounds, §303.201. General Authority, concerning factors that relate to the person's present fitness to perform the duties and responsibilities. The purpose of this rule amendment is to align the Texas Rules of Racing with legislative changes made to the Texas Racing Act during the 88th Legislative Session, specifically Texas Occupations Code §2025.

AGENCY ANALYSIS

A. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.022.

Amy F. Cook, Executive Director, has determined that the proposed rules will not create or eliminate a government program; create new or eliminates existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation, expand an existing regulation, limit an existing regulation, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules applicability; and will not positively or adversely affects the state's economy. The rule will not repeal an existing regulation, rather it will be amended to conform with Chapter 53, Texas Occupations Code which was incorporated into the Texas Racing Act in the 88th Legislative Session.

B. ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

C. REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE §2007.043.

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

E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed rule repeal and rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code §2001.024(A)(6).

F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to further align the administration of the occupational licensing program with recent statutory changes to the Texas Occupations Code that incorporate Chapter 53 in the agency licensing program.

G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

H. STATUTORY AUTHORITY.

The amendments are proposed under Texas Occupations Code §2025.001(a-1).

I. CROSS REFERENCE TO STATUTE. Texas Occupations Code §2025.001(a-1).

§303.201. General Authority.

(a) In accordance with state law, the commission may revoke, suspend, or deny a license [~~or the stewards or racing judges may suspend or deny a license to a person~~] because of the person's conviction of a felony or misdemeanor if the offense directly relates to the person's present fitness to perform the duties and responsibilities associated with the license.

(b) In determining whether [~~or not~~] an offense directly relates to a person's present fitness to perform the duties and responsibilities associated with the license, the commission [~~or stewards or racing judges~~] shall consider the relationship between the offense and the occupational [~~particular~~] license applied for and the following factors:

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

(2) the age of the person at the time of the commission of the crime;

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

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence presented by the person of the person's present fitness, including letters of recommendation from:

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

(B) the sheriff or chief of police in the community where the person resides; or

(C) any other persons in contact with the convicted person.

(c) The executive director [~~secretary~~] shall [~~may~~] develop and publish guidelines relating to the administration of the of occupational licensing program. [~~regarding the factors listed in subsection (b) of this~~

section and how the factors relate to the offenses listed in §303.202 of this title (relating to General Provisions.)]

(d) On learning of the felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision of a licensee, the executive director or designee [commission] shall determine whether a license may be subject to suspension or revocation [revoke the licensee's license].

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

Filed with the Office of the Secretary of State on September 17, 2024.

TRD-202404463
Amy F. Cook
Executive Director
Texas Racing Commission
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 833-6699

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16 TAC §303.202

The Texas Racing Commission (TXRC) proposes amendments to Title 16, Part 8, Chapter 303, Subchapter F, Licensing Persons with Criminal Background, Rule §303.202. Guidelines, concerning the occupational licensing guidelines. The purpose of these amendments is to clarify the responsibilities of the executive director and align the administration of the occupational licensing program with current state law. The proposed amendments will allow the agency to conform with the provisions of Texas Occupations Code §2025.251-262.

A. DRAFT GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.022.

Amy F. Cook, Executive Director, has determined that the proposed rules will not create or eliminate a government program; create new or eliminates existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation, expand an existing regulation, limit an existing regulation, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules applicability; and will not positively or adversely affects the state's economy. The rule will not repeal an existing regulation, rather it will be amended to conform with Chapter 53, Texas Occupations Code which was incorporated into the Texas Racing Act in the 88th Legislative Session.

B. ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

C. REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code §2006.002, is not required.

D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE §2007.043.

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

E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code §2001.024(A)(6).

F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed amendments are expected to reduce the overall costs of the licensing process by clarifying the factors considered for issuance of an occupational license.

G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed amendments.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

H. STATUTORY AUTHORITY.

The amendments are proposed under Texas Occupations Code §2025.251-262.

I. CROSS REFERENCE TO STATUTE.

Texas Occupations Code §2025.251-262.

§303.202. Guidelines.

[(a)] In accordance with state law, the commission has delegated the administration of the occupational licensing program to the executive director who shall develop guidelines [developed guidelines] relating to the suspension, revocation, or denial of occupational licenses based on criminal background. [The offenses that the commission has determined are directly related to the occupational licenses issued by the commission are:]

[(1) an offense for which fraud, dishonesty, or deceit is an essential element;]

[(2) an offense relating to racing, pari-mutuel wagering, gambling, or prostitution;]

[(3) a felony offense of assault, such as those described by Penal Code, Chapter 22;]

[(4) a criminal homicide offense, such as those described by Penal Code, Chapter 19;]

[(5) a burglary offense, such as those described by Penal Code, Chapter 30;]

[(6) a robbery offense, such as those described by Penal Code, Chapter 29;]

[(7) cruelty to animals;]

[(8) a theft offense, such as those described by Penal Code, Chapter 31;]

[(9) an offense relating to the possession, manufacture, or delivery of a controlled substance, a dangerous drug, or an abusable glue or aerosol paint;]

[(10) arson; and]

[(11) a felony offense of driving while intoxicated.]

[(b) The commission has considered the following factors in determining whether or not a particular offense directly relates to a particular occupational license:]

[(1) the nature and seriousness of the crime;]

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

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

[(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.]

[(c) Based on the factors described in subsection (b) of this section, the commission has determined that the offenses described in subsection (a) of this section are directly related to the following occupational licenses. (An "X" on the chart means the offense directly relates to the license.)]
[Figure: 16 TAC §303.202(c)]

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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Amy F. Cook
Executive Director
Texas Racing Commission
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CHAPTER 311. OTHER LICENSES
SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES
16 TAC §311.4

The Texas Racing Commission (TXRC) proposes amendments to Texas Administrative Code, Title 16, Part 8, Chapter 311, Subchapter A, Division 1, Occupational Licenses, §311.4. Occupational License Restrictions. The purpose of these amendments is to align the Texas Rules of Racing with changes in the Texas Racing Act made during the 88th Legislative Session, specifically, Texas Occupations Code §2025.001(a-1).

AGENCY ANALYSIS

A. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.022.

Amy F. Cook, Executive Director, has determined that the proposed rules will not create or eliminate a government program; create new or eliminate existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation, expand an existing regulation, limit an existing regulation, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affects the state's economy. The rule will not repeal an existing regulation, rather it will be amended to conform with Chapter 53, Texas Occupations Code which was incorporated into the Texas Racing Act in the 88th Legislative Session.

B. ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

C. REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code §2006.002, is not required.

D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE §2007.043.

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

E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code §2001.024(A)(6).

F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to reduce the overall costs

of the licensing process aligning the administration of the licensing program by the Executive Director with the current version of the Texas Racing Act.

G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

STATUTORY AUTHORITY.

The amendments are proposed under Texas Occupations Code §2025.001 (a-1).

CROSS REFERENCE TO STATUTE.

No other statute, code, or article is affected by the proposed amendments.

§311.4. Occupational License Restrictions.

(a) Non-Transferable. Except as otherwise provided by this section, a license issued by the Executive Director is personal to the licensee and is not transferable.

~~[(1) Except as otherwise provided by this section, a license issued by the Commission is personal to the licensee and is not transferable.]~~

~~[(2) If the death of a licensee creates an undue hardship or results in a technical violation of the Act or a Rule, on application of a person who wishes to operate or work under the license, the Commission may issue a temporary license to the person for a period specified by the Commission not to exceed one year.]~~

(b) Education. To be eligible to receive a license to participate in racing with pari-mutuel wagering, an individual who is under 18 years of age must present to the Commission proof that the individual:

(1) has graduated from high school or received an equivalent degree; or

(2) is currently enrolled in high school or equivalent classes.

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

Filed with the Office of the Secretary of State on September 17, 2024.

TRD-202404466
Amy F. Cook
Executive Director
Texas Racing Commission
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 833-6699

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CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING
SUBCHAPTER D. DRUG TESTING
DIVISION 3. PROVISIONS FOR HORSES

16 TAC §319.362

The Texas Racing Commission (TXRC) proposes rule amendments in Texas Administrative Code, Title 16, Part 8, Chapter 319, Subchapter D, Provisions for Horses, §319.362. Split Specimen. The purpose of this rule amendment is to change the procedures for drug testing of horses to enable the storage of split samples at a laboratory along with testing both samples at that laboratory.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

AGENCY ANALYSIS

A. DRAFT GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.022.

Amy F. Cook, Executive Director, has determined that the proposed rule change will not affect the local economy, so the Commission is not required to prepare a local employment impact statement under Government Code §2001.022. The 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 OOG; will not require an increase or decrease in fees paid to the OOG; will not create new regulations; will not increase or decrease the number of individuals subject to the applicability of the rules; and will not positively or adversely affect the Texas economy.

B. ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code §2006.002, is not required.

C. REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code §2006.002, is not required.

D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE §2007.043.

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule amendments do

not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed rule repeal and rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code §2001.024(A)(6).

F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to improve the positive economic impact, health, and safety of licensed horse racing in Texas by reducing the impact of unlicensed racing.

G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

H. STATUTORY AUTHORITY: The amendments are proposed under Texas Occupations Code §§2034.002; 2034.005.

I. CROSS REFERENCE TO STATUTE. Texas Occupations Code §§2034.002; 2034.005.

§319.362. Split Specimen.

(a) Before sending a specimen from a horse to a testing laboratory, the commission veterinarian shall determine whether the specimen is of sufficient quantity to be split. If there is sufficient quantity, the commission veterinarian or the commission veterinarian's designee shall divide the specimen into two parts and both parts will be shipped to the testing laboratory for testing and storage for future testing, if applicable. If the specimen is of insufficient quantity to be split, the commission veterinarian may require the horse to be detained until an adequate amount of urine can be obtained. If the commission veterinarian ultimately determines the quantity of the specimen obtained is insufficient to be split, the commission veterinarian shall certify that fact in writing and submit the entire specimen to the laboratory for testing.

~~[(b) The commission veterinarian or commission veterinarian's designee shall retain custody of the portion of the specimen that is not sent to the laboratory. The veterinarian or designee shall store the retained part in a manner that ensures the integrity of the specimen.]~~

(b) ~~[(c)]~~ An owner or trainer of a horse which has received a positive result on a drug test may request, in writing, that the split of the specimen for the primary sample with the positive result, be submitted for testing by a different technician at a Commission approved testing laboratory. ~~[retained serum or urine, whichever provided the positive result, be submitted for testing to a Commission approved and listed laboratory that is acceptable to the owner or trainer.]~~ The owner or trainer must notify the executive director ~~[secretary]~~ of the request not later than 48 hours after notice of the positive result. Failure to request the split within the prescribed time period will be deemed a waiver of the right to the split specimen.

~~[(d) If the retained part of a specimen is sent for testing, the commission staff shall arrange for the transportation of the specimen in a manner that ensures the integrity of the specimen. The person requesting the tests shall pay all costs of transporting and conducting tests on the specimen. To ensure the integrity of the specimen, the split specimen must be shipped to the selected laboratory no later than 10 days after the day the trainer is notified of the positive test. Subject to this deadline, the owner or trainer of the horse from whom the specimen was obtained is entitled to be present or have a representative present at the time the split specimen is sent for testing.]~~

(c) ~~[(e)]~~ If the test on the split specimen confirms the findings of the original laboratory, it is a prima facie violation of the applicable provisions of the chapter.

(d) ~~[(f)]~~ If the test on the split specimen portion does not substantially confirm the findings of the original laboratory, the stewards may not take disciplinary action regarding the original test results.

(e) ~~[(g)]~~ If an act of God, power failure, accident, labor strike, or any other event, beyond the control of the Commission, prevents the split from being tested, the findings of the original laboratory are prima facie evidence of the condition of the horse at the time of the race.

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

Filed with the Office of the Secretary of State on September 17, 2024.

TRD-202404467
Amy F. Cook
Executive Director
Texas Racing Commission
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 833-6699

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TITLE 22. EXAMINING BOARDS

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 fixes a clerical error made by staff to the total fee amounts for the dentist renewal fee, dentist renewal late - 1 to 90 days fee, and dentist renewal late - 91 to 364 days fee. An extra $15 charge was mistakenly imposed, and therefore the proposed amendment updates the fees to remove the extra charge.

In addition, the proposed amendment includes late fees for the dentist and dental hygienist temporary license by credentials renewal application. The late fees are imposed in accordance with Section 257.002(c)-(c-1) of the Texas Occupations Code by requiring licensees whose license is expired for 90 days or less to pay a renewal fee that is equal to 1 ½ times the normally required renewal fee, and whose license is expired for more than 90 days but less than one year to pay a renewal fee that is equal to two times the normally required renewal fee.

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 proposed 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 proposed 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; (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: The Board finds that the provisions of Texas Government Code Section 2001.0045(b) do not apply to the proposed rule because it implements statutory requirements, and is necessary to protect the health, safety, and welfare of the people of Texas, as provided in Section 2001.0045(c)(6) and (9).

Comments on the proposed rule 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 November 28, 2024 [~~May 23, 2024~~], 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.

Filed with the Office of the Secretary of State on September 20, 2024.

TRD-202404550
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 305-8910

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 191. DISTRICT REVIEW COMMITTEES

22 TAC §§191.1 - 191.5

The Texas Medical Board (Board) proposes the repeal of current Chapter 191, concerning District Review Committees, §§191.1 - 191.5.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 191 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the repeal may be submitted using this link: https://forms.office.com/g/DibuGXnyfE. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§191.1 Purpose.

§191.2 Districts.

§191.3 Committee Meetings.

§191.4 Activities and Scope of Authority.

§191.5 Per Diem and Expenses.

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

Filed with the Office of the Secretary of State on September 17, 2024.

TRD-202404478
Scott Freshour
General Counsel
Texas Medical Board
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 305-7030

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CHAPTER 196. VOLUNTARY RELINQUISHMENT OR SURRENDER OF A MEDICAL LICENSE

22 TAC §§196.1, 196.2, 196.4, 196.5

The Texas Medical Board (Board) proposes the repeal of current Chapter 196, concerning Voluntary Relinquishment or Surrender of a Medical License, §§196.1, 196.2, 196.4, and 196.5.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 196 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the repeal may be submitted using this link: https://forms.office.com/g/DibuGXnyfE. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§196.1. Relinquishment of License.

§196.2. Surrender Associated with Disciplinary Action.

§196.4. Relicensure After Relinquishment or Surrender of License.

§196.5. Competence to Resume Practice.

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

Filed with the Office of the Secretary of State on September 17, 2024.

TRD-202404479

Scott Freshour
General Counsel
Texas Medical Board
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 305-7030

CHAPTER 199. PUBLIC INFORMATION

22 TAC §§199.1 - 199.6

The Texas Medical Board (Board) proposes the repeal of current Chapter 199, concerning Public Information, §§199.1 - 199.6.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 199 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: https://forms.office.com/g/DibuGXnyfE. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§199.1. Public Information Committee.

§199.2. Requests to Speak.

§199.3. Requests for Information.

§199.4. Charges for Copies of Public Records.

§199.5. Notice of Ownership Interest in a Niche Hospital.

§199.6. Enhanced Contract or Performance Monitoring.

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

Filed with the Office of the Secretary of State on September 17, 2024.

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Scott Freshour
General Counsel
Texas Medical Board
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 305-7030

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

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

The Texas Department of Insurance (TDI) proposes to repeal 28 TAC §§3.1 - 3.8, and replace them with new Division 1, containing §3.1 and §3.2; Division 2, containing §§3.10 - 3.23; Division 3, containing §3.40 and §3.41; Division 4, containing §§3.50 - 3.52; and Division 5, containing §§3.60 - 3.62, concerning filing and submission requirements for life, annuity, accident, health, and health maintenance organization (HMO) products. TDI proposes to amend §3.3100 and repeal §3.3101 and §3.3102 of Subchapter S, concerning readability. TDI also proposes to amend §§3.4004, 3.4005, and 3.4009 of Subchapter Z, concerning certain life, accident, health, and annuity forms that are exempt from review, and to repeal §3.4020, concerning policy form certifications in connection with exempt filings.

In a separate rulemaking, TDI proposes to amend 28 TAC §7.1301 and repeal §7.1302, concerning the billing system for regulatory fees, to be consistent with new and amended sections in 28 TAC Chapter 3. The proposed Chapter 7 amendment and repeal are also published in this issue of the *Texas Register*.

EXPLANATION. This proposal streamlines and modernizes the filing processes for life, annuity, accident, health, and HMO products, including form, rate, network, and advertising filings. These rules last underwent significant updates in 2003. The proposal:

- updates standards governing all filings that are submitted to TDI's Life and Health Division through SERFF;

- repeals provisions related to the manual TDI billing system;

- aligns filing procedures across the Life and Health Division by extending filing rules to apply to HMO and network filings;

- limits excessive use of variability in a filing to help TDI ensure compliance and promptly process filings;

- addresses acceptable methods of premium payment and circumstances when third-party payments must be accepted;

- expands the applicability of readability and plain language requirements to all life, annuity, credit, accident, health, and HMO products, other than group annuities and major medical products subject to existing plain language rules;

- strengthens consumer protections related to applications by adding disclosure requirements and clarifying that an applicant cannot be asked to sign an application before receiving a written copy;

- narrows the scope of filings eligible to be filed exempt; and

- reorganizes the rules for clarity and readability.

Descriptions of the new, amended, and repealed sections follow, organized by subchapter and division.

Subchapter A. Submission Requirements for Filings and Departmental Actions Related to Such Filings.

Proposed New Division 1. Applicability, Scope, and Definitions.

Section 3.1. Applicability and Scope. The proposed new section tracks provisions currently contained in the existing section. It explains that the subchapter applies to all form, rate, advertising, network, group eligibility, and informational filings for products including life, annuity, accident and health, credit life, credit accident and health, and HMO products. The new section differs from current §3.1, which is proposed for repeal. The current section does not apply to HMO products; the expanded applicability in the new section reflects that these filings are processed using the same submission procedures. While the proposed section is written broadly to capture a wide range of product and filing types, it does not require issuers to make any filing that is not already required under existing rules.

Section 3.2. Definitions. The proposed new section defines 33 terms for use in Subchapter A. Included among these are some terms contained in current §3.2, which is proposed for repeal. The proposed definitions for these terms are updated to align with terms used by industry through the filing process.

Proposed New Division 2. General Filing Requirements.

Section 3.10. Requested Filing Mode. The proposed new section is similar to subsections (a)(1) - (3) and (b)(1) in current §3.5, which is proposed for repeal. The proposed new section outlines four requested filing modes and specifies the types of filings that are eligible to be submitted on a file and use or exempt basis, at the option of the insurer, rather than being filed for review or approval. A filing that is not subject to review or approval may be filed in an informational filing mode.

Section 3.11. Submission Requirements. The proposed new section outlines submission requirements that apply to all types of filings. It duplicates submission of information currently required by existing §3.3 and §3.4(c) and (m), which are proposed for repeal. Proposed new subsection (a) would require issuers to submit filings electronically through the System for Electronic Rates & Forms Filing (SERFF) or a subsequent electronic system, and proposed subsection (b) addresses how the department would handle a system outage. TDI intends to continue using SERFF, and only anticipates that a subsequent system would be used if SERFF is replaced with a different system or the Texas Legislature mandates that a different system be used.

The proposed new section carries over language from current §3.3, but updates and simplifies it in regard to transmittal information to align with SERFF submission fields. Since some information previously collected through transmittal checklists can now be collected within SERFF fields, proposed new subsection (c) specifies the information that must be included, either in applicable SERFF fields or in a transmittal checklist. As technology evolves, TDI may modify transmittal checklists to streamline filing processes and avoid duplicative requirements. Most of the information specified in proposed new subsection (c) is substantially similar to existing §3.3 and §3.4(c) and (m). Company information in subsection (c)(1) is broader, to reflect SERFF fields. A confidentiality designation is included in subsection (c)(4) because SERFF allows all filings to be posted for public access, unless a document within the form is designated as containing confidential information. Requirements in subsection (c)(10) expand on the requirements in existing §3.3(b)(2)(J)(ii) to include a copy of a form approved before January 1, 2012, which is the date TDI's SERFF records begin.

Proposed new subsection (d) addresses submission requirements for a substantially similar, exact copy, substitution, or resubmission filing, which are similar to existing requirements in §3.6(a)(3), (4), and (6). Many of the certification requirements in existing §3.6 are included in new §3.16.

Proposed new subsection (e) references requirements for advertising filings contained in Chapter 21, Subchapter B.

Proposed new subsection (f) specifies that TDI may ask for any additional information necessary, which aligns with existing §3.6(d).

Section 3.12. Contact Person. The proposed new section aligns closely with language in existing §3.4(b). Additions include paragraph (2), requiring an issuer to provide the contact person's email address (rather than providing it "if available," as in the existing rule), and paragraph (3)(B), requiring that an issuer clearly authorize their designee to act on behalf of the issuer with respect to the type of filing. Designees might include a consulting firm, qualified actuary, or legal counsel.

Section 3.13. Filing Fees. The proposed new section sets the fee for form filings at $100, subject to certain exceptions, which are consistent with the fees in existing §3.4(r). Likewise, rate filing fee amounts are unchanged at $100 for certain products subject to approval, and $50 for others. The proposed new section does not apply filing fees to any other filing types (e.g., advertising, network, group eligibility, or informational filings). These changes simplify the fee structure currently addressed in §3.4(r). The proposed new section requires all form and rate filing fees to be paid through SERFF, or a subsequent electronic payment system designated by TDI. Proposed new §3.13 requires issuers to pay filing fees at the time a filing is accepted for review, and provides that TDI may consider a filing withdrawn if the issuer does not pay the fee within five business days following acceptance for review. This ensures that the appropriate fee will be paid before a filing is approved. The proposed new section will eliminate the need for TDI's manual billing system, thus TDI proposes to repeal §7.1302, which addresses TDI's manual billing system.

Section 3.14. Purpose and Use. The proposed new section includes provisions similar to existing §3.2(9) and §3.3(b)(2)(F). The existing provisions are included in new paragraphs (1) - (4), (6), and (7). Instead of using the term "form," which is found in existing §3.2(9), the proposed new section uses the term "filing" to reflect the focus of Chapter 3, as proposed, on filing requirements. Paragraph (3)(B) provides examples of the types of key or unique provisions in an accident and health filing that must be identified, including exclusive provider benefits and innovative excepted benefit products. Innovative excepted benefit products would include experimental or nonconventional coverage types addressed in §3.3081 and authorized by Insurance Code §1201.103. New paragraph (5) does not duplicate a provision from existing §3.2 or §3.3. It requires a filing to explain any new program or initiative addressed by the filing. Examples of this include a noninsurance benefit authorized by Insurance Code §1701.061, or a steering or tiering program addressed in Insurance Code §1458.101. This provision will streamline TDI's review by helping staff understand how the filing will be used at the beginning of the review and reducing the need to ask additional questions.

Section 3.15. Confidential Information in Filings. The proposed new section codifies TDI's existing process for handling confidential information in filings and aligns with the Property and Casualty Filings Made Easy rules in 28 TAC Chapter 5, Subchapter M. The new subsections address public inspection of filings through SERFF Filing Access; confidentiality and disclosure

under the Texas Public Information Act; a prohibition against declaring an entire filing confidential; redaction; and the confidentiality of personally identifiable information. The definition of personally identifiable information under §3.2 does not include the name of a group policyholder, thus this section does not require an issuer to designate a group policy face page as confidential.

Section 3.16. Certifications. The proposed new section lists requirements for certifications that are similar to those in existing §3.4(j) and §3.6(a). Proposed new subsection (a) lists general certifications required for all filings to affirm the company's responsibility to thoroughly review a filing, consistent with existing §3.6(a)(1). Paragraphs (1) and (2) state the certification is on behalf of the issuer and the issuer is bound by it. Paragraphs (3) and (4) state that the individual is familiar with the laws applicable to the filing, has reviewed the filing, and believes the filing is compliant. Paragraph (5) states that the form filed is not deceptive or misleading; this certification was previously required only in exempt filings. Paragraph (6) affirms that, if applicable, the filing accurately reflects the Flesch score of each form.

Subsection (b) lists additional certifications from existing §3.6(a)(2) that only apply to certain filings by creating new Figure 28 TAC §3.16(b) to clearly display when these specific certifications should be used. The first two certifications ensure that companies do not knowingly file forms with compliance deficiencies that have been previously flagged by the department. The third certification ensures that companies review and update previously filed forms as needed to comply with new requirements before submitting a substantially similar, exact copy, or substitution filing. The fourth and fifth certifications affirm that all changes to a form are identified and that any exact copy filing meets the definition. The sixth certification affirms that a substitution filing is made only for forms that have not been issued. The seventh certification affirms that a form will be marketed as supplemental coverage only if it is filed for review as supplemental. The eighth certification affirms that products created using matrix or insert page forms will comply, since TDI does not review such products in their final form. The ninth - 13th certifications affirm that exempt filings will comply with Chapter 3, Subchapter Z, similar to existing certifications in §3.6(a)(9).

Subsection (c) outlines the consequences for submitting false certifications by referencing Insurance Code §841.704 and §843.464, which address criminal penalties for knowingly making false statements to TDI.

Section 3.17. Form and Rate Filing Requirements. The proposed new section updates form and rate filing requirements for efficient review. Subsection (a) specifies that, except for general use filings, a single filing may contain rates and forms only for one product.

Subsection (b) requires general use forms to be filed individually, unless the forms are reasonably related and intended to be used with one or more of the same underlying products. These provisions are substantially similar to existing rules; for example, existing §3.4(r)(1)(A) specifies the $100 filing fee applies to "each contract or policy, including . . . its certificate, . . . application, and . . . riders filed as part of the entire policy or contract." These provisions ensure that filings are accurately classified on the basis of the type of product and help TDI staff apply the correct product standards. TDI encourages issuers to identify related filings in the general information provided with the filing so that TDI can assign related filings to the same reviewer, or otherwise coordinate TDI staff to ensure prompt and consistent reviews. Issuers can also identify subsequent filings as "substantially similar" to a previous filing, which allows TDI staff to focus on new language and perform a faster review.

Subsection (c) specifies the minimum requirements for a face page.

Subsection (d) addresses the requirements for unique form numbers, which are addressed in existing §3.4(c)(2). Form numbers are required on each page or below each matrix provision.

Subsection (e) contains requirements for limited, partial refilings that are consistent with existing §3.4(h).

Subsection (f) requires amendments and endorsements to be accompanied by an insert page or a revised form that incorporates the changes made. This requirement supports plain language and readability and ensures that when consumers are issued coverage, they receive a clean, updated document. An amendment or endorsement form should be issued only to modify a consumer's existing coverage document and should not accompany newly issued coverage.

Section 3.18. Variable Material. The proposed new section includes updated requirements similar to those in existing §3.4(d) and (e). These provisions promote the appropriate use of variability where it adds value and efficiency. The limits on variability are necessary to address challenging reviews and ensure compliance. TDI anticipates that the proposed limits on variable material will significantly increase speed-to-market by reducing the time issuers spend correcting deficient filings.

Subsection (a) describes the general and proper use of variable material.

Subsection (b) requires issuers to submit a statement of variability that demonstrates compliance and provides a clear explanation of how the material will vary.

Subsection (c) describes permissible uses of variability.

Subsection (d) explains limits on variability. A form number cannot be variable because TDI's approval of a form is tied to the form number. Likewise, an issuer's name cannot be variable because TDI separately approves each issuer's use of a form. Instead, issuers can submit an exact copy filing if they experience a name change or want to use the same form that was approved for another company. Different product types must be filed in separate filings so the filing reflects the appropriate type of insurance and the correct review standards can be applied. While variability cannot be used to create different product types, issuers have other tools available that support efficient filing methods, including general use, matrix provisions, insert page filing options, and the option to identify a filing as substantially similar to another filing, which allows for a streamlined review. The ranges of variability specified must be consistent with any applicable rate filing. TDI cannot approve a form unless it can verify that the issued form will comply with applicable requirements.

Subsection (e) addresses fill-in material for life and annuity forms, consistent with existing §3.4(d)(2).

Subsection (f) prohibits the use of variable material in life forms for text and specifications of nonforfeiture assumptions, similar to existing §3.4(e)(2), and it clarifies proper use of zero-range entries.

Subsection (g) clarifies that any change to a statement of variability is considered a change to the form itself and must be filed in conjunction with the form.

Subsection (h) specifies that TDI may request examples of issued forms without variability, if needed to aid staff's understanding of how the variability will function. The limits set on variability in this section provide insurers with clear guidance on the proper and expected use of variable material to ensure efficient reviews. These limits do not restrict general use filings that can capture similar documents used in a variety of contract forms.

Section 3.19. Matrix and Insert Page Forms. The proposed new section sets out submission requirements that apply to a matrix or insert page form filing. The proposed requirements are similar to requirements in existing §3.4(f) and (g), but they are combined where requirements for matrix or insert pages are identical. Subsection (a)(1) addresses form number requirements, and subsection (a)(2) clarifies when a matrix provision can be used in multiple products. Subsection (a)(3) requires the issuer to explain how the forms will be used. Subsection (b) explains how an insert page may be used to replace an existing page of a previously approved or exempted form, consistent with existing §3.4(g)(3).

Section 3.20. Plain Language and Readability Requirements. The proposed new section extends plain language and readability requirements to life and annuity products (other than group annuity products) and group accident and health excepted benefit products, other than major medical plans. Major medical plans continue to be subject to plain language and readability requirements under similar provisions in Chapter 3, Subchapter G. To promote uniformity, the requirements in this section replace similar readability requirements for individual accident and health products under Chapter 3, Subchapter S, which are proposed for repeal.

Subsection (a) describes the purpose of the plain language requirements.

Subsection (b) describes the forms to which the plain language requirements apply.

Subsection (c) requires applicable forms to be written in plain language.

Subsection (d) sets the Flesch Reading Ease score at 40; references the method of calculation in existing Chapter 3, Subchapter G; requires a statement of the Flesch score; and states that TDI may require additional information to verify compliance. The calculation method allows certain text to be excluded, including language required by any state or federal law.

Subsection (e) provides guidance to issuers by describing plain language best practices.

Subsection (f) addresses how a definitions section may be used.

Subsection (g) addresses font size and formatting.

Subsection (h) specifies when a table of contents or index is required.

These provisions are in line with industry standards and provide additional guidance to aid companies in submitting compliant form filings. Most issuers are already using plain language best practices.

Section 3.21. Group Filings. The proposed new section includes updated requirements similar to those currently in existing §3.4(o) and §3.6(c). Group filing requirements are streamlined by not including the requirement from existing §3.6(c)(2) for issuers to submit separate form filings for each group type.

Subsection (a) uses updated language to identify the Insurance Code provisions that address eligible policyholders for group and blanket coverage, applies the criteria for accident and health policyholders to apply to groups purchasing HMO coverage, specifies when an issuer must submit a group eligibility filing, and explains how group eligibility information and forms may be submitted. Under the new section, issuers will not be required to submit the group eligibility information for review for each product being issued. Instead, if TDI has verified the group's eligibility in the past five years, the issuer will submit only an informational filing.

Subsection (b) specifies the group eligibility filing requirements for coverage to be issued to an association, which are similar to requirements in existing §3.6(c)(3)(B) - (D). Those filings must identify the types of coverage the issuer will offer the association; demonstrate that the association is an eligible group policyholder; and include an alternate face page and a copy of the association's constitution, bylaws, and articles of incorporation.

Subsection (c) specifies the group eligibility filing requirements for coverage to be issued to a trust, which are similar to requirements in existing §3.6(c)(3)(D) and (F). Trust filings must include a copy of the trust agreement and an alternate face page form for each related industry group. Association trust filings also must include a list of all participating associations and a reference to the group eligibility filing for each association.

Subsection (d) requires issuers to notify TDI of additional associations within a multiple association trust by making an informational filing and is similar to requirements in existing §3.6(c)(3)(E). Approved association trusts must notify TDI of any additions to the trust upon enrollment and include additional documentation.

Subsection (e) requires issuers to submit a group eligibility filing for any type of group or blanket policyholder that is not identified in statute as an eligible policyholder, including actuarial information similar to requirements in existing §3.4(q)(6). These filings are needed to determine whether it is in the best interest of consumers to allow a particular "discretionary group" to offer insurance coverage.

Subsection (f) specifies information that issuers must provide when issuing a major medical health benefit plan to an association, which is similar to requirements in existing §3.6(c)(3)(A) and relevant for determining the applicable requirements. For example, different requirements apply to member-only bona fide associations, bona fide employer associations, and associations issuing coverage to small employers versus large employers.

Subsection (g) clarifies that products issued to educational institutions on a group basis must be filed under Insurance Code §1131.064 or §1251.056, and that products issued to educational institutions on a blanket basis must be filed under Insurance Code §1251.353. While educational institutions are specifically identified as eligible blanket policyholders under Insurance Code §1251.353, the statute does not specifically identify them as eligible group policyholders.

Subsection (h) is consistent with existing §3.4(o), which requires issuers to ensure that insurance certificates or HMO evidences of coverage being delivered to Texas residents comply with all the applicable laws of this state and include copies of out-of-state documentation.

Section 3.22. Braille and Non-English Filings. The proposed new section provides guidance regarding braille and non-English filings. Subsection (a) aligns with existing §3.4004(h) and requires a certification that the form meets the definition of an exact copy. Subsection (b) allows a filing that includes only a braille or non-English language version of a previously approved form to be filed in an informational mode or an exempt mode.

Section 3.23. Acceptance, Rejection, and Disposition of Filings. The proposed new section includes reorganized versions of rules in existing §3.7 to clarify procedures for accepting and processing filings and to avoid restating statutory provisions. New subsection (a) addresses acceptance of filings and includes provisions similar to existing §3.7(a) and (b). Subsection (a)(1) explains that filings that are subject to approval and not rejected will be considered filed as of the submission date. It also references the statutory provisions that address deemer periods. Subsection (a)(2) explains that an exempt filing that is not rejected will be considered exempt as of the disposition date. Subsection (a)(3) explains that an informational filing that is not rejected will be considered filed as of the submission date and will be closed with an informational disposition.

New subsection (b) addresses rejection of filings that are incomplete or otherwise do not meet submission requirements, similar to existing §3.7(a)(2). TDI may reject a filing if an issuer does not make corrections within two business days of TDI's request for corrections. This limited timeframe reflects the straightforward nature of submission deficiencies, in contrast to the more complex and substantive nature of the compliance standards for which corrections may be requested under subsection (c). TDI will not reopen a filing that has been rejected.

New subsection (c) is similar to existing §3.7(c) in addressing requests for correction and extensions and waivers of deemer dates. These provisions are necessary to ensure that a form is not deemed approved when compliance issues have been identified. Submission requirements for corrections consist of a summary and certification of identified changes similar to those in existing §3.6(a)(5)(E) and (F). In the interest of processing filings promptly, subsection (c)(3) requires issuers to submit corrections within 10 business days. This replaces the 30-day period provided in existing §3.7(c)(4) and is necessary to allow TDI to review filings within the statutory deemer dates.

New subsection (d) addresses how TDI will notify issuers of a filing disposition.

New subsection (e) explains that TDI may withdraw approval only after notice and opportunity for hearing, consistent with existing §3.7(e).

New subsection (f) addresses issuer responsibilities to retain records related to form filings.

Proposed New Division 3. Requirements Relating to Application Form Filings.

Section 3.40. Applications Generally. The proposed new section explains TDI's expectations for application form filings, consistent with Insurance Code §1701.055. Subsection (a) requires application form filings to address the type of contracts and products the application will be used with and whether the application will be used in paper, electronic, or telephonic form.

Subsection (b) requires issuers to submit entire applications for review and to make clear what an applicant is required to complete. This section does not require issuers to file screenshots or websites for review, but rather to include in the form filing all text that may be used in an application, however it is delivered.

Subsection (c) explains the requirements for applications to be used by multiple issuers. Subsections (a), (b), and (c) are consistent with TDI's current review standards.

Subsection (d) specifies fairness standards for questions asked on an application form. Questions must be consistent with underwriting standards, limited to information necessary to issue or administer the policy, and may not require the applicant to self-diagnose.

Subsection (e) specifies disclosure requirements for application forms, explaining that the application will become part of the contract and helping applicants understand underwriting standards. It also requires applications to include a method for applicants to opt out of electronic communications if the issuer does not seek affirmative consent. This provision helps issuers ensure their forms and procedures comply with Insurance Code Chapter 35 as amended by House Bill 1040, 88th Legislature, 2023. Finally, it requires issuers to disclose how applicants' personal information may be obtained from third parties.

Section 3.41. Standards for Electronic and Telephonic Applications. The proposed new section adds provisions to aid issuers in complying with appropriate delivery of applications, consistent with TDI's current review standards. Subsection (a) references an issuer's obligation to comply with Insurance Code Chapter 35.

Subsection (b) requires issuers to provide applicants with a written copy of the completed application before signing. This provision is needed to ensure that a consumer is not asked to verbally sign an application without being able to verify that it was completed accurately. It does not prevent an issuer from delivering a written copy of the application electronically.

Subsection (c) requires issuers to deliver the completed application in a manner that allows the consumer to keep it for their records in compliance with Texas Business Commerce Code §322.008(a) and Insurance Code §35.004(c).

Subsection (d) requires issuers to include a description of security procedures that will be used to verify the authenticity of an electronic transaction.

Proposed New Division 4. Requirements Specific to Accident, Health, and HMO Filings.

Section 3.50. Filing Requirements for Health Plan Disclosures. The proposed new section is similar to the requirements in existing §3.4(i) and identifies each product for which an outline of coverage or similar plan disclosure is required to be filed. Applicable product filings must either include the required disclosure document or reference the filing ID that the document was filed separately under.

Section 3.51. Payment of Premiums or Cost Sharing. The proposed new section implements Insurance Code Chapter 541 and addresses consumer protections related to restrictions on the form or manner of premium or cost-sharing payments for major medical and Medicare Supplement coverage.

Subsection (a) specifies practices that are unfair methods of competition or unfair or deceptive acts, such as failing to disclose in the contract a restriction on the form or manner of the payment of premiums or cost sharing.

Subsection (b) requires issuers to permit payments by an enrollee's family, approved entities under 45 CFR §156.1250, or another type of third party if certain criteria are met. This section does not require issuers to accept premium payments from third parties that are health care providers or are financially interested.

Subsection (c) clarifies that the section does not modify the requirements or applicability of Insurance Code §1369.0542.

Section 3.52. Filings Required for Termination of Guaranteed Renewable Major Medical Coverage. The proposed new section adds clarity to the filing requirements for issuers terminating or nonrenewing all guaranteed renewable major medical coverage in a given market or service area. This is needed to provide clarity on how to file required notices. These filings give TDI the opportunity to help issuers comply. They also allow TDI to help consumers affected by terminations.

Subsection (a) references the rules that require issuers to provide notice regarding termination of guaranteed renewable major medical coverage.

Subsection (b) identifies the information that issuers must include in filings related to termination of guaranteed renewable major medical coverage.

Subsection (c) clarifies that the filing requirements are in addition to withdrawal plan rules in Chapter 7, Subchapter R, if the termination of coverage constitutes a withdrawal under Insurance Code Chapter 827.

Proposed New Division 5. Actuarial Filing Requirements.

Section 3.60. General Actuarial Filing Requirements. The proposed new section requires issuers to submit either rate filings or other actuarial information as required by law and specifies the existing applicable statutes and rules. This section replaces existing provisions in §3.1(8) and (10) and §3.4(p), which are proposed for repeal.

Section 3.61. Actuarial Information for Certain Accident and Health Filings. The proposed new section specifies the actuarial information that must be included for certain accident and health products. This section includes updated versions of filing requirements previously contained in §3.4(q)(5) and (6). Subsection (a) specifies that the section applies to individual accident and health products and group accident and health products issued to alternative types of group policyholders.

Subsection (b) clarifies that the section does not apply to rate filings for non-grandfathered individual major medical, small group major medical, Medicare supplement, or long-term care products. Rate filing standards for these are addressed in separate rules.

Subsection (c) clarifies that a premium rate schedule must be filed before being used.

Subsection (d) requires a premium rate schedule to be accompanied by an actuarial memorandum signed by a qualified actuary.

Subsection (e) specifies actuarial filing submission requirements for new products, which are not specified in existing rules, beyond a brief reference in §3.4(q)(6). This information is necessary to implement Insurance Code §1251.056 and §1701.057, which require TDI to assess whether benefits are reasonable in relation to the premiums charged.

Subsection (f) specifies requirements for rate adjustment filings for existing products, and replaces provisions addressed in existing §3.4(q)(5).

Section 3.62. Actuarial Information for Life and Annuity Filings. The proposed new section replaces existing §3.4(q)(1) and (2) to update the actuarial information required for life and annuity filings, consistent with current agency standards. Subsection (a)(1) references requirements in Insurance Code Chapter 1105. Subsection (a)(2) addresses actuarial information required for universal life filings. Subsection (a)(3) references the actuarial information required for variable life forms. Subsection (a)(4) requires a certification similar to existing §3.4(q)(1)(C).

Subsection (b) addresses actuarial information required for annuity filings, which is substantially similar to existing §3.4(q)(2).

Subsection (c) addresses multiple guaranteed interest charge periods.

Subchapter S. Minimum Standards and Benefits and Readability for Individual Accident and Health Insurance Policies.

Section 3.3100. Policy Readability Generally. Amendments to the section revise duplicative readability references in Chapter 3, Subchapter S, to align with standards listed in new §3.20. Subsection (a) is amended to add the title for Insurance Code Chapter 1201, Subchapter E, and strike unnecessary references to Chapter 1201. Subsection (b) is amended to reference plain language and readability standards in proposed new Chapter 3, Subchapter A.

Repeal of §3.3101 and §3.3102. The proposal repeals rules related to plain language and readability standards that are replaced by proposed new §3.20.

Subchapter Z. Exemption from Review and Approval of Certain Life, Accident, Health, and Annuity Forms and Expedition of Review.

Section 3.4004. Exempt Forms. The proposed amendments to the section update the types of documents that are eligible to be filed in an exempt filing mode to reflect the types of forms prior review is necessary for to ensure consumer protection based on changes in the market and the department's observation of compliance issues through consumer complaints and audits of exempt forms.

Amendments proposed in subsection (a) broadly exempt group and individual term life insurance forms. Exempt privileges are removed for product types that are subject to actuarial review, including whole life, endowment life, and certain limited refilings. This change will have minimal impact on issuers because the volume of exempt filings is low--an estimated four whole life filings may be impacted based on filing patterns in 2022 and 2023. TDI's average review time for life filings is less than a month, and issuers can elect "file and use" if they do not want to wait for TDI to complete its review. The subsection is simplified to remove reference to different types of groups, forms, and products previously addressed in paragraphs (1) - (3). Individual variable life with a separate account only, which was previously specified as exempt in paragraph (3)(Q) is renumbered as paragraph (2). Subsequent paragraphs are renumbered. Nonsubstantive amendments are made to paragraphs (3) and (4) as renumbered to clarify abbreviated terms. Paragraph (5) as renumbered is amended to remove exempt privileges for limited refilings that change the mortality table or interest rates for new issues under the policy form because these filings require actuarial review.

Amendments proposed in subsection (b) clarify that it addresses the types of life insurance forms that are not permitted to be filed as exempt. Paragraph (1) is amended to clarify that universal life includes flexible premium adjustable life. Paragraph (2) is amended to remove universal-related life, which duplicates the reference to universal life in paragraph (1), and add whole life, consistent with the removal of ordinary life from subsection (a)(3)(A) because it is subject to actuarial review. Paragraph (3) is amended to remove adjustable life, which is now referenced in paragraph (1) and add endowment life, consistent with its removal from subsection (a)(3)(M) - (O), because it is subject to actuarial review. Nonsubstantive amendments are made to paragraphs (8) and (10) - (12). New paragraph (13) is added for limited refilings for life insurance that change the mortality table or interest rates for new issues under the policy form, consistent with the change made in subsection (a)(4).

Nonsubstantive amendments are proposed in subsection (c) to conform to agency style.

Amendments to subsection (d) are proposed to clarify that it addresses the types of annuity forms that are not permitted to be filed as exempt. The term "index-linked crediting" replaces "equity indexed" to be consistent with the terminology more commonly used by issuers. New paragraph (6) is added to list contingent deferred annuities.

Amendments proposed in subsection (e) update the types of accident and health forms that can be filed as exempt. Nonsubstantive amendments in paragraph (1)(A) and (C) simplify the exemption of certain group accident and health forms by removing reference to different types of forms. Paragraph (1) is amended to remove exempt privileges for blanket forms in subparagraph (B) because of a pattern of compliance issues. Subsequent subparagraphs are redesignated.

Nonsubstantive amendments are made to paragraph (1)(B) as redesignated to clarify the exemption for employer plans that supplement Medicare. Nonsubstantive amendments in paragraph (2) simplify the exemption of certain types of group and individual accident and health forms by removing reference to different types of forms. Paragraph (2)(C) is amended to remove exempt privileges for dental forms because of a pattern of compliance issues and clarify that hospital indemnity forms are eligible to be filed exempt. Paragraph (2)(D) is amended to remove exempt privileges for in-patient confinement and basic hospital expense coverages because, unless they are structured as hospital indemnity coverage, they are reviewed as major medical products. Subsequent subparagraphs are redesignated. A nonsubstantive amendment in paragraph (2)(H) removes the reference to Champus supplements because those policies are rarely filed, so the example is not useful. Paragraph (2)(K) is amended to remove exempt privileges for prescription drug policies because major medical review standards apply. Paragraph (3) is amended to remove exempt filing privileges for certain alternate face pages because group eligibility filing requirements are addressed in Chapter 3, Subchapter A. As proposed in §3.13, group eligibility filings would not be charged a filing fee.

Amendments to subsection (f) are proposed to remove repetitive language and clarify that it addresses the types of forms and rates that are not permitted to be filed as exempt. Paragraph (1) is amended to modernize the language related to comprehensive or major medical policies by adding a reference to "guaranteed renewable or short-term limited duration" and removing the reference to limited benefit policies, which are no longer permitted under federal law. Nonsubstantive amendments are made to paragraphs (2) - (6). New paragraph (7) is added to list "other fixed indemnity coverage" that is more extensive than coverage for hospital confinement because such forms often provide innovative benefits and contain compliance issues. New paragraph (8) is added to clarify that the exempt status for forms does not extend to rates that are required to be filed. TDI has identified that rates related to individual health products have been inappropriately filed as exempt, and these rates are often unreasonable in relation to the benefits provided. New paragraph (9) is added to list dental policies because TDI has consistently found compliance issues related to unique requirements in Texas law.

Amendments to subsection (g) are proposed to remove unnecessary language related to certifications and remove a reference to §3.4020, which is proposed for repeal. While exact copies can almost always be filed exempt, an exception is added to disallow an exact copy filing to be filed exempt for preferred provider benefit plans so that staff can verify that these plans have satisfied examination requirements added to Insurance Code §1301.056.

An amendment to subsection (h) is proposed to remove the reference to the outdated certification form. Certifications are addressed in proposed §3.16. For clarity and consistency with new §3.22, the term "foreign language" is replaced with references to the terms "braille" and "non-English."

Section 3.4005. General Information. Proposed amendments to subsection (c) remove unnecessary language related to certifications and a reference to §3.4020, which is proposed for repeal. Language is added to reference the certifications required for exempt filings in §3.16. Also, a nonsubstantive amendment is proposed for subsection (b) to improve readability.

Section 3.4009. Sanctions and Cancellation of Exempt Filing Privileges. Proposed amendments to subsection (a) explain that an insurer's exempt filing privileges may be cancelled if the insurer makes an exempt filing that fails to comply that results in TDI determining that the filing has failed audit. If TDI determines it is appropriate to cancel exempt filing privileges, this will be communicated in the failed audit notice. This removes the requirement that TDI hold a hearing before canceling an insurer's exempt filing privilege. However, it does not remove an insurer's right to request a hearing to challenge the failed audit determination, consistent with Insurance Code Chapter 36. TDI anticipates that the need to take action under this section will be rare. However, to protect consumers and maintain a fair and competitive market, it is important to ensure TDI can take prompt action when needed. Nonsubstantive amendments are made in subsections (b) and (c) to improve readability.

Section 3.4020. The proposal repeals §3.4020, which contains a figure with outdated certifications. New certifications are proposed in §3.16. Conforming changes are made in §3.4004 and §3.4005 to remove references to §3.4020.

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

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

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the sections as proposed are in effect, Ms. Bowden expects that enforcing and administering the sections will have the public benefits of ensuring that TDI can efficiently process life and health filings, including forms, rates, networks, advertising, group eligibility, and other informational documents required to be filed with TDI, and ensure life and health products comply with applicable requirements. The requirements will also promote consumer protection and ensure life and health products are not unjust or deceptive.

The requirement in §3.11(a) for issuers to use SERFF to submit filings will help TDI efficiently comply with Government Code Chapter 552 by facilitating the appropriate release of information while including the necessary technical safeguards to protect confidential information. It will also help TDI function more efficiently by reducing the administrative tasks associated with receiving, scanning, storing, and replying to paper filings.

The requirement in §3.13(d) for issuers to pay applicable fees through the SERFF EFT system or another electronic payment option designated by TDI will allow TDI to eliminate its manual billing system that is addressed in §7.1302, which has been proposed for repeal. This change creates administrative efficiency for TDI and issuers by ensuring that correct fee amounts are transmitted within the filing, without the need to separately track which fees have not been paid and process invoices. It also ensures that no issuers will have their filings held up for lack of payment.

New plain language standards in §3.20 will have the public benefit of improving consumers' ability to understand their coverage documents. Likewise, the requirement in §3.17(f) will improve readability by reducing issuers' reliance on amendments and ensuring that newly issued coverage will be clearly explained in a single cohesive document. In the absence of plain language standards, issuers might use confusing language or organization, which could be unjust, misleading, or deceptive, contrary to Insurance Code §1701.055.

New requirements for applications in §3.40(d) will have the public benefit of ensuring that applications for life and health coverage are fair, do not require applicants to self-diagnose, and align with issuers' underwriting standards. New requirements for applications in §3.40(e) will have the public benefit of helping applicants understand the underwriting process and how the applicant's personal information may be obtained from third parties.

New requirements for electronic and telephonic applications in §3.41 will have the public benefit of ensuring that consumers can verify that any answers provided through a telephonic application have been accurately captured, and ensuring that issuers have security procedures in place that allow them to verify the authenticity of electronic transactions.

New provisions related to payment of premiums or cost sharing in §3.51 will have the public benefit of ensuring that issuers do not impose unfair restrictions on the form or manner of premium and cost-sharing payments and requiring issuers to disclose any payment requirements within their contract.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL.

TDI anticipates that there will be possible costs to persons required to comply with the sections as proposed during each year of the first five years that the rules will be in effect. However, these possible costs will be offset with cost savings that result from the proposed sections.

Electronic Filing Requirements. Proposed new §3.11 requires issuers to submit filings through SERFF. Since the use of SERFF is not currently required, the proposed requirement in §3.11(a) could have a cost impact on any issuer that currently submits filings outside of SERFF. In 2024, SERFF charges a fee of $18.68 for each filing. In addition, for form filings, issuers also must pay a fee (currently $35 per filing) for data organization and consolidation services.

However, there is also a cost for paper filings. Issuers must pay to print and mail the filing. TDI estimates that a typical initial filing may cost $5 - $10 dollars to print, and $9.85 - $30.45 to mail, based on USPS prices for flat rate envelopes. Costs will vary depending on the number of pages submitted, the speed of delivery selected, and the number of times an issuer needs to make corrections. TDI also estimates it would take an additional 15 minutes of time for an administrative assistant to process a paper filing, compared with submitting a filing through SERFF. According to data maintained by the Texas Workforce Commission and located at www.texaswages.com/WDAWages, an administrative assistant working in Texas earns a median hourly wage of approximately $19.47. Costs would be incurred multiple times within a filing if TDI identifies any compliance deficiencies that require changes because the issuer would need to print and mail new copies of the corrected documents. Also, waiting for documents to be mailed would add significant time to the typical review period.

While TDI is not able to quantify the value of the time saved by using SERFF, the data shows that issuers do not choose to use paper filings, even though that option exists under the current rules. Over the course of 2022 and 2023, TDI received just one paper filing. Issuers voluntarily use SERFF because it provides a cost-effective option for issuers to transmit filings, store information, communicate with TDI staff, make information publicly available, and designate any information that is proprietary or confidential. Because of this, Ms. Bowden estimates that this change in practice will not cause issuers subject to the proposal to incur additional costs.

Filing Fees. TDI anticipates that the proposed rules that impact the amount of filing fees charged will result in cost savings for issuers. The proposed rules maintain the existing fee structure for all form and rate filings. Fees will not be charged for other types of filings, including informational filings, advertising filings, network filings, and group eligibility filings. While Insurance Code §1701.053 authorizes fees to be charged for each form, the proposed rules apply a single fee for all forms contained in a filing (except for matrix forms, for which fees are unchanged). Issuers are permitted to include multiple forms related to a given product within a single filing, such as an application, policy, certificate, and optional rider.

There are no direct increases to filing fees; however, there are some circumstances where issuers may experience some indirect costs. While the fee for exempt filings is maintained at $50, changes to the types of filings that are eligible to be filed as exempt in §3.4004 will effectively raise the fee for certain filings from $50 to $100. In addition, new standards on variability may sometimes require issuers to submit additional filings, such as if the issuer previously included multiple products in a single filing.

However, these increased fees are offset by decreases in fees for other types of filings. The proposed rule will eliminate fees for

network filings and group eligibility filings that contain alternate face pages, which are currently set at $100. It will also eliminate fees for certain informational filings, including outlines of coverage and disclosure forms, which are currently set at $50. Also, the removal of the requirement to submit separate form filings for different group types that otherwise use substantially the same forms will reduce the number of filings issuers must submit.

Based on filing patterns observed in SERFF in 2022 and 2023, TDI estimates that the changes in fees proposed in §3.13 and the changes to exempt filings in §3.4004 will result in a net cost savings to issuers of $25,000 - $42,000 each year.

Variability. TDI anticipates that the proposed rules may have a cost impact on some issuers that submit forms with variable material. Proposed §3.18 clarifies the permissible use of variable material. TDI estimates that compliance officers currently spend an additional 20 - 80 hours completing necessary corrections to filings that contain a large amount of variable material. These filings typically take an additional four to eight weeks to process, and sometimes must be disapproved or withdrawn by the filer if they need additional time to make corrections. TDI anticipates that the proposed rules' new limits on variable material will significantly reduce the amount of time filers spend submitting corrections or clarifying filings. TDI estimates that a compliance officer will need to spend an extra four to 16 hours to comply with new limits on variable material, including submitting separate filings where appropriate. But because the changes will eliminate the time that is currently spent correcting and explaining overly complex variability, TDI estimates that the changes to variable material will save compliance officers an estimated four to 64 hours of time, resulting in a net cost savings of $141.24 - $2,259.84 per filing. The new requirements are also expected to reduce processing time and improve speed-to-market for applicable products.

Plain Language. TDI anticipates that the proposed plain language requirements in §3.20 could have a cost impact on any issuer that has not already developed forms to meet plain language and readability standards. However, TDI believes that the vast majority of issuers will not have to make changes to comply because the plain language requirements are substantially similar to standards contained in NAIC Model #575 (Life and Health Insurance Policy Language Simplification Model Act), which was last updated in 1995 and has been adopted in at least 27 states (though not Texas). In addition, as with Texas, several other states have adopted or otherwise require their own similar plain language requirements. Also, issuers are already required to follow the plain language standards for individual accident and health products and for major medical coverage. The rule does not require issuers to submit new forms or modify previously issued forms; the plain language standards will apply only to forms filed after the rule is effective.

Any issuer that needs to measure readability for the first time or update forms to comply with the new plain language and readability requirements in proposed §3.20 may experience some new costs. TDI estimates four to 20 hours for a compliance officer to draft revisions to affected products to comply with the new rules and two to five hours for an attorney to review the revisions. According to data maintained by the Texas Workforce Commission and located at www.texaswages.com/WDAWages, compliance officers and attorneys earn a median hourly wage of approximately $35.31 and $64.50, respectively. It may cost affected issuers between $270 and $1,029 to comply with §3.20.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the sections as proposed will not have an adverse economic effect on small or micro businesses, or on rural communities. As explained in the Public Benefit and Cost Note section, TDI anticipates that all possible costs that result from the proposal will be offset by cost savings. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a cost on regulated persons because all possible costs will be offset by cost savings. Therefore, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the sections as proposed 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 require a decrease in fees paid to the agency;

- will create a new regulation;

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

- will increase the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on November 4, 2024. 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.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2850 at 2:00 p.m., central time, on November 7, 2024, in Room 2.035 of the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701.

SUBCHAPTER A. SUBMISSION REQUIREMENTS FOR FILINGS AND DEPARTMENTAL ACTIONS RELATED TO SUCH FILINGS

28 TAC §§3.1 - 3.8

STATUTORY AUTHORITY. TDI proposes the repeal of §§3.1 - 3.8 under Insurance Code §§1111A.015, 1153.005, 1701.060, and 36.001.

Insurance Code §1111A.015 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1111A.

Insurance Code §1153.005 provides that the commissioner, after notice and hearing, may adopt rules to implement Insurance Code Chapter 1153.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

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

CROSS-REFERENCE TO STATUTE. The repeal of §§3.1 - 3.8 implements Insurance Code §§1111A.005, 1153.053, 1701.053, 1701.055, 1701.057, and 1701.061.

§3.1. Scope.

§3.2. Definitions.

§3.3 Transmittal Information.

§3.4. General Submission Requirements.

§3.5. Filing Authorities and Categories.

§3.6. Certifications, Attachments, and Additional Information Requirements.

§3.7. Form Acceptance and Procedures.

§3.8. Effective Date.

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

Filed with the Office of the Secretary of State on September 19, 2024.

TRD-202404526
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 676-6555

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DIVISION 1. APPLICABILITY, SCOPE, SEVERABILITY, AND DEFINITIONS

28 TAC §3.1, §3.2

STATUTORY AUTHORITY. TDI proposes new §3.1 and §3.2 under Insurance Code §§35.0045, 541.401, 843.151, 1111A.015, 1153.005, 1201.006, 1251.008, 1271.004, 1271.253, 1501.010, 1651.004, 1651.051, 1652.005, 1652.051, 1652.052, 1652.103, 1698.051, 1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §35.0045 provides that the commissioner adopt rules necessary to implement Insurance Code Chapter 35.

Insurance Code §541.401 provides that the commissioner may adopt reasonable rules as necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §843.151 provides that the commissioner may adopt reasonable rules as necessary and proper to (1) implement Insurance Code §1367.053; Chapter 843; Chapter 1452, Subchapter A; Chapter 1507, Subchapter B; Chapters 222, 251, and 258, as applicable to an HMO; and Chapters 1271 and 1272, including rules to (A) prescribe authorized investments for an HMO for all investments not otherwise addressed in Chapter 843; (B) ensure that enrollees have adequate access to health care services; and (C) establish minimum physician-to-patient ratios, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; and (2) meet the requirements of federal law and regulations.

Insurance Code §1111A.015 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1111A.

Insurance Code §1153.005 provides that the commissioner, after notice and hearing, may adopt rules to implement Insurance Code Chapter 1153.

Insurance Code §1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Insurance Code Chapter 1201.

Insurance Code §1251.008 provides that the commissioner may adopt rules necessary to administer Insurance Code Chapter 1251, subject to a notice and hearing as required by Insurance Code §1201.007.

Insurance Code §1271.004 provides that the commissioner may adopt rules necessary to implement the section (which concerns individual health care plans) and to meet the minimum requirements of federal law, including regulations.

Insurance Code §1271.253 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove a filing under Insurance Code Chapter 1271.

Insurance Code §1501.010 provides that the commissioner adopt rules necessary to implement Insurance Code Chapter 1501 and meet the minimum requirements of federal law, including regulations.

Insurance Code §1651.004 provides that TDI may adopt rules that are necessary and proper to carry out Chapter 1651.

Insurance Code §1651.051 provides that the commissioner by rule establish standards for long-term care benefit plans, and for full and fair disclosure setting forth the manner, content, and required disclosures for the marketing and sale of these plans.

Insurance Code §1652.005 provides that, in addition to other rules required or authorized by Insurance Code Chapter 1652, the commissioner adopt reasonable rules necessary and proper to carry out the chapter, including rules adopted in accordance with federal law relating to the regulation of Medicare supplement benefit plan coverage that are necessary for this state to obtain or retain certain certification as a state with an approved regulatory program.

Insurance Code §1652.051 provides that the commissioner adopt reasonable rules to establish specific standards for provisions in Medicare supplement benefit plans and standards for facilitating comparisons of different plans, and may adopt reasonable rules that specifically prohibit benefit plans provisions that are not otherwise specifically authorized by statute and that the commissioner determines are unjust, unfair, or unfairly discriminatory.

Insurance Code §1652.052 provides that the commissioner adopt reasonable rules to establish minimum standards for benefits and claim payments under Medicare supplement benefit plans.

Insurance Code §1652.103 provides that the commissioner by rule provide a process for reviewing and approving or disapproving a proposed premium increase relating to a Medicare supplement benefit plan.

Insurance Code §1698.051 provides that the commissioner by rule establish a process under which the commissioner reviews health benefit plan rates and rate changes for compliance with Insurance Code Chapter 1698 and other applicable state and federal law.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

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

CROSS-REFERENCE TO STATUTE. Section 3.1 and §3.2 implement Insurance Code §§1105.055, 1111A.005, 1131.064, 1131.101, 1131.102, 1153.005, 1153.053, 1153.101, 1153.701, 1251.056, 1251.101, 1251.359, 1271.004, 1271.051 - 1271.057, 1271.101, 1271.104, 1271.251, 1271.253, 1501.260, 1652.101, 1701.053, 1701.055, 1701.057, and 1701.061.

§3.1. Applicability and Scope.

This subchapter applies to all filings related to a life insurance, annuity, life settlement, credit insurance, accident and health insurance, HMO, or point-of-service product that are filed with the department, including the following filing types:

(1) a form filing submitted under Insurance Code §1111A.005, concerning Requirements for Contract Forms, Disclosure Forms, and Advertisements; Insurance Code §1153.051, concerning Filing of Form; Insurance Code §1271.101, concerning Approval of Form of Evidence of Coverage or Group Contract; or Insurance Code Chapter 1701, concerning Policy Forms, including:

(A) a policy, contract, group agreement, certificate, evidence of coverage, application, enrollment form, rider, amendment or endorsement, insert page, matrix filing, or limited partial refiling; or

(B) any other coverage document attached to or made part of a contract;

(2) a rate filing submitted in connection with a form filing under this subsection or otherwise required to be filed under Division 5 of this subchapter (relating to Actuarial Filing Requirements), including a schedule of charges, actuarial memorandum, or change to rating methodology;

(3) an advertising filing submitted in connection with a product filed under this subchapter, including filings identified under §21.120 of this title (relating to Filing for Review);

(4) a network filing submitted in connection with an HMO plan under Chapter 11 of this title (relating to Health Maintenance Organizations), a preferred or exclusive provider benefit plan under Subchapter X of this chapter (relating to Preferred and Exclusive Provider Plans), or a Medicare Select plan under §3.3325 of this title (relating to Medicare Select Policies, Certificates and Plans of Operation), including:

(A) provider contract forms (including a template, executed contract, amendment, termination, or attestation of compliance), delegated entity contract forms (including a template, executed contract, amendment, or termination), and related filings;

(B) provider directories;

(C) network configuration filings, including:

(i) new applications;

(ii) limited provider networks;

(iii) annual network adequacy report filings;

(iv) access plans;

(v) service area expansions or reductions; and

(vi) material modification to a network configuration;

(D) notices, including a notice of a network termination or an annual application period for physicians and providers to contract; and

(E) quality assurance program filings;

(5) a group eligibility filing, as specified in §3.21 of this title (related to Group Filings), including articles of incorporation, bylaws, constitution, or a trust agreement, policy face page, and any other documentation needed to demonstrate that a prospective group or blanket policyholder is eligible under Insurance Code Chapter 1131, Subchapter B, concerning Group and Wholesale, Franchise, or Employee Life Insurance: Eligible Policyholders; Insurance Code Chapter 1251, Subchapter B, concerning Group Accident and Health Insurance: Eligible Policyholders; or Insurance Code Chapter 1251, Subchapter H, concerning Blanket Accident and Health Insurance: Eligible Policyholders;

(6) an informational filing, other than a form filing, rate filing, advertising filing, network filing, or group eligibility filing, that is required for compliance with Texas law but is not subject to approval, including:

(A) a disclosure, outline of coverage, or a similar plan summary;

(B) notices, including those relating to a discontinuance, withdrawal, uniform benefit modification, and modification of drug coverage;

(C) reports, including reports required for Medicare Supplement in Subchapter T of this title (relating to Minimum Standards for Medicare Supplement Policies) and Long-Term Care in Subchapter Y of this title (relating to Standards for Long-Term Care Insurance, Non-Partnership and Partnership Long-Term Care

Insurance Coverage Under Individual and Group Policies and Annuity Contracts, and Life Insurance Policies That Provide Long-Term Care Benefits Within the Policy);

(D) certifications related to form filings, readability scores, actuarial memoranda, statements of variability, and small and large employer health benefit plans;

(E) Medicare SELECT plans of operation and amendments; and

(F) other documents and information necessary to make a filing complete or for a comprehensive review of the filing that are filed in an informational mode.

§3.2. Definitions.

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

(1) Amendment or endorsement--A form that is not a rider that changes or modifies the provisions of an issued policy, certificate, contract, or evidence of coverage.

(2) Blanket policy or contract--A policy or contract authorized by Insurance Code Chapter 1251, Subchapter H, concerning Blanket Accident and Health Insurance: Eligible Policyholders, and issued to a master group policyholder or contract holder that covers all or nearly all individuals within a described group or class of individuals without individual application or underwriting.

(3) Commissioner--The commissioner of insurance.

(4) Department--The Texas Department of Insurance.

(5) Disposition--The final status of a filing, which is issued in writing by the department and communicated to the issuer upon closing the filing. A disposition status may include approved, disapproved, exempt, failed audit, informational, noncompliant, rejected, reviewed, substitution approval, or withdrawn.

(6) Disposition date--The date the department issues a disposition on a filing.

(7) Evidence of coverage--Any certificate, agreement, or contract, including a blended contract, that is issued by an HMO to an enrollee and states the coverage to which the enrollee is entitled.

(8) Exact copy--A filing that, except for the issuer's name, address, telephone number, or other similar identification information, is identical to a form that was previously approved by the department and is still compliant with current statutes and regulations. A braille or non-English-language copy of a form that is a direct translation from the English version of the form is also an exact copy.

(9) Failed audit--A finding made by the department, consistent with §3.4008 of this title (relating to Procedures for Corrections to Non-Compliant Exempt Forms) that a form filed in an exempt filing mode includes one or more compliance deficiencies.

(10) Filing--A document filed with the department under this subchapter, including a form filing, rate filing, advertising filing, group eligibility filing, network filing, or informational filing.

(11) Filing ID--A unique identifier assigned to a filing by SERFF (for example, SERFF ID).

(12) Filing types--A designation used to describe the purpose and contents of a filing, which includes form filings, rate filings, advertising filings, network filings, group eligibility filings, and informational filings and the associated categories identified in §3.1 of this title (relating to Applicability and Scope).

(13) Form--A document required to be filed under Insurance Code §1111A.005, concerning Requirements for Contract Forms, Disclosure Forms, and Advertisements; Insurance Code §1153.051, concerning Filing of Form; Insurance Code §1271.101, concerning Approval of Form of Evidence of Coverage or Group Contract; or Insurance Code §1701.051, concerning Filing Required;

(14) Form number--A unique identifier printed at the lower left-hand corner composed of numbers or letters that is assigned to a unique form.

(15) General use--A filing classification that indicates that the filed forms will be used with other forms submitted in the filing or with previously approved or exempted forms for a certain product or products or a subset of a product or type (for example, an application that will be used with all life products, an application that will be used with all universal life products, an application that will be used with group life and accident and health products, or an application that will be used with major medical and dental products).

(16) HMO--A health maintenance organization as defined in Insurance Code §843.002, concerning Definitions.

(17) Insert page--A form consisting of a page or section of a contract that has a unique identifiable form number and is used in combination with other forms to create a complete contract.

(18) Issuer--An insurance company or HMO that makes a filing under this subchapter.

(19) Limited, partial refiling--A change to a previously approved or exempted life or annuity form that meets one or more of the criteria set forth in subparagraphs (A) - (D) of this paragraph:

(A) a change in the text, interest rate, guaranteed charges, or mortality table used to compute nonforfeiture for life insurance or annuities;

(B) a change in the current interest rate, where such rates are guaranteed and shown in the policy or contract;

(C) a change in the reserves (if the change in reserves affects the text of the policy); or

(D) a change to the separate account for variable products when the separate account is bracketed as variable text on the initial filing.

(20) Matrix filing--A filing consisting of individual provisions, each with its own unique identifiable form number, allowing the flexibility to create multiple policies, evidences of coverage, certificates, contracts, or applications by using numerous combinations of the individual provisions.

(21) NAIC--National Association of Insurance Commissioners.

(22) New submission--A filing submission type that is applicable to all filings other than a resubmission subject to Insurance Code §1701.058, concerning Reconsideration of Form.

(23) Personally identifiable information--Facts or details about an individual that can be used either alone or in combination to distinguish the individual's identity, such as:

(A) any individual policyholder's, certificate holder's, or insured's identification, including name, address, phone number, or email;

(B) social security numbers;

(C) insurance policy, contract, or plan numbers;

(D) identification cards;

(E) debit, credit card, bank account, or routing numbers; or

(F) health information about an individual.

(24) Product--A package of benefits with a discrete set of rating and pricing methodologies that will be offered to a consumer within a single policy, group agreement, evidence of coverage, certificate, or contract. In the case of health coverage, a product also includes a particular network type (such as HMO, point of service, preferred provider, exclusive provider, or indemnity).

(25) Qualified actuary--An actuary who is certified by the American Academy of Actuaries to meet the U.S. Qualification Standards.

(26) Resubmission--A filing submission type that contains corrections made to a form that was previously disapproved or for which approval has been withdrawn.

(27) Rider--A form that adds or expands benefits and becomes a part of the policy, group agreement, evidence of coverage, certificate, or contract.

(28) SERFF--The System for Electronic Rates & Forms Filing established by the NAIC or a subsequent electronic system designated by the department.

(29) Submission guide--Documentation provided by the department that includes technical guidance concerning how to submit and classify filings. The submission guide is available on SERFF and on the department's website: www.tdi.texas.gov.

(30) Substantially similar--A form that, except for minor changes that are clearly identified and described in an accompanying document, is identical to a form that the department previously approved and is still compliant with current statutes and regulations.

(31) Substitution--A new submission that includes a form that replaces a previously approved or exempted form that has not been and will not be issued or otherwise used in Texas at any time by the issuer and that has a form number that is the same as the form it is replacing.

(32) Supplemental--A type of product that is specifically designed and issued to supplement other in-force coverage.

(33) Withdrawn filing--A filing that is not pending the department's review and is not considered approved or exempted, including a filing that was submitted and subsequently removed from the department's review for any reason, including at the issuer's request, or by the department because of an issuer's failure to respond to a request for information or request for revision.

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

Filed with the Office of the Secretary of State on September 19, 2024.

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Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 676-6555

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DIVISION 2. GENERAL FILING REQUIREMENTS

28 TAC §§3.10 - 3.23

STATUTORY AUTHORITY. TDI proposes new §§3.10 - 3.23 under Insurance Code §§541.401, 843.151, 843.154, 1111A.015, 1153.005, 1153.006, 1201.006, 1201.101, 1201.206, 1251.008, 1271.004, 1271.253, 1501.010, 1651.004, 1651.051, 1652.005, 1652.051, 1652.052, 1652.103, 1698.051, 1701.053, 1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §541.401 provides that the commissioner may adopt reasonable rules as necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §843.151 provides that the commissioner may adopt reasonable rules as necessary and proper to (1) implement Insurance Code §1367.053; Chapter 843; Chapter 1452, Subchapter A; Chapter 1507, Subchapter B; Chapters 222, 251, and 258, as applicable to an HMO; and Chapters 1271 and 1272, including rules to (A) prescribe authorized investments for an HMO for all investments not otherwise addressed in Chapter 843; (B) ensure that enrollees have adequate access to health care services; and (C) establish minimum physician-to-patient ratios, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; and (2) meet the requirements of federal law and regulations.

Insurance Code §843.154 provides that the commissioner, within the limits provided by the section, prescribe the fees to be charged under Insurance Code §843.154.

Insurance Code §1111A.015 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1111A.

Insurance Code §1153.005 provides that the commissioner, after notice and hearing, may adopt rules to implement Insurance Code Chapter 1153.

Insurance Code §1153.006 provides that TDI set a fee not to exceed $200 for a form or schedule filed under Insurance Code Chapter 1153.

Insurance Code §1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Insurance Code Chapter 1201.

Insurance Code §1201.101 provides that the commissioner adopt reasonable rules establishing standards for the readability of individual accident and health policies.

Insurance Code §1201.206 provides that the commissioner may adopt reasonable rules regarding the procedure for submitting policies subject to Insurance Code Chapter 1201 that are necessary, proper, or advisable for the administration of the chapter.

Insurance Code §1251.008 provides that the commissioner may adopt rules necessary to administer Insurance Code Chapter 1251, subject to a notice and hearing as required by Insurance Code §1201.007.

Insurance Code §1271.004 provides that the commissioner may adopt rules necessary to implement the section (which concerns individual health care plans) and to meet the minimum requirements of federal law, including regulations.

Insurance Code §1271.253 provides that the commissioner may require the submission of any relevant information the commis-

sioner considers necessary in determining whether to approve or disapprove a filing under Insurance Code Chapter 1271.

Insurance Code §1501.010 provides that the commissioner adopt rules necessary to implement the chapter and meet the minimum requirements of federal law, including regulations.

Insurance Code §1651.004 provides that TDI may adopt rules that are necessary and proper to carry out Chapter 1651.

Insurance Code §1651.051 provides that the commissioner by rule establish standards for long-term care benefit plans, and for full and fair disclosure setting forth the manner, content, and required disclosures for the marketing and sale of these plans.

Insurance Code §1652.005 provides that, in addition to other rules required or authorized by Insurance Code Chapter 1652, the commissioner adopt reasonable rules necessary and proper to carry out the chapter, including rules adopted in accordance with federal law relating to the regulation of Medicare supplement benefit plan coverage that are necessary for this state to obtain or retain certain certification as a state with an approved regulatory program.

Insurance Code §1652.051 provides that the commissioner adopt reasonable rules to establish specific standards for provisions in Medicare supplement benefit plans and standards for facilitating comparisons of different plans, and may adopt reasonable rules that specifically prohibit benefit plan provisions that are not otherwise specifically authorized by statute and that the commissioner determines are unjust, unfair, or unfairly discriminatory.

Insurance Code §1652.052 provides that the commissioner adopt reasonable rules to establish minimum standards for benefits and claim payments under Medicare supplement benefit plans.

Insurance Code §1652.103 provides, that the commissioner by rule provide a process for reviewing and approving or disapproving a proposed premium increase relating to a Medicare supplement benefit plan.

Insurance Code §1698.051 provides that the commissioner by rule establish a process under which the commissioner reviews health benefit plan rates and rate changes for compliance with Insurance Code Chapter 1698 and other applicable state and federal law.

Insurance Code §1701.053 provides that TDI shall collect a fee in an amount determined by the commissioner for the filing of the form of a document under Insurance Code Chapter 1701.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

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

CROSS-REFERENCE TO STATUTE. Sections 3.10 - 3.23 implement Insurance Code §§1105.055, 1111A.005, 1131.064, 1131.101, 1131.102, 1153.005, 1153.053, 1153.101, 1153.701, 1251.056, 1251.101, 1251.359, 1271.004, 1271.051 - 1271.057, 1271.101 - 1271.104, 1271.251, 1271.253, 1501.260, 1652.101, 165.102, 1701.053, 1701.055, 1701.057, and 1701.061.

§3.10. Requested Filing Mode.

Requested filing mode. All filings must identify a requested filing mode as described in this section.

(1) Review or approval. The following types of filings must be submitted for review or approval:

(A) a form or rate filing that is required to be filed for review or approval under §3.1(1) or (2) of this title (relating to Applicability and Scope), other than a filing made under paragraphs (2) or (3) of this section;

(B) an advertising filing that is required to be filed for review under §21.120 of this title (relating to Filing for Review);

(C) a group eligibility filing for review; and

(D) a network configuration filing under §3.1(4)(C) of this title.

(2) File and use. A form or rate filing may be submitted in a file-and-use mode only as permitted under Insurance Code §1701.052, concerning File and Use.

(3) Exempt. A form filing may be submitted in an exempt mode only as permitted under Insurance Code §1701.005, concerning Exemptions, and Subchapter Z of this chapter (relating to Exemption from Review and Approval of Certain Life, Accident, Health, and Annuity Forms and Expedition of Review).

(4) Informational. A filing may be submitted in an informational filing mode as specified in §3.1(6) of this title or if paragraphs (1) - (3) of this section do not apply.

§3.11. Submission Requirements.

(a) All filings and supporting documentation within the scope of this subchapter must be submitted through SERFF or a subsequent electronic system designated by the department.

(b) If the electronic system designated by the department experiences a system-wide outage for any reason, any applicable deemer date or due date for a company response is tolled until the outage is resolved. The department may designate an alternative submission method for filings and supporting documents during such an outage.

(c) Filings submitted to the department must provide complete and accurate information about the filing, include responsive information in all applicable SERFF fields, and include applicable responsive information that is not duplicative of SERFF fields in a transmittal checklist uploaded into SERFF as provided in the department's submission guide. Material information required to be submitted in an initial filing through SERFF fields and transmittal checklists will not exceed the following:

(1) the issuer's name, address, and identifying information, including the NAIC number, NAIC group number, federal employer identification number (FEIN), and the issuer's license type and state of domicile;

(2) the contact person information as required by §3.12 of this title (relating to Contact Person);

(3) an explanation of the purpose and use of the filing as required in §3.14 of this title (relating to Purpose and Use);

(4) a clear designation if the issuer would like to make confidential a specific form, rate, or document in the filing, consistent with §3.15 of this title (relating to Confidential Information in Filings);

(5) the information and certifications required in §3.16 of this title (relating to Certifications);

(6) identification of the unique form number of each form submitted;

(7) a classification of the attributes of the filing and forms included in the filing, consistent with the department's submission guide, including the:

(A) type of filing, consistent with the categories identified in §3.1 of this title (relating to Applicability and Scope);

(B) type of submission, including new or resubmission;

(C) requested filing mode, including review and approval, file and use, informational, or exempt, as described in §3.10 of this title (relating to Requested Filing Mode);

(D) requested effective date for the filing;

(E) type of product and subtype of product, consistent with the product classification guidance provided in the department's submission guide;

(F) type of form, including policy, certificate, application or enrollment, schedule of benefits, rider, endorsement, outline of coverage, advertising, network access plan, provider contract, provider addendum, provider leasing agreement, and provider directory;

(G) type of rate, including a new or revised rate; and

(H) type of market, including individual, franchise, or group, and if applicable:

(i) size of group, including small, large, or small and large;

(ii) type of group, including employer, association, trust, discretionary, blanket, or other; and

(iii) name of group policyholder, in connection with a group eligibility filing;

(8) rate filing information for any product a rate filing is required for;

(9) a statement that the submission will be used on a general-use basis, only with the product being filed, or with previously approved or exempted forms;

(10) in the case of a filing that will be used with previously approved or exempted forms, or other pending filings, a list of the following:

(A) the form numbers and filing IDs of the pending or previously approved or exempted forms;

(B) the disposition dates of the previously approved or exempted forms;

(C) for a form approved before January 1, 2012, a copy of the approved or exempted form;

(D) if applicable, the updated list of form numbers the previously approved or exempted form is to be used with; and

(E) a brief description of when or how each submitted form or rate will be used with the previously approved or exempted forms or other pending forms;

(11) an explanation of any variable material as required by §3.18 of this title (relating to Variable Material); and

(12) the Flesch score for each submitted form, consistent with §3.20 of this title (relating to Plain Language and Readability Requirements).

(d) For a substantially similar, exact copy, substitution, or resubmission filing, the issuer must include the following information concerning how the forms in the filing relate to the forms that were previously approved, exempted, disapproved, or withdrawn from approval, as applicable:

(1) the form number, filing ID, and disposition date of the previously filed form; and

(2) a summary of the differences between the previously approved form and the new form, including a description of any deleted text and a clear identification of all changes with new or modified text underlined.

(e) An advertising filing must include the information and certifications required under Chapter 21, Subchapter B of this title (relating to Advertising, Certain Trade Practices, and Solicitation).

(f) The department may request any additional information necessary for a comprehensive review of any filing.

§3.12. Contact Person.

An issuer submitting a filing to the department must:

(1) designate one person as the contact person for that filing;

(2) provide the contact person's name, address, direct telephone number, and email address;

(3) provide, for any filing submitted by anyone other than the issuer, a dated letter of specific authorization that:

(A) designates the contact person for that filing;

(B) authorizes the designee to act on behalf of the issuer with respect to the type of filing; and

(C) is signed by an officer of the issuer or a person with authority to bind the issuer; and

(4) notify the department immediately of any change of information for the contact person on a pending filing, regardless of whether the contact person is the issuer's employee or other authorized representative.

§3.13. Filing Fees.

(a) For a form filing identified under §3.1(1) of this title (relating to Applicability and Scope), a fee of $100 is required, subject to the following exceptions:

(1) a fee of $50 is required for an exempt form filing that is made under Insurance Code Chapter 1701, concerning Policy Forms, and Subchapter Z of this chapter (relating to Exemption from Review and Approval of Certain Life, Accident, Health, and Annuity Forms and Expedition of Review);

(2) a fee of $50 is required for a resubmission of a previously disapproved form, or a form for which approval has been withdrawn;

(3) for a matrix filing, due to the ability to create multiple contracts or policies from matrix provisions, a fee of $50 per form is required, subject to a maximum fee of $500 per filing; and

(4) no fee shall be required for a substitution filing.

(b) For a rate filing made under §3.1(2) of this title that is separate from a form filing:

(1) a fee of $100 is required for a filing under Insurance Code Chapters 1153, concerning Credit Life Insurance and Credit Accident and Health Insurance; 1651, concerning Long-Term Care Benefit Plans; and 1652, concerning Medicare Supplement Benefit Plans; and

(2) a fee of $50 is required for all other rate filings.

(c) No fee is required for advertising, network, group eligibility, or informational filings under §3.1(3) - (6) of this title.

(d) Filing fees required under this section must be paid to the department using the electronic funds transfer system provided on SERFF or a subsequent electronic payment system designated by the department.

(e) Fees are due and must be paid at the time a filing is accepted for review. If the issuer does not pay the fee within five business days following the date of acceptance for review, the department may consider the filing withdrawn from review by the issuer. The department will not give any withdrawn filing consideration until the issuer resubmits the filing as a new filing.

§3.14. Purpose and Use.

Each filing must include an explanation of the purpose and use of the forms, rates, advertising, networks, or other information contained in the filing within the general information section of the filing that includes:

(1) how the contents of the filing will be used (for example, the application will be used on a general-use basis; or used with specific policies, evidences of coverage, or contract forms previously approved or exempted);

(2) the type of coverage addressed by the filing;

(3) any key or unique provisions contained in the filing, including:

(A) for a life or annuity filing, the inclusion of bonus interest, additional interest credits, two-tier values, bail-out, market value adjustments, and long-term care;

(B) for an accident and health filing, the inclusion of preferred or exclusive provider benefits, innovative excepted benefit products, standalone prescription drugs, or innovative benefits in a Medicare supplement policy;

(4) if applicable, how the product will be marketed (for example, direct, agent, or electronic);

(5) if applicable, whether the filing addresses a new program or initiative and, if so, how the program will affect consumers and whether the program or initiative has been filed, approved, or disapproved in other states;

(6) if applicable, to whom the product is to be marketed, for example, specific group types or sizes, such as an annuity contract marketed to issue ages 25 - 60; or a health benefit plan that will issued on the exchange; and

(7) if applicable, an indication of whether the filing is prompted by a business change such as an assumption, a name change, or a demutualization/conversion.

§3.15. Confidential Information in Filings.

(a) Filings submitted under this subchapter are subject to Government Code Chapter 552, concerning Public Information, including any applicable exception from required disclosure under that chapter. Except as provided in subsection (b) of this section, each submitted filing, including any supporting information filed, will be open for public inspection through SERFF Filing Access (or a subsequent electronic system) as of the date of the filing.

(b) If an issuer believes a portion of the information required to be filed under this subchapter is confidential and excepted from disclosure under Government Code Chapter 552, the issuer must use the SERFF confidentiality function to mark as confidential each document that contains information that the issuer believes is confidential and excepted from disclosure.

(c) An issuer is not permitted to add password protection or encryption, or otherwise format a document in a manner that restricts:

(1) the department's ability to fully process, review, search, and save the document without a password or other decryption process; or

(2) the public's ability to view public information in SERFF.

(d) An issuer may not declare an entire filing confidential. Entire filings marked confidential will be rejected under §3.23(c) of this title (relating to Acceptance, Rejection, and Disposition of Filings).

(e) An issuer may choose to include in the filing a redacted copy of a document that is marked as confidential, which would be available for public access. If included, the document must be clearly marked as a redacted copy.

(f) An issuer must not include an individual consumer's personally identifiable information in a filing, other than the name of a group policyholder that is included in a filing as required under §3.21 of this title (relating to Group Filings).

§3.16. Certifications.

(a) General certification - all filings. All filings must include the following certifications:

(1) the certification is on behalf of the issuer;

(2) the issuer is bound by the certification;

(3) the individual making the certification is familiar with all statutes and regulations of this state and the United States that are applicable to the filing and certifies that to the individual's best knowledge, information, and belief, the filing complies with those statutes and regulations;

(4) the individual making the certification has reviewed the filing and the information in the filing is true and correct;

(5) the form filed is not deceptive or misleading; and

(6) if applicable, the Flesch score of each form is accurately reflected and meets the requirements of §3.20 of this title (relating to Plain Language and Readability Requirements).

(b) Additional certifications. An issuer must include additional certifications as applicable and specified in Figure 28 TAC §3.16(b). An individual making a certification referenced in Figure 28 TAC §3.16(b) must also make the certifications required by subsection (a) of this section.

Figure: 28 TAC §3.16(b).

(c) Certification requirements. A false certification made under this section is an offense under Insurance Code §841.704, concerning False Statement, Report, or Other Document; Criminal Penalty, and §843.464, concerning Criminal Penalty.

§3.17. Form and Rate Filing Requirements.

(a) Except as provided by subsection (b) of this section, for a form or rate filing, only one product (including all forms that will constitute the entire contract and their associated rates) may be submitted in a single filing. This does not prevent an issuer from filing a product that contains multiple types of benefits that will be issued in combination in a single contract if that combination otherwise complies with applicable requirements.

(b) A form may be submitted for general use with multiple policies, evidences of coverage, or certificates. A form submitted for general use must be filed individually, except that multiple forms that are clearly related and intended to be used with one or more of the same underlying products may be filed together.

(c) Each form must prominently display on the cover page or the first page a face page that includes:

(1) the full name of the issuer assuming the risk of the product; and

(2) the complete mailing address of the issuer.

(d) Each form submitted must be designated by a unique form number that:

(1) is sufficient to distinguish it from all other forms used by the issuer;

(2) is shown in the lower left-hand corner of each page of the form, or in the case of a matrix provision, is shown below each matrix provision; and

(3) has the additional identifying form number requirements set forth in §3.5201 of this title (relating to Submission of Form and Rate Filings) if the form is submitted under Insurance Code Chapter 1153, concerning Credit Life Insurance and Credit Accident and Health Insurance.

(e) A limited, partial refiling must contain the change and any additional actuarial information necessary for a comprehensive review of the refiling, if applicable.

(f) An amendment that is submitted to modify an existing form must be accompanied by a revised version of that form (with a new unique form number) that incorporates the contents of the amendment, unless the amendment does not apply to newly issued forms. For a newly issued policy, certificate, contract, or evidence of coverage, the issuer must issue the revised version of the form.

§3.18. Variable Material.

(a) Variable material generally. As specified in this section, an issuer may file forms, advertising, or provider contracts using variable material to illustrate the ways an issued document may vary from the filed material. Any variable material must be identified using brackets and include specimen language or fill-in material that reflects the most restrictive option, if applicable, within the range of variability. Variable material may not be used in an issued form. The issued form must clearly state the actual benefits and contract terms.

(b) Statement of variability. When variable material is included in a filing, the issuer must submit a statement of variability to accompany the filing that:

(1) provides a clear explanation of how the material will vary for each variable option or range that appears in the brackets on the form; and

(2) demonstrates compliance with applicable requirements.

(c) Permitted uses of variable material. It is acceptable for an issuer to use variable material to illustrate:

(1) how a document may vary due solely to the age, sex, or classification of the insured or enrollee;

(2) the range of benefit levels or options that will be offered to consumers;

(3) nonsubstantive administrative items in the document, such as phone numbers, addresses, or third-party administrators; and

(4) the type of group the policy will be issued to if different review standards do not apply based on the group type.

(d) Prohibited uses of variable material. It is not acceptable for:

(1) a unique form number on a form to be bracketed as variable;

(2) the issuer name to be bracketed as variable;

(3) a form to use variability to create different types of products using a single form number, rather than making separate product filings;

(4) a form to specify a range of variability that exceeds the range supported in the issuer's filed rates or schedule of charges and actuarial memorandum, if applicable; or

(5) an issuer to use variability to an extent that the department is unable to fully understand how the product will appear when issued.

(e) Fill-in material for life and annuity forms. Life and annuity forms must contain fill-in material for a 35-year-old insured. If the form is not issued at age 35, the fill-in material must contain the youngest issue age. If any form includes reduced death benefits, the fill-in material must include the age with the greatest reduction in benefits at issue. The fill-in material must be for the longest premium-paying period available.

(f) Life and annuity standards.

(1) For life forms, the text and specifications of nonforfeiture assumptions cannot include variable material;

(2) For life and annuity forms, a zero entry in a range of values on the specifications page:

(A) is acceptable for tiering levels, expense charges, or other fees applicable under the contract; and

(B) is not acceptable for any benefit or credit provided for in the language of the contract.

(g) Changes to variability. Any change to a statement of variability is considered a change to the form itself and must be filed in conjunction with the form.

(h) Examples upon request. The department reserves the right to request that the issuer supplement its filing with examples of forms without variability, including examples of forms actually issued to consumers (with confidential information redacted).

§3.19. Matrix and Insert Page Forms.

(a) Forms may be submitted as matrix or insert page forms. Any issuer submitting a matrix or insert page form:

(1) must identify each matrix provision or insert page with a unique form number that:

(A) is sufficient to distinguish it from all other matrix provisions or insert pages used by the issuer; and

(B) is shown in the lower left-hand corner of the matrix provision or insert page;

(2) may use the same matrix provision or insert page form number within multiple products, provided the language is applicable to each product; however, any changes in the language to comply with the requirements for each product will require a unique form number; and

(3) must list the form number for each matrix provision or insert page and provide a statement indicating how and with what type of product or products the matrix provision or insert page will be used.

(b) An issuer may use an insert page to replace an existing page or section of a previously approved or exempted form if the replaced page or section has a unique form number that distinguishes it from the other pages of the form it is inserted in.

§3.20. Plain Language and Readability Requirements.

(a) Purpose. This section establishes plain language requirements and procedures to make contracts easier to read by the public and to remove language that may be unjust, deceptive, misleading, or unreasonably confusing.

(b) Applicability. This section applies to all forms that are filed under this subchapter and issued to consumers, except for:

(1) forms that are subject to Subchapter G of this chapter (relating to Plain Language Requirements for Health Benefit Policies); and

(2) group annuity products.

(c) Plain language. Forms must be written in plain language and organized in a manner to make it easy for consumers to understand.

(d) Flesch Reading Ease requirements.

(1) The text of the form must achieve a minimum Flesch Reading Ease score of 40, calculated using the method described in §3.602(b)(1), (c), and (d) of this title (relating to Plain Language Requirements).

(2) An issuer must include a statement of the Flesch score of the document when the form is submitted to the department. The department may require the submission of further information to verify compliance.

(e) Best practices. In determining whether forms are written in plain language and organized in a manner to aid consumer understanding, the department will consider plain language best practices, including:

(1) the use of short, familiar words or words that are used in common speech, rather than the use of jargon or technical terms, and defining technical terms used when necessary;

(2) whether the form is written in a clear and coherent manner;

(3) the unnecessary use of technical or abstract words;

(4) whether short sentences are used in paragraphs limited to a single topic, when possible, rather than the use of complex and compound sentences;

(5) the unnecessary use of prefixes and suffixes;

(6) whether the style, arrangement, and overall appearance of the form gives undue prominence to any portion of the text; and

(7) the organization of the form, including as modified by any rider, endorsement, or amendment, such as:

(A) whether the form is organized in a logical order, with clear sections and headings;

(B) whether the form's coverage provisions are self-contained and independent;

(C) whether the form is appropriately divided and captioned in meaningful sequence, where each section contains an underlined, boldfaced, or otherwise conspicuous title or caption at the beginning of the section that indicates the nature of the subject matter included in or covered by the section;

(D) whether the form unnecessarily refers the reader from section to section;

(E) whether general policy provisions, such as defined words and terms or limitations and exclusions, are located in a common area and appropriately captioned; and

(F) whether the use of a separate form, such as an amendment or endorsement used to modify a contract, policy, certificate, or evidence of coverage, will result in confusion about the coverage, particularly if this will occur at the time coverage is first issued.

(f) Definitions. Companies may use a separate definitions section for words used throughout the policy or evidence of coverage. If a separate definitions section is used, it must appear early in the form.

(g) Formatting. The form must:

(1) except for specification pages, schedules, and tables, be printed in not less than 10-point type;

(2) use a font style and size that is easy to read, considering the audience; and

(3) use a format that aids readability, with sufficient white space and the use of bulleted or numbered lists when appropriate.

(h) Table of contents. A form must contain a table of contents or an index of the principal sections if it has more than 3,000 words on three or fewer pages of text or if it has more than three pages, regardless of the number of words.

§3.21. Group Filings.

(a) An issuer submitting a filing for a group policy, agreement, evidence of coverage, or contract must comply with the requirements in this section.

(1) An issuer must identify the specific group type the form is being filed under by indicating the applicable Insurance Code section, as follows:

(A) for life insurance, Insurance Code Chapter 1131, Subchapter B, concerning Group and Wholesale, Franchise, or Employee Life Insurance: Eligible Policyholders;

(B) for accident and health insurance and HMO coverage, Insurance Code Chapter 1251, Subchapter B, concerning Group Accident and Health Insurance: Eligible Policyholders; or

(C) for accident and health insurance, Insurance Code Chapter 1251, Subchapter H, concerning Blanket Accident and Health Insurance: Eligible Policyholders.

(2) If Texas resident members of a group will be eligible to obtain coverage under a product issued to a group type specified in subsections (b) - (f) of this section, then an issuer must submit a group eligibility filing, as specified in those subsections, indicating:

(A) the name of the group;

(B) the products to be issued to the group;

(C) the associated form numbers and filing IDs the forms were approved under; and

(D) either:

(i) information that demonstrates that the group is eligible; or

(ii) a reference to a previous filing ID submitted by the issuer that the group's eligibility was verified under if the filing was made within the past five years and there has not been a material change to the information submitted or the group's continued eligibility.

(3) Forms to be used with multiple groups must be submitted separately from the group eligibility filing. Forms to be used with a single group may be submitted separately or in conjunction with the group eligibility filing.

(b) For a product to be issued to an association under Insurance Code §1131.060, concerning Nonprofit Organizations or Associations; §1251.052, concerning Associations; §1251.053, concerning Funds Established by Employers, Labor Unions, or Associations; or §1251.358, concerning Association, the issuer must submit a group eligibility filing that includes:

(1) a copy of the association's constitution, bylaws, and articles of incorporation;

(2) an alternate face page form that identifies the association, unless the forms are filed to be used with a specific association, in which case the association must be identified on the case-specific face page;

(3) identification of the types of coverage the issuer intends to offer the association; and

(4) information demonstrating that the association is an eligible group policyholder.

(c) For a product to be issued to a trust under Insurance Code §1251.053, the issuer must submit a group eligibility filing that includes:

(1) a copy of the trust agreement;

(2) an alternate face page form for each related industry group, with a unique form number; and

(3) for a product to be issued to associations participating in a multiple association trust:

(A) a listing of all the associations participating in the multiple association trust; and

(B) a reference to the unique filing ID or IDs in which the department previously confirmed that each participating association is an eligible group, consistent with subsection (b) of this section.

(d) An issuer that has received a determination for a filing to be issued to associations participating in a multiple association trust must make a group eligibility filing for information to notify the department of any subsequent additions of participating associations upon enrollment. The filing must include the documentation required in subsection (c) of this section for each association that joins the trust after the initial filing.

(e) An issuer that intends to offer a product to a type of group or blanket policyholder that is not identified in statute as an eligible policyholder must submit a group eligibility filing that demonstrates the group's eligibility, consistent with Insurance Code §1131.064, concerning Other Groups, §1251.056, concerning Other Groups, and §1251.359, concerning Coverage for Other Risks. The issuer must also submit actuarial information as required in §3.61 of this title (relating to Actuarial Information for Certain Accident and Health Filings), as applicable.

(f) For a major medical health benefit plan issued to an association under Insurance Code §1251.052, the issuer must:

(1) for a member-only association, identify whether the plan is issued to a member-only bona fide association as defined under §21.2702 of this title (relating to Definitions); or

(2) for an employer association filing:

(A) comply with all filing requirements set forth in Chapter 26 of this title (relating to Employer-Related Health Benefit Plan Regulations);

(B) specify whether the plan will cover small or large employer members; and

(C) specify whether the group is considered a bona fide employer association under §26.301 of this title (relating to Applicability, Definitions, and Scope).

(g) A product to be issued to an educational institution, if it is issued on a group basis, must be filed under Insurance Code §1131.064 or §1251.056, or, if it is issued on a blanket basis, must be filed under §1251.353, concerning Educational Institutions.

(h) An issuer licensed in this state that issues a certificate of insurance or evidence of coverage covering a Texas resident is responsible for ensuring that the form complies with applicable Texas insurance laws and rules, regardless of whether the group policy, agreement, or contract underlying the certificate or evidence of coverage was issued outside the state. A copy of the master policy, group agreement, or contract issued outside of Texas must accompany any life, annuity, credit, or accident and health certificate, or HMO evidence of coverage filed for review or filed as exempt, along with certification and evidence that the master policy, group agreement, or contract was lawfully issued and delivered in a state the issuer was authorized to do business in.

§3.22. Braille and Non-English Filings.

(a) A filing that includes a copy of a form that is submitted in braille as an exact copy of a previously approved form, or that is submitted in a non-English language that is translated from a previously approved English language form, must include a certification as required under §3.16(b) of this title (relating to Certifications) that the form is an exact copy of the English version of the previously approved form.

(b) The filing must reference the filing ID of the filing in which the English version of the form was previously approved. A filing that includes only a Braille or non-English language version of a previously approved form may be filed in an informational mode and is eligible to be filed in an exempt mode, consistent with Subchapter Z of this chapter (relating to Exemption from Review and Approval of Certain Life, Accident, Health, and Annuity Forms and Expedition of Review).

§3.23. Acceptance, Rejection, and Disposition of Filings.

(a) Acceptance, approval, and exemption of filings. Upon submission, a filing will be accepted for preliminary review of compliance with the filing requirements in this subchapter. If the filing requirements in this subchapter have not been satisfied, the department will

consider the filing incomplete and may reject the filing or request that the issuer make corrections. After a filing has been accepted by the department, an issuer is not permitted to expand the scope of a filing, such as by submitting additional forms for review, unless the department has instructed the issuer to do so.

(1) Review period for filings subject to approval. Filings subject to approval, whether filed in a review-and-approval mode or a file-and-use mode, will be reviewed for compliance with the Insurance Code, this title, and any other applicable law of this state or the United States. Filings are considered filed as of the date the filing is submitted, unless the filing is rejected as provided in subsection (b) of this section. The filings, after review, will be affirmatively approved or disapproved within the statutory deemer period if applicable, under Insurance Code §1271.102, concerning Procedures for Approval of Form of Evidence of Coverage or Group Contract; Withdrawal of Approval; §1701.054, concerning Approval of Form; or §1701.058, concerning Reconsideration of Form, unless the department initiates a request for correction as set forth in subsection (c) of this section.

(2) Date for exempt filings. As permitted under Subchapter Z of this chapter (relating to Exemption from Review and Approval of Certain Life, Accident, Health, and Annuity Forms and Expedition of Review), an issuer may submit a filing in an exempt mode. A filing closed with an exempt disposition is considered exempt as of the disposition date, unless the filing is rejected as provided in subsection (b) of this section. Exempt filings are subject to audit as specified in §3.4008 of this title (relating to Procedures for Corrections to Non-Compliant Exempt Forms).

(3) Date for informational filings. A filing submitted in an informational mode will be closed with an informational disposition, unless the department determines that the filing is subject to review. Informational filings are considered filed as of the date the filing is submitted, unless the filing is rejected as provided in subsection (b) of this section.

(b) Rejection of filings.

(1) If the department determines that a filing does not meet the requirements of this subchapter, the department will reject the filing as incomplete and notify the issuer of the reason for rejection or request that the issuer make corrections to the filing. If the issuer does not make corrections within two business days of the department's request for corrections, the department may reject the filing. A filing that is closed with a rejected disposition will not be considered to have been filed or accepted with the department for purposes of Insurance Code §§1153.106, concerning Rate Outside Certain Percentages of Presumptive Rate; 1271.102; or 1701.054, or this subchapter.

(2) The department may reject a filing for failure to comply with any requirement in this subchapter, for example if a filing:

(A) is marked confidential in its entirety;

(B) contains an individual consumer's personally identifiable information in violation of §3.15 of this title (relating to Confidential Information in Filings);

(C) contains changes from the previous form that are not clearly identified; or

(D) contains a certification that is materially inaccurate.

(3) The department will not reopen a rejected filing to allow the issuer to make corrections. The issuer must submit a new filing for the department to consider any corrections.

(c) Request for correction.

(1) Rather than disapproving a filing, the department may request that the issuer make corrections to a form that contains compliance deficiencies if:

(A) for an insurance filing, the issuer, as necessary and at least seven days before the date the filing is deemed approved (unless otherwise permitted by the department):

(i) requests a 45-day extension of the review period; or

(ii) provides a waiver of the issuer's right to deem the filing approved, if applicable; or

(B) for an HMO filing:

(i) the department notifies the issuer that the review period has been postponed, consistent with §11.301(6) of this title (relating to Filing Requirements); or

(ii) the issuer, as necessary and no less than seven days before the date the filing is deemed approved (unless otherwise permitted by the department), provides a waiver of the issuer's right to deem the filing approved, consistent with §11.301(7) of this title.

(2) An issuer submitting a form as a correction to a pending form must provide:

(A) a summary of the differences between the previously reviewed form and the corrected form, including a description of any deleted text, and a clear identification of all changes, with new or modified text redlined; and

(B) a statement that no changes were made to the form other than those identified.

(3) If an issuer fails to submit corrections to the department within 10 business days after the department provides a notice of any deficiencies and request for corrections, the department may consider the filing withdrawn from review by the issuer. The department will not give any withdrawn filing consideration unless the issuer resubmits it as a new filing.

(d) Disposition. The department will send written or electronic notice of any actions taken by the department when it has completed the processing of the filing. The notice will state the disposition and its effective date.

(e) Withdrawal of approval. Before withdrawing approval, the department will provide notice and opportunity for hearing. The notice will specify each applicable form number and the compliance deficiencies.

(f) Retention of filings and dispositions. Companies must retain the written notification or a copy of the electronic notification as documentation of the department's action on a form and maintain copies of approved, reviewed, and exempted forms. This requirement no longer applies if there are no lives insured under the form and the issuer has submitted a written or electronic request that the department withdraw approval of the 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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Texas Department of Insurance
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DIVISION 3. REQUIREMENTS RELATING TO APPLICATION FORM FILINGS

28 TAC §3.40, §3.41

STATUTORY AUTHORITY. TDI proposes new §3.40 and §3.41 under Insurance Code §§35.0045, 541.401, 843.151, 1153.005, 1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §35.0045 provides that the commissioner adopt rules necessary to implement Insurance Code Chapter 35.

Insurance Code §541.401 provides that the commissioner may adopt reasonable rules as necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §843.151 provides that the commissioner may adopt reasonable rules as necessary and proper to (1) implement Insurance Code §1367.053; Chapter 843; Chapter 1452, Subchapter A; Chapter 1507, Subchapter B; Chapters 222, 251, and 258, as applicable to an HMO; and Chapters 1271 and 1272, including rules to (A) prescribe authorized investments for an HMO for all investments not otherwise addressed in Chapter 843; (B) ensure that enrollees have adequate access to health care services; and (C) establish minimum physician-to-patient ratios, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; and (2) meet the requirements of federal law and regulations.

Insurance Code §1153.005 provides that the commissioner, after notice and hearing, may adopt rules to implement the chapter.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

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

CROSS-REFERENCE TO STATUTE. Section 3.40 and §3.41 implement Insurance Code §§35.0045, 541.401, 843.151, 1201.271, 1271.051 - 1271.057, 1271.101 - 1271.104, and 1701.055.

§3.40. Applications Generally.

(a) Application form filings must include an explanation of the purpose and use of the application that specifies:

(1) the purpose of the application, including the type of contracts and products the application will be used for; and

(2) whether the application will be in paper, electronic, or telephonic form.

(b) Application form filings must:

(1) include a form of the application that shows all text contained on the application, including all sections and questions that the applicant must complete, and any additional drop-downs, scripts, questions, questionnaires, or supplements that may be conditionally required on the basis of the applicant's responses; and

(2) clearly indicate which statements an applicant must agree to in order to be considered eligible for coverage.

(c) Applications for use by multiple companies or for use in offering products from multiple companies must be submitted to the department by each issuer that will use the form and must prominently display:

(1) the full name of each issuer assuming the risk of the products, and the products offered by each issuer;

(2) the complete mailing address of each issuer; and

(3) a means of designating the appropriate issuer (such as checkboxes) that coverage is being sought through.

(d) Questions that applicants must complete on an application:

(1) must be limited to questions necessary to issue or administer the policy or contract;

(2) may not be structured in a manner that requires the applicant to self-diagnose; and

(3) if limited by time or scope, must be consistent with the underwriting standards.

(e) Application forms must:

(1) clearly state that the application will be attached to the policy or evidence of coverage and will become part of the contract;

(2) state that coverage may not be denied on the basis of information not requested in the application except as described in the application;

(3) include a method for an applicant to opt out of electronic communications if the issuer does not seek affirmative consent for conducting business electronically under Insurance Code §35.004, concerning Minimum Standards for Regulated Entities Conducting Business with Consumers; and

(4) if the issuer will obtain personal information on applicants from third parties, disclose the types of information that might be obtained, the circumstances when it might be obtained, and how it will be used.

§3.41. Standards for Electronic and Telephonic Applications.

(a) When conducting business electronically, an issuer must comply with Insurance Code Chapter 35, concerning Electronic Transactions.

(b) For all applications, including applications that involve electronic or telephonic transactions, the issuer must provide the

applicant with a written copy of the completed application, including any responses given verbally, before the applicant is asked to sign and submit the application.

(c) The issuer must deliver the completed written application in a manner that allows the consumer to retain the information, consistent with Texas Business and Commerce Code §322.008(a), concerning Provision of Information in Writing; Presentation of Records, and Insurance Code §35.004(c), concerning Minimum Standards for Regulated Entities Electronically Conducting Business with Consumers.

(d) When filing an application that will be used with electronic or telephonic transactions, the issuer must include in the filing a description of the security procedures that will be used to verify the authenticity of the transaction.

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

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DIVISION 4. REQUIREMENTS SPECIFIC TO ACCIDENT, HEALTH, AND HMO FILINGS

28 TAC §§3.50 - 3.52

STATUTORY AUTHORITY. TDI proposes new §§3.50 - 3.52 under Insurance Code §§541.401, 843.151, 1201.006, 1202.051, 1271.004, 1301.007, 1501.010, 1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §541.401 provides that the commissioner may adopt reasonable rules as necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §843.151 provides that the commissioner may adopt reasonable rules as necessary and proper to (1) implement Insurance Code §1367.053; Chapter 843; Chapter 1452, Subchapter A; Chapter 1507, Subchapter B; Chapters 222, 251, and 258, as applicable to an HMO; and Chapters 1271 and 1272, including rules to (A) prescribe authorized investments for an HMO for all investments not otherwise addressed in Chapter 843; (B) ensure that enrollees have adequate access to health care services; and (C) establish minimum physician-to-patient ratios, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; and (2) meet the requirements of federal law and regulations.

Insurance Code §1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Insurance Code Chapter 1201.

Insurance Code §1202.051 provides that the commissioner adopt rules necessary to implement the section and meet the minimum requirements of federal law.

Insurance Code §1271.004 provides that the commissioner may adopt rules necessary to implement the section (which concerns individual health care plans) and to meet the minimum requirements of federal law, including regulations.

Insurance Code §1301.007 provides that the commissioner may adopt rules necessary to implement the chapter.

Insurance Code §1501.010 provides that the commissioner adopt rules necessary to implement Insurance Code Chapter 1501 and meet the minimum requirements of federal law, including regulations.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement Insurance Code Chapter 1701.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section.

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

CROSS-REFERENCE TO STATUTE. Sections 3.50 - 3.52 implement Insurance Code §§843.201, 1202.051, 1271.004, 1271.051 - 1271.057, 1271.101 - 1271.104, 1301.158, 1701.055, 1701.057, and 1701.061.

§3.50. Filing Requirements for Health Plan Disclosures.

A filing for any product for which an outline of coverage, written description of plan terms and conditions, or similar disclosure is required must include a copy of the required disclosure document for review or a reference to the filing ID that the disclosure document was separately filed under. The disclosure document must comply with the applicable requirements, including:

(1) for individual accident and health coverage, the requirements in Subchapter S of this chapter (relating to Minimum Standards and Benefits and Readability for Individual Accident and Health Insurance Policies);

(2) for Medicare supplement coverage, the requirements in §3.3308 of this title (relating to Required Disclosure Provisions);

(3) for short-term limited-duration coverage, the requirements in §3.3602 of this title (relating to Requirements for Short-Term Limited-Duration Coverage);

(4) for a preferred or exclusive provider plan, the requirements in §3.3705 of this title (relating to Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations);

(5) for long-term-care coverage, the requirements in §3.3832 of this title (relating to Outline of Coverage); or

(6) for an HMO plan, the requirements in §11.1600 of this title (relating to Information to Prospective and Current Contract Holders and Enrollees).

§3.51. Payment of Premiums or Cost Sharing.

(a) With respect to an issuer's restrictions on the form or manner of the payment of premiums or cost sharing for a major medical health insurance, HMO, or Medicare supplement product, the following practices are unfair methods of competition or unfair or deceptive

acts or practices prohibited under Insurance Code Chapter 541, concerning Unfair Methods of Competition and Unfair or Deceptive Acts or Practices:

(1) failing to disclose such restrictions in the contract;

(2) requiring payment by personal check; and

(3) prohibiting payments made by the enrollee, such as by money order, if the source of the funds meets the criteria in subsection (b) of this section.

(b) For a major medical insurance, HMO, or Medicare supplement product, an issuer must accept premium payments and apply cost-sharing payments to the enrollee's deductible, copayment, cost-sharing responsibility, or out-of-pocket maximum if the payments are made by:

(1) the enrollee's family;

(2) an entity described in 45 CFR §156.1250, concerning Acceptance of Certain Third Party Payments, as applicable; or

(3) another third party if the following criteria are met:

(A) the assistance is provided on the basis of the insured's financial need;

(B) the individual or organization providing the funds is not a health care provider; and

(C) the individual or organization providing the funds is not financially interested. Financially interested individuals or organizations include those that receive most of their funding from individuals or entities with a pecuniary interest in the payment of health insurance claims, or organizations that are subject to direct or indirect control of individuals or entities with a pecuniary interest in the payment of health insurance claims.

(c) Nothing in this section modifies the requirements or applicability of Insurance Code §1369.0542, concerning Effects of Reductions in Out-of-Pocket Expenses on Cost Sharing.

§3.52. Filings Required for Termination of Guaranteed Renewable Major Medical Coverage.

(a) Any issuer required to provide notice to the department related to termination by discontinuance or refusal to renew all guaranteed renewable major medical coverage in a given market or service area under §3.3038 of this title (relating to Mandatory Guaranteed Renewability Provisions for Individual Hospital, Medical, or Surgical Coverage; Exceptions), §11.506 of this title (relating to Mandatory Contractual Provisions: Group, Individual, and Conversion Agreement and Group Certificate), §21.2704 of this title (relating to Mandatory Guaranteed Renewability Provisions for Health Benefit Plans Issued to Members of an Association or Bona Fide Association), §26.16 of this title (relating to Refusal to Renew and Application to Reenter Small Employer Market), or §26.309 of this title (relating to Refusal to Renew and Application to Reenter Large Employer Market) must submit a filing consistent with this section at least 180 days before coverage under the first plan terminates.

(b) An issuer must submit a filing for each applicable line of business that includes:

(1) whether a withdrawal plan has been submitted under Chapter 7, Subchapter R of this title (relating to Withdrawal Plan Requirements and Procedures) and Insurance Code Chapter 827, concerning Withdrawal and Restriction Plans;

(2) as applicable, the service areas affected by the withdrawal and a reference to the filing ID that the issuer filed the service area reduction under;

(3) the number of covered lives affected in each Texas county;

(4) the effective date or dates the coverage will terminate on;

(5) a copy of the notices to be provided to policyholders, group contract holders, and enrollees; and

(6) a list of products that will be terminated that includes the form numbers and filing IDs.

(c) Filing requirements in this section are in addition to requirements in Chapter 7, Subchapter R of this title that may apply if the failure to renew coverage constitutes a withdrawal under Insurance Code Chapter 827.

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 5. ACTUARIAL FILING REQUIREMENTS

28 TAC §§3.60 - 3.62

STATUTORY AUTHORITY. TDI proposes new §§3.60 - 3.62 under Insurance Code §§843.151, 1107.108, 1111A.015, 1153.005, 1153.103, 1201.006, 1201.206, 1251.008, 1271.004, 1501.010, 1651.004, 1651.051, 1651.053, 1651.055, 1652.005, 1652.051, 1652.052, 1652.101 - 1652.103, 1698.051, 1698.052, 1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §843.151 provides that the commissioner may adopt reasonable rules as necessary and proper to (1) implement Insurance Code §1367.053; Chapter 843; Chapter 1452, Subchapter A; Chapter 1507, Subchapter B; Chapters 222, 251, and 258, as applicable to an HMO; and Chapters 1271 and 1272, including rules to (A) prescribe authorized investments for an HMO for all investments not otherwise addressed in Chapter 843; (B) ensure that enrollees have adequate access to health care services; and (C) establish minimum physician-to-patient ratios, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; and (2) meet the requirements of federal law and regulations.

Insurance Code §1107.108 provides that the commissioner may adopt rules to implement the provisions of Insurance Code Chapter 1107.

Insurance Code §1111A.015 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1111A.

Insurance Code §1153.005 provides that the commissioner, after notice and hearing, may adopt rules to implement Insurance Code Chapter 1153.

Insurance Code §1153.103 provides that the commissioner, after notice and a hearing, by rule may adopt a presumptive premium rate for various classes of business and terms of coverage regarding credit life insurance and credit accident and health insurance.

Insurance Code §1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Insurance Code Chapter 1201.

Insurance Code §1201.206 provides that the commissioner may adopt reasonable rules regarding the procedure for submitting policies subject to Insurance Code Chapter 1201 that are necessary, proper, or advisable for the administration of the chapter.

Insurance Code §1251.008 provides that the commissioner may adopt rules necessary to administer Insurance Code Chapter 1251, subject to a notice and hearing as required by Insurance Code §1201.007.

Insurance Code §1271.004 provides that the commissioner may adopt rules necessary to implement the section (relating to individual health care plans) and to meet the minimum requirements of federal law, including regulations.

Insurance Code §1501.010 provides that the commissioner adopt rules necessary to implement Insurance Code Chapter 1501 and meet the minimum requirements of federal law, including regulations.

Insurance Code §1651.004 provides that TDI may adopt rules that are necessary and proper to carry out Chapter 1651.

Insurance Code §1651.051 provides that the commissioner by rule establish standards for long-term care benefit plans, and for full and fair disclosure setting forth the manner, content, and required disclosures for the marketing and sale of these plans.

Insurance Code §1651.053 provides that the commissioner adopt rules to establish standards for loss ratios of long-term care benefit plans.

Insurance Code §1651.055 provides that the commissioner adopt rules to stabilize long-term care premium rates.

Insurance Code §1652.005 provides that, in addition to other rules required or authorized by Insurance Code Chapter 1652, the commissioner adopt reasonable rules necessary and proper to carry out the chapter, including rules adopted in accordance with federal law relating to the regulation of Medicare supplement benefit plan coverage that are necessary for this state to obtain or retain certain certification as a state with an approved regulatory program.

Insurance Code §1652.051 provides that the commissioner adopt reasonable rules to establish specific standards for provisions in Medicare supplement benefit plans and standards for facilitating comparisons of different plans, and may adopt reasonable rules that specifically prohibit benefit plans provisions that are not otherwise specifically authorized by statute and that the commissioner determines are unjust, unfair, or unfairly discriminatory.

Insurance Code §1652.052 provides that the commissioner adopt reasonable rules to establish minimum standards for benefits and claim payments under Medicare supplement benefit plans.

Insurance Code §1652.101 provides that the commissioner adopt reasonable rules to establish minimum loss ratio standards for Medicare supplement benefit plans.

Insurance Code §1652.102 provides that the commissioner may adopt rules relating to filing requirements for rates, rating schedules, and loss ratios.

Insurance Code §1652.103 provides that the commissioner by rule provide a process for reviewing and approving or disapproving a proposed premium increase relating to a Medicare supplement benefit plan.

Insurance Code §1698.051 provides that the commissioner by rule establish a process under which the commissioner reviews health benefit plan rates and rate changes for compliance with Insurance Code Chapter 1698 and other applicable state and federal law.

Insurance Code §1698.052 provides that the commissioner adopt rules and provide guidance related to individual health plans, including qualified health plans, to address several factors, including covered benefits or health benefit plan design.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

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

CROSS-REFERENCE TO STATUTE. Section 3.60 implements Insurance Code §§1131.064, 1131.101, 1131.102, 1153.101, 1153.701, 1251.056, 1251.101, 1251.359, 1271.004, 1271.251, 1271.253, and 1651.056.

Section 3.61 implements Insurance Code §§1251.056, 1251.101, and 1251.359.

Section 3.62 implements Insurance Code §§1105.055, 1107.108, 1114.007, 1131.064, 1131.101, 1131.102, 1153.053, 1153.101, and 1153.701.

§3.60. General Actuarial Filing Requirements.

Issuers are required to submit rate filings or other actuarial information as required by law, including:

(1) Insurance Code Chapter 1105, concerning Standard Nonforfeiture Law for Life Insurance;

(2) Insurance Code Chapter 1107, concerning Standard Nonforfeiture Law for Certain Annuities;

(3) Insurance Code §1131.064, concerning Other Groups;

(4) Insurance Code §1153.101, concerning Filing of Schedule of Rates and Subchapter FF of this chapter (relating to Credit Life and Credit Accident and Health Insurance);

(5) Insurance Code §1251.056, concerning Other Groups;

(6) Insurance Code §1251.359, concerning Coverage for Other Risks;

(7) Insurance Code Chapter 1271, Subchapter F, concerning Schedule of Charges, and Chapter 11, Subchapter H of this title (relating to Schedule of Charges);

(8) Insurance Code Chapter 1501, Subchapter E, concerning Underwriting and Rating of Small Employer Health Benefit Plans, and §26.11 of this title (relating to Restrictions Relating to Premium Rates);

(9) Insurance Code Chapter 1651, concerning Long-Term Care Benefit Plans, and Subchapter Y of this chapter (relating to Standards for Long-Term Care Insurance, Non-Partnership and Partnership Long-Term Care Insurance Coverage Under Individual and Group Policies and Annuity Contracts, and Life Insurance Policies That Provide Long-Term Care Benefits Within the Policy);

(10) Insurance Code Chapter 1652, concerning Medicare Supplement Benefit Plans, and Subchapter T of this chapter (relating to Minimum Standards for Medicare Supplement Policies);

(11) Insurance Code Chapter 1698, concerning Rates for Certain Coverage, and Subchapter F of this chapter (relating to Rate Review for Health Benefit Plans); and

(12) Insurance Code §1701.057, concerning Withdrawal of Individual Accident and Health Insurance Policy Form Approval.

§3.61. Actuarial Information for Certain Accident and Health Filings.

(a) This section applies to:

(1) individual accident and health products under Insurance Code §1701.057, concerning Withdrawal of Individual Accident and Health Insurance Policy Form Approval; and

(2) group accident and health coverage issued to alternative types of group policyholders under Insurance Code §1251.056, concerning Other Groups, and §1251.359, concerning Coverage for Other Risks.

(b) This section does not apply to rate filings specified in §3.60(9) - (11) of this title (relating to General Actuarial Filing Requirements).

(c) No premium rate schedule may be used until a copy of the schedule has been filed with the department.

(d) Each premium rate schedule must be accompanied by an actuarial memorandum, signed by a qualified actuary.

(e) A new product filing must include the following actuarial information:

(1) the form numbers the rates apply to and the filing IDs that the forms were filed, approved, or exempted under;

(2) a new rate sheet that includes rates for each plan and each combination of rating factors used by the issuer;

(3) an actuarial memorandum that contains:

(A) a brief description of the policy benefits, renewability provision, and general marketing method;

(B) a brief description of how rates were determined, including a general description and source of each assumption used;

(C) a list of retention components, including, expenses, taxes, fees, and profit expressed as a percent of premium, dollars per policy, or dollars per unit of benefit;

(D) the target loss ratio, including a brief description of how it was calculated, and all components used in its calculation;

(E) a description of the experience used in developing the issuer's rates, including the level of credibility and appropriateness of experience data or justification for the use of the proposed manual rates if the issuer's own experience is not credible;

(F) assumptions and support used in developing rates, including adjustments for trend, morbidity, lapses, risk-mitigating programs, and changes in benefits; and

(G) any other data used to support the proposed rate.

(f) A rate adjustment filing for an existing product must include:

(1) the form numbers that the rate adjustments apply to and the filing IDs that the forms were filed, approved, or exempted under;

(2) a new rate sheet that includes rates for each plan and each combination of rating factors used by the issuer; and

(3) an actuarial memorandum that contains:

(A) a brief description of the benefits, renewability provision, and the general marketing method;

(B) scope and reason for the rate revision;

(C) a description of the experience used in developing the issuer's rates, including past experience, loss ratios for all applicable prior experience periods, and the level of credibility and appropriateness of experience data;

(D) a brief description of how revised rates were determined, including a general description and source of each assumption used;

(E) a list of expenses, taxes, fees, and profit, expressed as a percent of premium, dollars per policy, or dollars per unit of benefit;

(F) the target loss ratio and description of how it was calculated;

(G) assumptions and support used in developing rates, including adjustments for trend, morbidity, lapses, risk-mitigating programs, and changes in benefits; and

(H) any other data used to support the proposed rate increase.

§3.62. Actuarial Information for Life and Annuity Filings.

(a) Each life filing that changes the nonforfeiture values of a particular policy or certificate must be accompanied by the information described in this subsection.

(1) For a life insurance product that is subject to Insurance Code Chapter 1105, concerning Standard Nonforfeiture Law for Life Insurance, an issuer must include an actuarial memorandum that demonstrates compliance with Insurance Code Chapter 1105.

(2) For a universal life filing, an issuer must include:

(A) an actuarial memorandum, signed by a qualified actuary, with a detailed and complete explanation of the basis for computing the policy value and the cash surrender value of the policy, including:

(i) the guaranteed maximum expense charges and loads;

(ii) the guaranteed interest rate or rates;

(iii) the guaranteed maximum mortality charges;

(iv) any other guaranteed charges; and

(v) any surrender or partial withdrawal charges;

(B) a comparison table for issue age 35 that displays columns of:

(i) the guaranteed death benefits;

(ii) guaranteed accumulated values;

(iii) cash surrender values; and

(iv) reserves for the policy; and

(C) itemized monthly universal life calculations for the first and 50th years showing:

(i) beginning values;

(ii) maximum expense charges;

(iii) maximum cost-of-insurance deductions;

(iv) monthly expense and/or policy fees;

(v) interest accumulations; and

(vi) the ending values for the specimen policy.

(3) For variable life forms, the issuer must provide actuarial information as required by §4.1504 of this title (relating to Insurance Contract and Filing Requirements), and as required by this section.

(4) The issuer must provide a certification that it will calculate all premiums, reserves, and nonforfeiture values in a manner consistent with the information submitted under this subchapter.

(b) For each annuity filing, an actuarial memorandum must be provided to meet the minimum requirements of Insurance Code Chapter 1107, concerning Standard Nonforfeiture Law for Certain Annuities, and specify the guaranteed interest rates, the maximum surrender charges, and any other maximum charges applicable in the determination of nonforfeiture values. If the issuer intends to change the guaranteed interest rates specified in the form, notification must be submitted to the department before the change. The notification must specify the new guaranteed interest rate and the date when the new guaranteed interest rate will be effective for new issues of a specified policy form, as required by §3.1004 of this title (relating to Policy Form Review).

(1) For variable annuities, the actuarial information must include the information required in this subsection and the information required by §4.2105 of this title (relating to Contract Requirements) to the extent such material is applicable.

(2) For policies or contracts that contain a market-value adjustment, the actuarial memorandum must:

(A) identify the name of the separate account;

(B) indicate the basis for the market-value-adjustment formula and that the formula provides reasonable equity to both the contract holder and the issuer;

(C) detail that the reserve liabilities are established in accordance with actuarial procedures that recognize that assets of the separate account are based on market values, the variable nature of the benefits provided, and any mortality guarantees;

(D) include a table of minimum guaranteed policy values and cash surrender values that:

(i) are based on the longest guaranteed investment period;

(ii) reflect both upward and downward market-value adjustments; and

(iii) show that the minimum guaranteed values before the adjustment are not less than the minimum nonforfeiture values required by law; and

(E) provide a numerical illustration reproducing the values shown in the table for the first, second, and third years of investment, and at the end of the guaranteed investment period.

(c) For a filing that includes more than one guaranteed interest charge period, the actuarial memorandum must address each guaranteed interest charge period.

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
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SUBCHAPTER S. MINIMUM STANDARDS AND BENEFITS AND READABILITY FOR INDIVIDUAL ACCIDENT AND HEALTH INSURANCE POLICIES

28 TAC §3.3100

STATUTORY AUTHORITY. TDI proposes amendments to §3.3100 under Insurance Code §§1201.006, 1201.101, 1201.206, 1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Insurance Code Chapter 1201.

Insurance Code §1201.101 provides that the commissioner adopt reasonable rules establishing specific standards for the content and manner of sale of an individual accident and health insurance policy.

Insurance Code §1201.206 provides that the commissioner may adopt reasonable rules regarding the procedure for submitting policies subject to Insurance Code Chapter 1201 that are necessary, proper, or advisable for the administration of the chapter.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

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

CROSS-REFERENCE TO STATUTE. Section 3.3100 implements Insurance Code §§1201.002, 1201.201, and 1201.202.

§3.3100. Policy Readability Generally.

(a) In order to increase policyholder understanding of individual accident and sickness policies, insurers are encouraged to draft individual accident and sickness policies in a readable manner. To maintain the value of [~~In order not to devalue~~] the policy as a legal document, the utmost care and caution must be used in its preparation. Insurance Code Chapter 1201, Subchapter E, concerning Required Policy Provisions, requires the use of certain policy provisions in particular language or provisions that are as [~~not less~~] favorable to the insured or beneficiary as [~~than~~] those set forth in that [~~said~~] subchapter. Even with [~~The same is true with respect to optional policy provisions as provided in Insurance Code §§1201.219 - 1201.226. Notwithstanding~~] these requirements of law, insurers are encouraged [~~urged~~] to experiment with new language in these areas.

(b) The standards for plain language and readability set forth in Subchapter A of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings) apply to forms filed under this subchapter. [~~Insurers are encouraged to follow the principles set forth in §3.3101 of this title (relating to Organization of Policy Format for Readability) and §3.3102 of this title (relating to Language Readability) when preparing individual accident and sickness policies.~~]

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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28 TAC §3.3101, §3.3102

STATUTORY AUTHORITY. TDI proposes the repeal of §3.3101 and §3.3102 under Insurance Code §§1201.006, 1201.101, 1201.206, 1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Insurance Code Chapter 1201.

Insurance Code §1201.101 provides that the commissioner adopt reasonable rules establishing specific standards for the content and manner of sale of an individual accident and health insurance policy.

Insurance Code §1201.206 provides that the commissioner may adopt reasonable rules regarding the procedure for submitting policies subject to Insurance Code Chapter 1201 that are necessary, proper, or advisable for the administration of the chapter.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

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

CROSS-REFERENCE TO STATUTE. The repeal of §3.3101 and §3.3102 implements Insurance Code §§1201.002, 1201.101, 1201.201, and 1201.202.

§3.3101. Organization of Policy Format for Readability.
§3.3102. Language Readability.

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

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SUBCHAPTER Z. EXEMPTION FROM REVIEW AND APPROVAL OF CERTAIN LIFE, ACCIDENT, HEALTH, AND ANNUITY FORMS AND EXPEDITION OF REVIEW

28 TAC §§3.4004, 3.4005, 3.4009

STATUTORY AUTHORITY. TDI proposes amendments to §§3.4004, 3.4005, and 3.4009 under Insurance Code §§1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable

rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

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

CROSS-REFERENCE TO STATUTE. Sections 3.4004, 3.4005, and 3.4009 implement Insurance Code §§1701.005, 1701.060, and 1701.061.

§3.4004. Exempt Forms.

(a) Group and individual life forms. The group and individual life insurance forms specified in this subsection are exempt from the review and approval requirements of Insurance Code Chapter 1701, concerning Policy Forms, unless the forms are required by the laws of Texas, another state, or the United States, to be specifically approved or are otherwise excepted in subsection (b) of this section:

(1) group and individual term life insurance forms; [~~master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto, issued under the authority of Insurance Code §§1131.003, 1131.051 -1131.058, 1131.060, and 1131.064(b), listed in subparagraphs (A) and (B) of this paragraph:~~]

[~~(A) term policies and riders; and~~]

[~~(B) cash value and endowment policies with no more than five death benefit and/or premium changes;~~]

[~~(2) any alternate face pages filed subsequent to the original approval of a policy for use with multiple employer trusteed arrangements as defined in Insurance Code §1131.053;~~]

[~~(3) individual, joint life, and last survivor insurance forms, including applications, listed in subparagraphs (A) - (Q) of this paragraph:~~]

[~~(A) ordinary life;~~]

[~~(B) limited pay life with no more than five death benefit and/or premium changes;~~]

[~~(C) life paid up at specified ages with no more than five death benefit and/or premium changes;~~]

[~~(D) single premium life with no more than five death benefit changes;~~]

[~~(E) modified premium level death benefit life with no more than five premium changes;~~]

[~~(F) level premium life with no more than five death benefit changes;~~]

[~~(G) retirement income policies;~~]

[~~(H) level or decreasing term policies and riders;~~]

[~~(I) increasing term policies and riders;~~]

[~~(J) family plans;~~]

[~~(K) family income;~~]

[~~(L) family plan riders, including but not limited to children's term riders, dependent term riders, and spouse term riders;~~]

[~~(M) limited pay endowment with no more than five death benefit and/or premium changes;~~]

[~~(N) level premium endowment with no more than five death benefit changes;~~]

[~~(O) single premium endowment with no more than five death benefit changes;~~]

[~~(P) indeterminate premium policies with no more than five death benefit changes; and~~]

(2) [~~(Q)~~] individual variable life policies with a separate account only;

(3) [~~(4)~~] rider forms listed in subparagraphs (A) - (K) of this paragraph:

(A) accidental death benefit riders;

(B) waiver of premium riders;

(C) guaranteed insurability riders;

(D) individual retirement account [~~accounts~~] (IRA) riders (to include Roth and Simple IRAs [~~IRA~~]) [~~riders~~];

(E) preliminary term riders;

(F) conversion riders;

(G) exchange riders;

(H) waiver of cost riders, including waiver of cost and monthly expense charge, and waiver of cost and premium payment;

(I) dividend option riders;

(J) additional insured riders; and

(K) additional insurance on base insured riders;

(4) [~~(5)~~] endorsement forms listed in subparagraphs (A) - (K) of this paragraph:

(A) optional retirement program (ORP) [~~ORP~~] endorsements;

(B) nontransferability endorsements;

(C) H.R. 10 (Keogh plan) endorsements;

(D) tax sheltered annuity endorsements;

(E) nonassignability endorsements;

(F) settlement option endorsements;

(G) individual retirement account endorsements (to include Roth and Simple IRAs [~~IRA endorsements~~]);

(H) unisex endorsements;

(I) loan endorsements;

(J) waiver of surrender charges on disability or confinement in a hospital or nursing home endorsements; and

(K) step-up or roll-up death benefit endorsements; and

(5) [(6)] limited refilings for [life insurance which indicate only a change in the mortality table or interest rates for new issues under the policy form, or] changes to the separate account for variable products.

(b) Exceptions. A filing identified in [The provisions of] subsection (a)(1) [and (2)] of this section is not permitted to be filed as exempt for [do not apply to] any group or individual life insurance forms providing the types of coverages set out in paragraphs (1) - (13) [(12)] of this subsection:

(1) universal life, including flexible premium adjustable life;

(2) whole [universal related] life;

(3) endowment [adjustable] life;

(4) variable life with a fixed account;

(5) business value;

(6) any forms containing a market value adjustment;

(7) deposit term;

(8) forms subject to Insurance Code Chapter 1153, concerning Credit Life Insurance and Credit Accident and Health Insurance;

(9) any life insurance product used to fund prepaid funeral contracts;

(10) any form containing a persistency bonus provision, no-lapse premium provision, or other additional interest credit to the policy value provision (guaranteed or non-guaranteed), index-linked crediting [equity indexed] provision, residual death benefit provision, accelerated death benefit provision, long-term care or other accident- and health-related [accident and health related] benefit provision;

(11) applications for use with variable life or index-linked [equity indexed] life, or forms that contain a market value adjustment provision, a long-term care or other accident- and health-related [accident and health related] benefit provision; [or]

(12) group life master policies, contracts, certificates, applications, or enrollment forms, as well as any applicable riders, amendments, and endorsements [applicable thereto], issued under the authority of Insurance Code §1131.064, concerning Other Groups, that are related [relating] to discretionary groups; or[.]

(13) limited refilings for life insurance that indicate a change in the mortality table or interest rates for new issues under the policy form.

(c) Group and individual annuity forms. The group and individual annuity forms[, including applications,] specified in paragraphs (1) - (7) of this subsection are exempt from the review and approval requirements of Insurance Code Chapter 1701, unless the forms are required by the laws of Texas, another state, or of the United States to be specifically approved or are otherwise excepted in subsection (d) of this section:

(1) single premium immediate annuities (including variable immediate annuities);

(2) deferred annuities used as structured settlement options;

(3) individual deferred annuities that do not include persistency bonuses or additional interest credits of any type, waiver of surrender charges (except for death, disability, or confinement in a hospital or nursing home); two-tier values; or a market value adjustment:

(A) for purposes of this paragraph, and paragraph (4) of this subsection, "waiver of surrender charges" means a waiver of surrender charges that [which] is applied to any amount greater than 10% of the surrender value;

(B) for purposes of this paragraph, and paragraph (4) of this subsection, "two-tier values" means values on an annuity available at the maturity date of the contract that [which] are different, depending on whether the value is taken from the contract in a lump sum or left with the issuer for periodic payments, regardless of whether the different values are available at issue or later;

(4) group annuities that do not include persistency bonuses or additional interest credits of any type, waiver of surrender charges (except for death, disability, or confinement in a hospital or nursing home), two-tier values, or a market value adjustment; group annuities that are guaranteed investment contracts (GICs), synthetic GICs, funding agreements, and unallocated group annuities funding pension plans;

(5) limited refilings for annuity products that [which] indicate only a change in the mortality table or interest rates for new issues under the policy form, or changes to the separate account for variable products;

(6) variable annuities with a separate account only, which do not include a provision for guaranteed living benefits; and

(7) reversionary annuities.

(d) Exceptions. A filing identified in [The provisions of] subsection (c) of this section may not be filed as exempt for [do not include] any of the following annuity forms:

(1) annuities used to fund prepaid funeral contracts;

(2) variable annuities that contain guaranteed living benefit provisions;

(3) annuities that contain an index-linked crediting [equity indexed] provision, long-term care, or other accident- and health-related benefit provision;

(4) applications for use with variable annuities, index-linked crediting [equity indexed] annuities, annuities that contain a market-value-adjustment, or that contain a [market value adjustment provision,] long-term care or other accident- and health-related provision;

(5) group annuity master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable to those [thereto], issued under the authority of Insurance Code §1131.064, relating to discretionary groups; or[.]

(6) contingent deferred annuities.

(e) Group and individual accident and health forms. The group and individual accident and health insurance forms specified in paragraphs (1) and (2) [- (3)] of this subsection are exempt from the review and approval requirements of Insurance Code Chapter 1701, unless the forms are required by the laws of Texas, another state, or the United States, to be specifically approved or are otherwise excepted in subsection (f) of this section:

(1) the group [and blanket] accident and health forms set out in subparagraphs (A) - (C) [(D)] of this paragraph:

(A) a [any] group accident and health form [master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto] issued to employers under [authority of] Insurance Code §1251.051, concerning Employers, or to a labor union or association of labor unions [and

§1251.052; provided the forms issued] under [authority of] Insurance Code §1251.052, concerning Associations [are exempt only if delivered or issued for delivery to a labor union or organization of labor unions];

[(B) any blanket accident and health master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto, issued under authority of Insurance Code §§1251.351 - 1251.358;]

(B) [(C) any] group forms [master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto,] issued under [the authority of] Insurance Code §§1251.051;[,] 1251.052;[,] or 1251.053, concerning Funds Established by Employers, Labor Unions, or Associations, respectively, that provide [providing] Medicare Supplement coverage to an employer, multiple employer arrangement, or a labor union and that are exempt from regulation under Insurance Code §1652.002(b)(1), concerning Medicare Supplement Benefit Plan;

(C) [(D) any] group forms [master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto,] issued under [the authority of] Insurance Code §1251.051 and §1251.052 that provide [providing] long-term care coverage to a single employer, [or] a labor union, or an association of labor unions through a policy that [which] is delivered or issued for delivery outside of Texas;

(2) group and individual accident and [and/or] health forms that provide the following coverages: [policies, contracts, certificates, applications, enrollment forms, riders, amendments, endorsements, and related forms (including but not limited to outlines of coverage, notices, rates, and conditional receipts) applicable thereto, providing coverages set forth in subparagraphs (A) - (K) of this paragraph:]

(A) accident only (including occupational accident and other specified accident);

(B) accidental death and dismemberment;

(C) hospital indemnity [dental];

[(D) in-patient confinement and basic hospital expense coverages (including policies with coverage on an indemnity or expense-incurred basis);]

(D) [(E)] vision;

(E) [(F)] specified disease (including cancer, heart attack, stroke, and other specifically named diseases);

(F) [(G)] disability coverages (including [but not limited to] income replacement, key-man, buy/sell, and overhead expense);

(G) [(H)] policies designed to provide conversion coverages;

(H) [(I)] other permitted coverages that [which] are designed to supplement other in-force health insurance[, including Champus supplements]; and

(I) [(J)] group stop loss/excess loss policies containing an attachment point of $5,000 or more.[; and]

[(K) prescription drug policies; and]

[(3) any alternate face pages filed subsequent to the original approval of a policy for use with multiple employer trusteed arrangements as defined in Insurance Code §1251.053.]

(f) Exceptions. A filing identified in [The provisions of] subsection (e) of this section is not permitted to be filed as exempt for [do not apply to] any of the following insurance forms or rates: [set out in paragraphs (1)-(6) of this section.]

(1) a [The provisions of subsection (e)(2) of this section do not apply to any] group or individual health insurance policy that [which] provides, on a comprehensive basis for illness and injury, a combination of hospital, medical, and surgical coverages, including [but not limited to] any guaranteed renewable or short-term limited-duration major medical policies; [and any limited benefit hospital, medical, and surgical policies as defined in §3.3079 of this title (relating to Minimum Standards for Limited Benefit Coverage).]

(2) a [The provisions of subsection (e)(1) and (2) of this section do not apply to any] Medicare supplement policy [policies] as defined in Insurance Code Chapter 1652, concerning Medicare Supplement Benefit Plans, except as specifically provided in subsection (e)(1)(C) of this section;[.]

(3) a [The provisions of subsection (e)(1) and (2) of this section do not apply to any] long-term care policy [policies] as defined in Insurance Code Chapter 1651, concerning Long-Term Care Benefit Plans, (including [but not limited to] any policies providing nursing home or home health care coverages), except as specifically provided in subsection (e)(1)(D) of this section;[.]

(4) a form containing [The provisions of subsection (e)(1) and (2) of this section do not apply to any forms which contain] preferred provider or exclusive provider benefit plan provisions as defined in Insurance Code Chapter 1301, concerning Preferred Provider Benefit Plans; [§§3.3701 - 3.3706 of this title (relating to Preferred Provider Plans).]

(5) a [The provisions of subsection (e)(1) and (2) of this section do not apply to any] group form that is [forms which are] issued under [the authority of] Insurance Code §1251.056, concerning Other Groups; [(discretionary groups).]

(6) a conversion [The provisions of subsection (e)(2)(H) of this section do not apply to any] policy subject to the provisions of Chapter 21, Subchapter SS of this title, (relating to Continuation and Conversion Provisions) [Subchapter F of this chapter (relating to Group Health Insurance Conversion Privilege)], except for policies providing conversion from a policy included as an exempt form in this section;[.]

(7) a policy of "other fixed indemnity coverage" that is more extensive than coverage for hospital confinement, including a policy that provides limited long-term care coverage for a period of less than 12 months;

(8) rate or actuarial information that is required to be filed, even if the form is filed exempt as permitted by this section; and

(9) a dental policy.

(g) Copies of previously approved forms. Except for filings not eligible to be filed exempt under subsection (f)(4) of this section, a [Any] form not otherwise exempted under this subchapter that is an exact copy of a [previously approved] form is exempt from the review and approval requirements of Insurance Code Chapter 1701. These [Such] forms must be filed in accordance with and accompanied by the required certification as prescribed in Subchapter A of this chapter (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings). [The certification form required to be used in filing the certification is "TEXAS POLICY FORM CERTIFICATIONS, Multi-Use Form," which also is to be utilized for filing certifications for file-and-use under Insurance Code §1701.052, as well as for corrections, resubmissions, substitutions, and filings for forms exempted from review and official action by this subchapter. Form "TEXAS POLICY FORM CERTIFICATIONS" is available from the

~~Life and Health Division, has been filed with the Texas Register Division of the Secretary of State for public inspection, and is adopted by reference in this subchapter. The form also is reproduced in full as Figure 1 in §3.4020 of this title (relating to Appendix).~~]

(h) Copies of previously approved forms subsequently submitted in braille or a non-English [~~foreign~~] language [~~(non-English)~~]. Any form not otherwise exempted under this subchapter that is submitted in braille [~~Braille~~] as an exact copy of a previously approved form, or any form that has been translated into a non-English [~~foreign~~] language from its previously approved English version, is exempt from the review and approval requirements of Insurance Code Chapter 1701. These [~~Such~~] forms must be filed in accordance with and accompanied by the required certification as prescribed in Subchapter A of this chapter. [~~The certification form required to be used in filing the certification is the same as that described in subsection (g) of this section.~~]

§3.4005. General Information.

(a) This section does not relieve any insurer or other licensee from complying with the Insurance Code or the rules and regulations of the Texas Department of Insurance.

(b) Insurers must cause all forms to comply with all required provisions of all applicable law, including [~~but not limited to~~] the Insurance Code and the rules and regulations of the department. In addition to other legal requirements:

(1) forms may not contain any ambiguous, deceptive, misleading, unfair, inequitable, or unjust wording or terminology;

(2) title headings or other indications of a form's provisions may not be misleading;

(3) forms may not contain any exception, exclusion, limitation, or reduction that is deceptive, unjust, unfair, encourages misrepresentation, or is inequitable or that would deceptively affect the risk understood [~~purported~~] to be assumed in the general coverage of the contract; and

(4) forms may not be printed or otherwise reproduced in such a manner as to render any provision of the form substantially illegible or not easily legible to persons of normal vision.

(c) Every filing exempted from review by this subchapter must be accompanied by each item of information set out in paragraphs (1) - (3) of this subsection.

(1) The certifications for exempt filings required in §3.16 of this title (relating to Filing Modes, Categories, and Certifications). [~~A signed copy of the certification form which is entitled "TEXAS POLICY FORM CERTIFICATIONS, Multi-Use Form," which also is to be utilized for filing certifications for file-and-use under Insurance Code §1701.052, as well as for corrections, resubmissions, substitutions, and filings for previously approved similar forms. Form "TEXAS POLICY FORM CERTIFICATIONS" is available from the Life and Health Division, has been filed with the Texas Register Division of the Secretary of State for public inspection, and is adopted by reference in this subchapter. The form also is reproduced in full as Figure 1 in §3.4020 of this title (relating to Appendix).~~]

(2) Any additional information or documentation generally required under the provisions of Chapter 3, Subchapter A of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings).

(3) A cover letter setting out the items in subparagraphs (A) - (C) of this paragraph, as follows:

(A) that the filing is exempt;

(B) the particular section, subsection, paragraph, and subparagraph of the section under which the filing is exempt; and

(C) a brief description of the benefits provided by the form.

§3.4009. Sanctions and Cancellation of Exempt Filing Privileges.

(a) The privileges under this subchapter that permit an insurer to make exempt filings may be [~~these sections are~~] canceled [~~for an insurer~~] if the insurer makes an exempt filing that fails to comply with one or more provisions of this title or the Insurance Code that results in the department determining that the filing has failed audit. The department will issue a notice of failed audit consistent with §3.23 of this title (relating to Acceptance, Rejection, and Disposition of Filings) that explains [~~either of the determinations in paragraphs (1) or (2) of this subsection are made after notice and hearing as follows~~]:

(1) the compliance deficiencies identified during the audit process;

[~~(1) an insurer's filing made under §3.4004 of this title (relating to Exempt Forms) fails to comply with §3.4005 of this title (relating to General Information); or~~]

(2) the corrective action required;

[~~(2) an insurer's filing made under §3.4004(g) of this title fails to be an exact copy of a filing previously approved.~~]

(3) the cancellation of the insurer's exempt filing privileges; and

(4) how those privileges may be reinstated.

(b) If an insurer's privileges to make exempt filings under this subchapter are cancelled [~~In the event of cancellation of privileges under these sections~~], the insurer is [~~henceforth~~] required to file for review and approval any and all forms intended for use in Texas, until the [~~such time as~~] privileges under these sections are reinstated.

(c) Reinstatement of any privilege canceled under these sections will occur after a period of not more than one year, as provided in the notice of failed audit under subsection (a) of this section [~~from the date the privileges finally terminate, unless otherwise determined by the commissioner~~]. An insurer may make application for reinstatement prior to the passage of the period specified in the notice of failed audit under subsection (a) of this section [~~one year following the termination of such privileges~~].

(d) Nothing in these sections limits the commissioner from imposing any other sanction authorized by the Insurance Code or other applicable law.

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

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Jessica Barta
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6555

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SUBCHAPTER Z. EXEMPTION FROM REVIEW AND APPROVAL OF CERTAIN LIFE, ACCIDENT, HEALTH AND ANNUITY FORMS AND EXPEDITION OF REVIEW

28 TAC §3.4020

STATUTORY AUTHORITY. TDI proposes the repeal of §3.4020 under Insurance Code §§1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

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

CROSS-REFERENCE TO STATUTE. The proposed repeal of §3.4020 implements Insurance Code §1701.005 and §§1701.052 - 1701.055.

§3.4020. Appendix.

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
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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER M. REGULATORY FEES

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §7.1301, concerning regulatory fees, and repeal §7.1302, concerning billing system, to be consistent with the proposed repeal and amendment of certain existing sections and adoption of new sections in 28 TAC Chapter 3, Subchapter A, Submission Requirements for Filings and Departmental Actions Related to Such Filings. The Chapter 3 proposal is published separately in this issue of the *Texas Register.*

EXPLANATION. Amending §7.1301 and repealing §7.1302 are necessary to conform to the proposed repeal, amendment, and addition of new sections in Chapter 3, Subchapter A. As proposed, the applicability of Chapter 3, Subchapter A, is expanded to include filings by health maintenance organizations (HMOs). The fee amounts for HMO filings addressed in §7.1301 will be replaced with fee amounts specified in proposed §3.13. Existing §3.7, which references the billing system in §7.1302, is proposed for repeal. Proposed new §3.13 requires filing fees to be paid through the electronic funds transfer system provided within the System for Electronic Rates & Forms Filing (SERFF). This change eliminates the need for the electronic billing system; thus, §7.1302 is proposed for repeal.

Descriptions of the proposed amendments to the sections follow.

Section 7.1301. Regulatory Fees. The proposed amendments to subsection (g) revise paragraph (4) and delete paragraph (5) to remove the existing provisions that specify a fee of $100 for an evidence of coverage that requires approval, and a fee of $50 for a filing that is required by rule but that does not require approval. Subsection (g)(4) is amended to reference filing fees specified in §3.13 for a filing governed by Chapter 3, Subchapter A. Subchapter A applies to form, rate advertising, network, group eligibility, and informational filings for life and health products, and as proposed, also applies to HMO products. As proposed separately in this edition of the *Texas Register,* §3.13 requires a fee of $100 for form and rate filings (including HMO evidence of coverage forms and their associated schedules of charges), subject to certain exceptions, and no fee for other types of filings (such as network filings). This change will result in a cost savings to issuers, as described in the Public Benefit and Cost Note section for Chapter 3, Subchapter A. In addition, TDI proposes nonsubstantive changes throughout §7.1301 to conform to agency style and usage guidelines, and to add titles to Insurance Code references.

Repeal of §7.1302. TDI proposes to repeal §7.1302, which establishes TDI's internal billing system. This change aligns with the proposed repeal of existing §3.7, and proposed new §3.13, which requires issuers to pay filing fees previously governed by §7.1302 through the SERFF EFT system. This change will increase efficiency for TDI and issuers by reducing the administrative work involved in creating, processing, and paying invoices.

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

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

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the sections as proposed are in effect, Ms. Bowden expects that administering them will have the public benefit of ensuring that TDI's rules conform to the proposed changes in Chap-

ter 3, Subchapter A, relating to Submission Requirements for Filing and Departmental Actions Related to Such Filings. Chapter 3, Subchapter A, is also proposed for repeal and replacement, and its publication coincides with the publication of the proposed amendments to §7.1301 and the proposed repeal of §7.1302.

For each of the first five years the sections as proposed are in effect, Ms. Bowden also expects that the public benefit anticipated as a result of administration and enforcement of the proposed amendments to §7.1301 and the proposed repeal of §7.1302 will be increased efficiency in the filing process, both for filers and for TDI, resulting in increased speed-to-market for product filings. Currently, filers that fail to pay fees have their filings put "on hold" until delinquent fees are paid, consistent with §7.1302(f) and (g). The updated filing fee process will avoid such holds. In addition, Ms. Bowden expects that administering the sections as proposed will have the public benefit of ensuring that TDI's rules are accurate, consistent, and transparent by reflecting updated Insurance Code references and correct state agency names and by addressing and eliminating errors in punctuation, grammar, and typography.

Ms. Bowden expects that the sections as proposed will not increase the cost of compliance for stakeholders because, as explained in the proposal for Chapter 3, the amendments result in a decrease in filing fees. Based on filing data for 2022 and 2023, TDI estimates an annual cost savings of $10,000 - $17,000 associated with the changes to fees for HMO filings that are addressed in §7.1301.

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

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Instead, the proposal results in a cost savings, as explained in the Public Benefit and Cost Note section. Therefore, no additional rule amendments are required under Government Code §2001.0045

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the sections as proposed 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 decrease fees paid to the agency;

- will not create a new regulation;

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

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

- will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on November 4, 2024. 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.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2850 at 2:00 p.m., central time, on November 7, 2024, in Room 2.035 of the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701.

28 TAC §7.1301

STATUTORY AUTHORITY. TDI proposes amendments to §7.1301 under Insurance Code §§843.154, 1153.006, 1701.053, and 36.001.

Insurance Code §843.154 provides that the commissioner, within the limits provided by the section, prescribe the fees to be charged under Insurance Code §843.154.

Insurance Code §1153.006 provides that TDI set a fee not to exceed $200 for a form or schedule filed under Insurance Code Chapter 1153.

Insurance Code §1701.053 provides that TDI collect a fee in an amount determined by the commissioner for the filing of the form of a document under Insurance Code Chapter 1701.

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

CROSS-REFERENCE TO STATUTE. Section 7.1301 implements Insurance Code §§843.154, 1153.006, and 1701.053.

§7.1301. Regulatory Fees.

(a) Regulated entities subject to fees. The regulated entities subject to the fees imposed by this section include all authorized insurers writing any class of insurance in this state that [~~which~~] are regulated by Insurance Code Title 2, concerning Texas Department of Insurance; Title 6, concerning Organization of Insurers and Related Entities; Title 7, concerning Life Insurance and Annuities; Title 8, concerning Health Insurance and Other Health Coverages; Title 9, concerning Provisions Applicable to Life and Health Coverages; Title 10, concerning Property and Casualty Insurance; Title 11, concerning Title Insurance; and Title 12, concerning Other Coverage [~~Titles 2 and 6 - 12~~]. For filings and other actions received by the Texas Department of Insurance (department) [~~department~~] on and after the effective date of this section, the [~~Texas Department of Insurance (department)~~] department will charge these entities fees in amounts in accordance with the provisions of this section. Filings or other actions received by the department before the effective date of this section will be governed by this subchapter as it existed immediately prior to that date.

(b) Fees for insurers with annual gross premium receipts less than $450,000. As provided in Insurance Code §202.004, concerning Reduced Fees for Certain Insurers, any insurer to which Insurance Code Chapter 202, concerning Fees, applies and whose gross premium receipts are less than $450,000 according to its annual statement for the preceding year ending December 31, is required to pay only one-half the amount of the fees required to be paid under subsection (d) or subsection (e) of this section. The fees will be collected at the higher rate

unless the applicant can provide the department with satisfactory documentation that gross premium receipts were less than $450,000.

(c) Fees for specified filings under [~~pursuant to~~] Insurance Code Chapter 1701, concerning Policy Forms. Fees for specified filings under [~~pursuant to~~] Insurance Code Chapter 1701 are set forth in and governed by Chapter 3, Subchapter A of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings).

(d) Fees for authorized insurers writing classes of insurance in this state that are regulated by Insurance Code Titles 2 and 6 - 12. For the following filings and actions, the fees are as follows.

(1) For classes of insurance for which statutory authority exists for collecting annual statement fees, the fee for filing annual statements is $250 unless otherwise specified.

(2) For filing amendments to certificate of authority if charter is not amended, the fee is $0.

(3) For reservation of name, the fee is $0.

(4) For renewal of reservation of name, the fee is $0.

(5) For filing application for admission of a foreign or alien insurance company, including issuance of certificate of authority, the fee is $0.

(6) For filing original charter, including issuance of certificate of authority, the fee is $0.

(7) For filing amendment to charter, including issuance of certificate of authority, if a hearing is held, the fee is $0.

(8) For filing amendment to charter, including issuance of certificate of authority, if a hearing is not held, the fee is $0.

(9) For filing designation of attorney for service of process or amendment to that [~~thereto~~], the fee is $0.

(10) For filing a total reinsurance agreement, the fee is $0.

(11) For filing a partial reinsurance agreement, the fee is $0.

(12) For filing a direct reinsurance agreement under [~~pursuant to~~] Insurance Code Chapter 884, Subchapter K, concerning Direct Reinsurance Agreements, the fee is $0.

(13) For filing for approval of reinsurance agreement under [~~pursuant to~~] Insurance Code Chapter 828, concerning Purchase of Stock for Total Assumption Reinsurance, the fee is $0.

(14) For filing for approval of merger under [~~pursuant to~~] Insurance Code Chapter 824, concerning Merger and Consolidation of Stock Insurance Corporations, the fee is $0.

(15) For accepting a security deposit, excluding deposits made under [~~pursuant to~~] Insurance Code §425.002, concerning Certain Insurers: Deposit of Securities, Money, or Property in Amount of Legal Reserves, the fee is $0.

(16) For substitution/amendment of a security deposit, excluding deposits made under [~~pursuant to~~] Insurance Code §425.002, the fee is $0.

(17) For certification of statutory deposit, the fee is $0.

(18) For filing notice of intent to relocate the books/records under [~~pursuant to~~] Insurance Code Chapter 803, concerning Location of Books, Records, Accounts, and Offices Outside of This State, the fee is $0.

(19) For filing restated articles of incorporation for domestic/foreign companies, the fee is $0.

(20) For filing a statement under [~~pursuant to~~] Insurance Code Chapter 823, Subchapter D, concerning Control of Domestic Insurer; Acquisition or Merger, and Subchapter E, concerning Acquisition Statement, [~~Subchapters D and E~~] for the first $9,900,000 of the purchase price or consideration, the fee is $0.

(21) For filing a statement under [~~pursuant to~~] Insurance Code Chapter 823, Subchapters D and E, if the purchase price or consideration exceeds $9,900,000, the fee is $0.

(22) For filing registration statement under [~~pursuant to~~] Insurance Code Chapter 823, Subchapter B, concerning Registration, the fee is $0.

(23) For filing for review under [~~pursuant to~~] Insurance Code Chapter 823, Subchapter C, concerning Transactions of Registered Insurer, or Chapter 884, Subchapter L, concerning Direct Reinsurance Agreements with Mutual Assessment Companies, the fee is $0.

(24) For filing for an exemption under [~~pursuant to~~] Insurance Code §823.164, concerning Exemptions from Subchapter, the fee is $0.

(e) Other fees established by Insurance Code Chapter 202. For the following filings, the fee is as follows.

(1) For filing joint control agreement, the fee is $0.

(2) For filing substitution/amendment to the joint control agreement, the fee is $0.

(3) For filing a change in attorney in fact, the fee is $0.

(f) Administrative procedures.

(1) When a reinsurance agreement or merger agreement is filed with the department, as enumerated in subsection (d)(10) - (14) of this section, the appropriate fee will be determined based on the ceding or merged company.

(2) The fee relating to reinsurance transactions entered into under [~~pursuant to~~] Insurance Code Chapter 823, Subchapter C, and subsection (d)(23) of this section will be [~~determined~~] based on the ceding company.

(3) When an amendment to a reinsurance agreement between affiliated insurers is filed with the department, as mentioned in paragraph (1) of this subsection, the appropriate fee will be based on the ceding company.

(4) An amendment to the charter would constitute any change in the original charter, including [~~, but not limited to,~~] name change, home office change, increase in capital, conversion, and increase in lines.

(5) The fee relating to affixing the official seal and certifying to the seal will be applied to all requests for certification, irrespective of requesting party.

(6) The fees for filing an acquisition statement under [~~pursuant to~~] Insurance Code Chapter 823, Subchapters D and E, and subsection (d)(20) and (21) of this section will apply to and be collected from the applicant whenever:

(A) the applicant is a regulated entity subject to this section; or

(B) the company being acquired is a regulated entity subject to this section.

(g) Fees under [~~pursuant to~~] the Texas Health Maintenance Organization Act, Insurance Code Chapter 843, concerning Health Maintenance Organizations. For the following filings and actions, the fees are as follows.

(1) For filing original application for certificate of authority, the fee is $0.

(2) For filing annual report, the fee is $250.

(3) For all examinations made on behalf of the State of Texas by the department or under its authority, the fee will be an amount the commissioner certifies to be just and reasonable.

(4) For a filing governed by Chapter 3, Subchapter A of this title, fees are set forth in and governed by §3.13 of this title (relating to Filing Fees). [~~filing evidence of coverage which requires approval, the fee is $100.~~]

[~~(5) For filing required by rule but which does not require approval, the fee is $50.~~]

(h) Fees for filings under [~~pursuant to~~] Insurance Code Chapter 1153, concerning Credit Life Insurance and Credit Accident and Health Insurance. Fees for filings under [~~pursuant to~~] Insurance Code Chapter 1153 are set forth in and governed by Chapter 3, Subchapter A of this title.

(i) Fee for filing an annual statement under Insurance Code Chapter 841, concerning Life, Health, or Accident Insurance Companies. The fee for filing an annual statement is $250.

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
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For further information, please call: (512) 676-6555

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28 TAC §7.1302

STATUTORY AUTHORITY. TDI proposes the repeal of §7.1302 under Insurance Code §§843.154, 1153.006, 1701.053, and 36.001.

Insurance Code §843.154 provides that the commissioner, within the limits provided by the section, prescribe the fees to be charged under Insurance Code §843.154.

Insurance Code §1153.006 provides that TDI set a fee for a form or schedule filed under Insurance Code Chapter 1153.

Insurance Code §1701.053 provides that TDI collect a fee in an amount determined by the commissioner for the filing of the form of a document under Insurance Code Chapter 1701.

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

CROSS-REFERENCE TO STATUTE. The proposed repeal of §7.1302 implements Insurance Code §§843.154, 1153.006, and 1701.053.

§7.1302. Billing System.

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER B. AUTHORITY TO CONTRACT

31 TAC §51.61

The Texas Parks and Wildlife Department (TPWD) proposes an amendment to 31 TAC §51.61, concerning Enhanced Contract Monitoring. The proposed amendment would add a comprehensive provision to the list of factors in subsection (b) that the department considers when making a determination to implement enhanced contract monitoring measures.

Under Government Code, §2261.253(c), a state agency is required to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring. The current rule lists multiple factors that TPWD will consider when determining whether a contract requires enhanced monitoring. The proposed amendment would add new paragraph (17) to provide for the consideration of any factors in addition to those enumerated in subsection (b) and is intended to provide the department with additional flexibility to consider other important factors, especially those recommended by the Comptroller of Public Accounts Statewide Procurement Division.

The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Tammy Dunham, Director of Contracting, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Ms. Dunham also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit

anticipated as a result of enforcing or administering the proposed rule will be enhancement of the department's ability to ensure that contracts and contractors are effectively monitored, which will ensure that the public trust is preserved.

There will be no adverse economic effect on persons required to comply with the rule, as the rule applies only to internal department administrative processes.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community, as the rule applies only to internal department administrative processes and not to any business or person. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create, expand, or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Tammy Dunham at (512) 389-4752, e-mail: tammy.dunham@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Government Code, §2261.253(c), which requires state agencies to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring.

The proposed amendment affects Government Code, §2261.253.

§51.61. Enhanced Contract Monitoring.

(a) (No change.)

(b) In determining if a contract requires enhanced contract monitoring, the department will consider the following factors, to the extent applicable:

(1) - (16) (No change.)

(17) Additional Factors. The department will consider additional factors that it determines appropriate, in accordance with Government Code, §2261.253(c).

(c) - (d) (No change.)

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

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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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SUBCHAPTER G. NONPROFIT ORGANIZATIONS

31 TAC §51.168

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §51.168, concerning Nonprofit Partnerships to Promote Hunting and Fishing by Resident Veterans. The proposed amendment would replace an inaccurate acronym where necessary throughout the section. Under the provisions of §51.161, concerning Definitions, the acronym for "nonprofit partner" in Subchapter G is "NP." However, in §51.168, the acronym "NPP" is employed, which could cause confusion. The proposed amendment would rectify the inaccuracy.

The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be accurate department regulations.

There will be no adverse economic effect on persons required to comply with the rule, as the rule applies only to internal department administrative processes.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community, as the rule applies only to internal department administrative processes and not to any business or person. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create, expand, or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Robert Macdonald at (512) 389-4775, e-mail: robert.macdonald@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, §11.208, which allows the commission to establish by rule the criteria under which the department may select a nonprofit partner and the guidelines under which a representative of or a veteran served by a nonprofit partner may engage in hunting or fishing activities provided by the nonprofit partner.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§51.168. Nonprofit Partnerships to Promote Hunting and Fishing by Resident Veterans.

(a) The department shall select one or more NP [~~nonprofit partners (NPP)~~] to promote hunting and fishing by residents of this state who are veterans of the United States Armed Forces. A prospective NP [~~NPP~~] under this section must exist exclusively to serve veterans of the United States Armed Forces. The selection process shall be conducted according to the applicable provisions of this subchapter, and shall occur at three-year intervals by means of a request for proposals published by the department.

(b) The following guidelines shall govern hunting and fishing activities under this section.

(1) An NP [~~NPP~~] must provide angling and hunting opportunities on private lands and/or public waters in Texas.

(2) (No change.)

(3) Hunting and fishing opportunity provided by an NP [~~NPP~~] under this section:

(A) (No change.)

(B) must be advertised by the NP [~~NPP~~] by providing public notice.

(4) Hunting and fishing opportunity provided by an NP [~~NPP~~] shall be at no cost to participants, not to include travel, lodging, meals, and other expenses ancillary to hunting and fishing activities unless those costs are provided by the NP [~~NPP~~] at the discretion of the NP [~~NPP~~].

(5) Not less than 30 days before any hunting or fishing activity may be provided or engaged in, an NP [~~NPP~~] shall complete and provide to the department on a form provided or approved by the department, the specific hunting and/or angling opportunities to be provided, to include the following, at a minimum:

(A) - (C) (No change.)

(D) the name and address of each representative of the NP [~~NPP~~] who will be participating in the activity.

(6) (No change.)

(7) The representative of an NP [~~NPP~~] who accompanies a participant who engages in hunting activities shall immediately tag any animal or bird killed by a participant for which a tag is required under Parks and Wildlife Code, Chapter 42 with a tag issued by the department to the NP [~~NPP~~] for the hunting opportunity.

(8) The representative of an NP [~~NPP~~] who accompanies a participant who engages in fishing activities shall immediately tag any fish caught by a participant for which a tag is required under Parks and Wildlife Code, Chapter 46 with a tag issued by the department to the NP [~~NPP~~] for the fishing opportunity.

(9) A wildlife resource document provided by the department to the NP [~~NPP~~] and completed by the representative of an NP [~~NPP~~] who accompanies a participant who engages in hunting or fishing activities shall accompany any harvested wildlife resource or portion thereof not accompanied by a tag until the wildlife resource reaches:

(A) - (C) (No change.)

(10) An NP [~~NPP~~] shall maintain a daily harvest log of hunting or fishing activity conducted.

(A) (No change.)

(B) The representative of an NP [~~NPP~~] who accompanies a participant who engages in hunting or fishing activities shall, on

the same day that a wildlife resource is killed or caught, legibly enter the following information in the daily harvest log:

(i) the name of the NP [~~NPP~~] representative;

(ii) - (v) (No change.)

(C) (No change.)

(D) The daily harvest log shall be retained by an NP [~~NPP~~] for a period of two years following the latest entry of hunting or fishing activity required to be recorded in the log.

(11) An NP [~~NPP~~] shall complete and submit an annual report to the department on a form prescribed or approved by the department.

(c) A person acting as a representative of an NP [~~NPP~~] under this section is not exempt from any licensing, stamp, documentation, or other rule of the department while engaging in hunting or fishing activities under this section.

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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James Murphy
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SUBCHAPTER K. DISCLOSURE OF CUSTOMER INFORMATION

31 TAC §51.301

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §51.301, concerning Duties of the Department. The proposed amendment would eliminate subsection (a), which is no longer necessary.

The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be accurate department regulations.

There will be no adverse economic effect on persons required to comply with the rule, as the rule applies only to internal department administrative processes.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community, as the rule applies only to internal department administrative processes and not to any business or person. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create, expand, or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Robert Macdonald at (512) 389-4775, e-mail: robert.macdonald@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under Parks and Wildlife Code, §11.030, which requires the commission to adopt policies relating to the release and use of customer information by rule.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§51.301. Duties of the Department.

[~~(a) The executive director shall prepare and make available a list of the types of information maintained by the department that are included in each of the applicable categories listed in §51.300 of this title (relating to Definitions).~~]

(a) [(b)] The department will collect only that customer information and personal customer information required to carry out department functions.

(b) [(c)] The department will use customer information and personal customer information only as required to carry out department functions.

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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James Murphy
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 56. AGENCY DECISION TO REFUSE LICENSE OR PERMIT ISSUANCE OR RENEWAL AND AGENCY DECISION TO SUSPEND OR REVOKE AFFECTED LICENSE OR PERMIT

31 TAC §56.7

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §56.7, concerning Permits and Licenses Affected. The proposed amendment would add all cultivated oyster mariculture permits (COM) issued by the department under 31 TAC Chapter 58, Subchapter E, to the list of permits and licenses to which the provisions of Chapter 56 apply.

In 2022, the department promulgated Chapter 56 to comply with recommendations of the Texas Sunset Advisory Commission to establish a uniform process to govern department decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute. The Sunset Commission also recommended a similar process for agency decisions to suspend or revoke such licenses and permits.

In another proposed rulemaking published elsewhere in this issue regarding COM rules, the department proposes the repeal of §58.359, concerning Agency Decision to Refuse to Issue or Renew Permit; Review of Agency Decision. The department has determined that the COM permits are a type of permit to which the Texas Sunset Advisory Commission recommendation applies, and this proposed rule would therefore apply the standards established in Chapter 56 to all COM permits.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be consistency with the recommendation of the Texas Sunset Advisory Commission.

There will be no adverse economic effect on persons required to comply with the rule, as the provisions of Chapter 56 are substantively similar to the provisions of §58.359 currently in effect.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community, as the rule does not substantively affect internal department administrative processes currently in effect under existing rule. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create, expand, or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Michaela Cowan, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8575; email: cfish@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, §12.001, which authorizes the department to collect and enforce the payment of all taxes, licenses, fines, and forfeitures due to the department; §12.508, which authorizes the department to refuse to issue or transfer an original or renewal license, permit, or tag if the applicant or transferee has been finally convicted of

a violation under the Parks and Wildlife Code or rule adopted or a proclamation issued under the Parks and Wildlife Code; and Chapter 75, which requires the commission to adopt rules to establish a program governing cultivated ouster mariculture, which may establish requirements for the taking, possession, transport, movement, and sale of cultivated oysters; the taking, possession, transport, and movement of broodstock oysters; fees and conditions for use of public resources, including broodstock oysters and public water, and any other matter necessary implement and administer Parks and Wildlife Code, Chapter 75; and Parks and Wildlife Code, §75.0101, which requires the commission to adopt rules to establish requirements for permit applications and application fees; criteria for the approval, transfer, revocation, and suspension of permits; and procedures for hearings related to a permit.

The proposed amendment affects Parks and Wildlife Code, Chapters 12 and 75.

§56.7. Permits and Licenses Affected.

The provisions of this chapter apply to the following types of permits and licenses.

(1) - (10) (No change.)

(11) Cultivated Oyster Mariculture - all;

(12) [~~(11)~~] Depredation;

(13) [~~(12)~~] Educational Display;

(14) [~~(13)~~] Falconry - all;

(15) [~~(14)~~] Finfish Import;

(16) [~~(15~~] Fish Dealer - all;

(17) [~~(16)~~] Fishing Guide - all;

(18) [~~(17)~~] Furbearing Animal - all;

(19) [~~(18)~~] Game Animal Breeder;

(20) [~~(19)~~] Game Bird Breeder - all;

(21) [~~(20)~~] Hunting Cooperative - all;

(22) [~~(21)~~] Marine Dealer, Distributor, or Manufacturer;

(23) [~~(22)~~] Menhaden Boat - all;

(24) [~~(23)~~] Nongame Fish;

(25) [~~(24)~~] Party Boat Operator;

(26) [~~(25)~~] Private Bird Hunting Area;

(27) [~~(26)~~] Scientific Plant Research;

(28) [~~(27)~~] Scientific Research;

(29) [~~(28)~~] Shell Buyer - all;

(30) [~~(29)~~] Shrimp Boat Captain - all;

(31) [~~(30)~~] Shrimp Offloading;

(32) [~~(31)~~] Wildlife Management Association Area Hunting Lease - all;

(33) [~~(32)~~] Wildlife Rehabilitation; and

(34) [~~(33)~~] Zoological.

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

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CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.21

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

The proposed amendment would temporarily prohibit the harvest of oysters for two years within the boundary of the restoration area on two reefs in Conditionally Approved Area TX-6 in Galveston Bay (approximately 529 acres on Dollar Reef and approximately 14 acres on Desperation Reef). The proposed amendment would temporarily close a total of 543 acres to oyster harvest for two years. The Texas Department of State Health Services (DSHS) regulates shellfish sanitation and designates specific areas where oysters may be harvested for human consumption. The designation of "Conditionally Approved" or "Approved" is determined by DSHS.

The temporary closures will allow for repopulation in those areas after planting of oyster cultch, and enough time for those oysters to reach legal size for harvest. Oyster cultch is the material to which oyster spat (juvenile oysters) attach in order to create an oyster bed. The restoration activities also will establish stable substrate and provide suitable conditions for spat settlement and oyster bed development.

Under Parks and Wildlife Code, §76.115, the department may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked. Oyster reefs in Texas have been impacted due to drought, flooding, and hurricanes (Hurricane Ike, September 2008 and Hurricane Harvey, August 2017), as well as high harvest pressure. TPWD has restored approximately 800 acres of oyster habitat with cultch placement techniques such as those used here.

The proposed amendment would close 14 acres on Desperation Reef in Galveston Bay for cultch placement through funding generated through H.B. 51 (85th Legislature, 2017), which included a requirement that certified oyster dealers re-deposit department-approved cultch materials in an amount equal to thirty percent of the total volume of oysters purchased in the previous license year. Additionally, construction associated with the Houston Ship Channel (HSC) Expansion Improvement Project resulted in unavoidable adverse impacts to oyster reefs. During the Final Interagency Feasibility Report-Environmental Impact Statement, mitigation efforts were proposed, consisting of the restoration of oyster reef in Galveston Bay to compensate for the loss of habitat. In coordination with resources agencies, the

United States Corps of Engineers selected areas on Dollar Reef and San Leon Reef for restoration. Both sites were impacted by Hurricane Ike and this area has been the focus of recent TPWD efforts to restore oyster reef. This mitigation project includes restoration on seven separate areas ranging in size from 13 acres to 20 acres. The proposed closure of 529 acres includes this network of seven restoration areas. The closure area is a perimeter surrounding the totality of the restoration areas because the individual closed areas are close to one another and the department seeks to eliminate potential confusion that could result from closing restoration areas individually. Parts of this area were closed in 2022 and that closure would have expired in 2024; however, due to the additional restoration efforts, the proposed amendment would expand the closure area and extend the period of closure for another two years.

Dakus Geeslin, Deputy Director, Coastal Fisheries Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Geeslin also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state; the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens; the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices; the potential for increased oyster production by repopulating damaged public oyster reefs and allowing these oysters to reach legal size and subsequent recreational and commercial harvest; and providing protection from harvest to a reef complex thus establishing a continual supply of oyster larvae to colonize oyster habitat within the bay system.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that because the areas designated for closure have been degraded to the extent that they no longer support any commercial exploitation, the closures effected by the proposed rules will not result in direct adverse economic impacts to any small business, microbusiness, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will: neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; will expand an existing regulation (by creating new area closures); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

The department has determined that the proposed rules is in compliance with Government Code §505.11 (Actions and Rule Amendments Subject to the Coastal Management Program).

Comments on the proposed rule may be submitted to Hanna Bauer, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8255; email: cfish@tpwd.texas.gov, or via the department website at www.tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase and sale of oysters, including prescribing the times, places, conditions, and means and manner of taking oysters.

The proposed amendment affects Parks and Wildlife Code, Chapter 76.

§58.21. Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

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

(c) Area Closures.

(1) (No change.)

(2) No person may take or attempt to take oysters within an area described in this paragraph. The provisions of subparagraphs (A)(i)-(ii) cease effect on November 1, 2025. The provisions of subparagraph (A)(iii)-(iv) cease effect on November 1, 2026. The provisions of subparagraph [~~(A)(iii) and~~] (B) of this paragraph cease on November 1, 2024.

(A) Galveston Bay.

(i) - (ii) (No change.)

(iii) Dollar Reef HSE Mitigation Site. The area within the boundaries of a line beginning at 29° 27' 32.85"N, 94° 53' 45.62"W (29.459125°N, 94.896006°W, corner marker buoy A); thence to 29° 27' 04.95"N, 94° 52' 39.17"W (29.451376°N, 94.877548°W, corner marker buoy B); thence to 29° 26' 27.69"N, 94° 53' 02.34"W (29.441026°N, 94.883984°W, corner marker buoy C); thence to 29° 26' 42.34"N, 94° 53' 37.31"W (29.445094°N, 94.893697°W, corner marker buoy D); thence to 29° 27' 25.61"N, 94° 53' 52.37"W (29.457114°N. 94.897881°W, corner marker buoy E); and thence back to buoy A. [~~29° 27' 22.92"N, 94° 53' 46.44"W (29.456367°N, -94.896233°W, corner marker buoy A); thence to, 29° 27' 13.62"N, 94° 53' 23.80"W (29.453784°N, -94.889944°W, corner marker buoy B); thence to, 29° 26' 51.77"N, 94° 53' 40.51"W (29.447713°N,~~

~~-94.894587°W, corner marker buoy C); thence to, 29° 27' 18.96"N, 94° 53' 49.96"W (29.455265°N, -94.897211°W, corner marker buoy D); and thence back to corner marker buoy A.~~]

(iv) Desperation Reef. The area within the boundaries of a line beginning at 29° 29' 34.40"N, 94° 52' 53.08"W (29.49289°N, 94.88141°W, corner marker buoy A); thence to 29° 29' 35.69"N, 94° 52' 46.70"W (29.49325°N, 94.87964°W, corner marker buoy B); thence to 29° 29' 28.14"N, 94° 52' 41.56"W (29.49115°N, 94.87821°W, corner marker buoy C); thence to 29° 29' 26.56"N, 94° 52' 51.56"W (29.49071°N, 94.88098°W, corner marker buoy D); thence back to buoy A.

(B) - (L) (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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James Murphy
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CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

The Texas Parks and Wildlife Department proposes amendments to §§58.352, 58.353, 58.355, and 58.356 and the repeal of §§58.354, 58.359, and 58.360 concerning Cultivated Oyster Mariculture. The amendments and repeals are necessary to improve and enhance the regulation of cultivated oyster mariculture (COM) operations in the state.

The 86th Texas Legislature in 2019 enacted House Bill 1300, which added new Chapter 75 to the Texas Parks and Wildlife Code and delegated to the Parks and Wildlife Commission the authority to regulate the process of growing oysters in captivity. In turn, the Texas Parks and Wildlife Commission in 2020 adopted the first and current regulations governing oyster mariculture (45 TexReg 5916). In brief, those rules established various types of COM permit(s) and the general provisions governing permit privileges and obligations as well as provisions governing administrative processes such as permit application, issuance, renewal, amendment, and denial, and reporting and recordkeeping requirements. The department was aware at that time that there would be a need to refine and modify the rules, as cultivated oyster mariculture had never existed in Texas prior to that time. In the time since the rules have been in effect, the department and the regulated community have communicated extensively to identify and develop improvements which form the substantive basis for much of the proposed rulemaking.

One goal of the proposed rulemaking is to more explicitly denote compliance with applicable requirements of the National Shellfish Sanitation Plan (NSSP), a program administered by United States Food and Drug Administration (FDA) to ensure that molluscan shellfish (oysters, clams, mussels, and scallops) moving in interstate commerce are safe for human consumption. Compliance with the NSSP is required for all oysters grown and harvested in Texas to enter interstate commerce.

The proposed amendment to §58.352, concerning Definitions, would add definitions for "Approved area" and "Conditionally Approved area" to clearly articulate that those terms have the meaning assigned by the Texas Health and Safety Code. The proposed amendment also would create new definitions for "Cultivated Oyster Mariculture Harvest Authorization" and "Hatchery." The proposed amendment would define Cultivated Oyster Mariculture Harvest Authorization (harvest authorization) as "a yearly authorization to allow the harvest of mariculture oysters." This annual authorization more clearly meets NSSP guidelines for harvest authorizations to only be valid for a one-year period. This authorization will be issued annually to each permit holder and will not result in any additional fees. The proposed amendment defines hatchery as "facility that spawns oyster broodstock" so that these activities can be included in what is covered by a permit issued by this subchapter. The proposed amendment would also modify the definition of "oyster seed" to refine the definition to any oyster 1 inch or less in size; this helps distinguish this particular stage of oysters rather than the broader terminology less than legal size.

The proposed amendment to §58.353, concerning General Provisions, also consists of several components. The proposed amendment would alter subsection (a) to allow a permittee to possess their permit either physically or electronically, which is intended to increase convenience for the regulated community.

The proposed amendment to §58.353 also would alter subsections (b) and (c) to more clearly delineate the differences between the two permits issued under this subchapter. The Cultivated Oyster Mariculture Permit would be renamed the Cultivated Oyster Mariculture Grow-Out Permit, and the Cultivated Oyster Mariculture - Nursery Only Permit would be renamed the Cultivated Oyster Mariculture Nursery-Hatchery Permit. The changes are intended to more clearly and explicitly delineate the activities authorized under a Nursery-Hatchery Permit. As many oyster hatcheries also function as nurseries, staff determined it would be more efficient to group nurseries and hatcheries into a single permit type. The alterations to the permit titles are made throughout the proposed rules.

The proposed amendment would add new subsection (e), which is current §58.360(1), concerning Prohibited Acts. Section 58.360 is proposed for repeal in this rulemaking as the majority of the text is redundant to General Provisions, and the two nonredundant contents of that section would be distributed to other locations within the rules as noted. The proposed modification is nonsubstantive.

The proposed amendment would alter current subsection (g) to include using line-bred descendants of oysters originally from Texas waters as allowable broodstock. Current rules limit broodstock to oysters collected from Texas waters; however, this would allow the descendants of those oysters to be used, not requiring a direct collection of broodstock from the wild each time. The regulated community requested this change as oyster hatcheries often keep offspring of broodstock to grow into broodstock themselves to reduce the impact on wild populations from continuous collections to facilitate production. The department has determined that so long as the offspring have Texas origin genetics there is little danger to the native genetics of Texas oyster populations.

The proposed amendment to paragraph (1) of current subsection (g) extends the time period during which the department may authorize the importation of oysters under certain conditions from other states for use in oyster mariculture operations. The deadline in the current rule was intended to allow permittees to utilize genetically acceptable stock produced outside of Texas within a limited amount of time, after which the department expected all stock to be propagated in Texas facilities using Texas broodstock lineage. Most oysters in the wild are diploid (having two sets of chromosomes); however, triploid (having three sets of chromosomes) oysters are mostly sterile, which makes them desirable for mariculture because they grow significantly faster than diploids and maintain high meat quality year-round, since no energy goes into reproduction. Triploid oysters rarely occur in the wild but can be produced reliably in a hatchery by crossing a diploid female with a tetraploid (four sets of chromosomes) male. However, the development of a Texas lineage tetraploid line has not occurred as quickly as anticipated, which necessitates an extension of the timeline. The proposed amendment also would more explicitly delineate the acceptable types of genetic provenance allowed for triploid oysters that can be lawfully imported to Texas for use in oyster mariculture operations. We specify that the diploid parent must be of Texas origin broodstock to add further insurance to protect genetic identity of Texas oysters.

The proposed amendment also would add new subsection (i), which is relocated from current §58.360(2) but has been reorganized and reworded for clarity. As noted previously in this preamble, §58.360 is proposed for repeal in this rulemaking, as the majority of the text is redundant to General Provisions. The rewording clarifies that the offense of commingling wild-caught oysters with oysters possessed under the provisions of this subchapter means that possession of wild-caught oysters is prohibited within COM Grow-Out sites, within COM Nursery-Hatchery sites (except for legally obtained broodstock), or on a vessel operating under a permit issued under the subchapter.

The proposed amendment would retitle current subsection (l) to reflect the fact that the rule language is being altered to address the harvest of cultivated oysters in general and does not apply solely to size requirements.

The proposed alterations to current paragraph (1) would reduce the minimum size requirements for harvest of cultivated oysters, from 2.5 inches to two inches. The current COM rules stipulate a minimum size limit of 2.5 inches primarily to facilitate field identification by department personnel of cultivated oysters as opposed to cargos of wild oysters. Since the current rules have been in effect, the department has determined that because cultivated oysters can be readily distinguished from wild oysters, the minimum size limit can be reduced, which not only allows cultivated oysters to be marketed more quickly, but also introduces additional market opportunities for the regulated community by creating the opportunity to sell smaller oysters that are popular in certain markets. The proposed amendment additionally creates a five percent allowance for undersized oysters (oysters between 1.5 inches and two inches in length) to acknowledge the inherent difficulty when sorting and harvesting large quantities of oysters to ensure that all of them meet the minimum size limit.

The proposed amendment would revise paragraphs (2) and (3) of current subsection (l) to separate and more clearly state provisions applicable to oysters coming from Nursery-Hatchery sites in or using waters from Unclassified and Prohibited areas from provisions applicable to oysters coming from sites in or using waters from Restricted areas. The provisions give the size by which oysters in Nursery-Hatchery facilities located in or using certain waters (e.g., designated by DSHS as Unclassified, Prohibited, or Restricted) must be moved to waters designated by DSHS as Approved or Conditionally Approved, as well as the minimum length of time the oysters must remain in those waters before harvest. These standards are established by the NSSP. Further, the proposed amendment to paragraph (2) would also provide that oysters of over one inch in length in a Nursery-Hatchery facility located in or using waters from a Restricted area may be moved, but are subject to relay regulation requirements under the NSSP. The proposed amendment would add new paragraph (5) to stipulate explicitly that oysters that are for whatever reasons (e.g., tumbling and sorting) out of the water longer than the limits established by DSHS rule (Time-to-Temperature controls in the Vibrio vulnificus Management Plan for Oysters) must be re-submerged for at least 14 days prior to harvest, which is necessary to conform with NSSP standards intended to protect human health and safety. Finally, proposed new paragraph (4) would clearly establish that it is unlawful to harvest oysters unless both a valid Grow-Out permit and a valid Cultivated Oyster Mariculture Harvest Authorization are possessed, which is necessary to more explicitly align department rules with the NSSP.

The proposed amendment to §58.353 also would alter current subsection (n) to clearly establish that the department will review a permittee's request to add subpermittees to the permit, designate those persons approved for subpermittee status, and may refuse to authorize subpermittees who would not be qualified for permit issuance. The proposed provisions are necessary to ensure that persons authorized to conduct permitted activities in the absence or in lieu of the permittee are identified, qualified to do so, and not otherwise prohibited or ineligible from being a permittee.

The proposed amendment to current subsection (p) would provide for the transfer of permits. Under current rule, COM permits are not transferrable. At the request of the regulated community, the department considers that because the period of validity of a COM permit is ten years and COM activities often result in for-profit commercial ventures, there likely will be scenarios in which the nature of business transactions result in changes in ownership, which could result in disruptive or inconvenient situations resulting from the process of issuing a new permit each time ownership changes. Therefore, the department is persuaded that a mechanism for transferring permits is reasonable and prudent. The proposed amendment would allow for the transfer of a permit upon completion of a transfer request and payment of a $200 transfer fee.

The proposed amendment also would alter the provisions of current subsection (r) to allow required infrastructure gear tags to bear the phone number of the permittee in lieu of the permittee's address.

The proposed amendment to current subsection (s) would consist primarily of clarifying changes to nomenclature. The word "harvest" would replace current language referencing the removal of oysters from permitted facilities, clarify that harvest tagging requirements apply to oysters being delivered and/or sold for human consumption, and that all tagging requirements of the subchapter must be met before oysters leave the permitted area.

Finally, the proposed amendment would alter current subsection (v) to rename the Oyster Seed Transport Document as the Oyster Transport Authorization and allow for transport of oysters to a

temporary location for purposes of tumbling and sorting. These authorizations allow for mechanisms to document permitted activities that transport oysters of various lengths outside of permitted sites, and to account for the possession of undersized oysters. The name change to Oyster Transport Authorization better encompasses what an authorization can cover, (i.e., not just oyster seed). The further proposed alterations better describe the process of requesting an authorization that is then reviewed and issued by the department. As with the current documentation, it would be required to accompany all non-harvest tagged oysters, oyster seed or oyster larvae that are being transported outside of a permitted area. The current documentation requirements (name, address, and if applicable, permit identifier of each permittee from whom the oysters were obtained; name, address, and permit identifier of each permittee to whom the oyster seed or larvae is to be delivered; precise accounting for and description of all containers in possession) would remain as is. The proposed amendment also would create a mechanism for oysters to be temporarily relocated outside of a permitted area for tumbling and sorting. A common oyster mariculture practice, tumbling and sorting oysters is a mechanical process that separates oysters according to size. Many permittees perform tumbling and sorting aboard boats on open water in permitted areas; however, wind and wave energy in Texas bay systems often make tumbling and sorting activities unsafe or unfeasible. The regulated community has requested the creation of some sort of mechanism that would allow the transport of oysters to a nearby location (such as a dock or onshore) to tumble and sort oysters. The department has determined that it is reasonable to allow permittees to transport mariculture oysters to shore temporarily for tumbling and sorting, provided that oysters are then returned to the original permitted site prior to harvest and such oysters are not aboard any boat at the same time that oysters tagged for harvest are aboard.

The proposed repeal of §58.354, concerning Oyster Seed Hatchery, is necessary because the provisions of the section are no longer needed in light of other aspects of this rulemaking.

The proposed amendment to §58.355, concerning Permit Application, would alter the subsection to provide for public notice of an application for a permit under the subchapter to be effected via the department's website. The current rule stipulates that the department will "publish notice" of permit applications and hold public meetings, the notices for which are by newspaper publication. Because the Texas coast is lengthy and for the most part consists of small communities, newspaper publication is not as efficient as electronic notification. The department believes it is more efficient to provide all notifications via the department's website and to have the option of conducting the required public meetings virtually or in person.

The proposed amendment to §58.356, concerning Renewal, would alter the current provisions to eliminate confusion that the application fee specified in §53.13(d), concerning Fees, is also the renewal fee, since a submission of a renewal is simply another form of an application.

The proposed repeal of §58.359, concerning Agency Decision to Refuse to Issue or Renew Permit; Review of Agency Decision, is necessary because all department regulations governing such processes were consolidated in 31 TAC Chapter 56 in compliance with the directives of the Texas Sunset Advisory Commission to establish a uniform process to govern department decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute and prescribe a similar process regarding agency decisions to suspend or revoke a license or permit affected by the new subchapter.

Hanna Bauer, Policy and Education Team Lead, Coastal Fisheries Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be minimal additional fiscal implications to state or local government as a result of administering the rule as proposed, as department personnel currently allocated to the administration and enforcement of the Cultivated Oyster Mariculture Program will continue to administer and enforce the rules as part of their current job duties. The additional implications consist of possible revenue resulting from imposition of the $200 fee imposed by the proposed rules for transfer of a permit. That fee is established at the same cost as the application fee because a transfer request would require an updated application. The fee is based on the administrative cost of implementing a transfer between two parties, which would include the issuance and oversight to determine that all previous provisions of the permit are in compliance at the time of transfer.

Ms. Bauer also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be enhancement and further development of a growing industry, the ecological benefits provided by oysters in public waters, and the production of oysters for public consumption.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

To ensure that this analysis captures every small or micro-business affected by the proposed rules, the department assumes that most, if not all persons who hold a COM permit qualify as small or micro-businesses. Department data indicate that there are currently 17 fully permitted and nine conditionally approved cultivated oyster mariculture sites.

As noted earlier in this preamble, the rules as proposed would implement a $200 fee for transfer of a permit. The price of the fee is meant to recover the administrative costs to the department of recordkeeping, compliance, notifications, and processing.

Several alternatives were considered to achieve the goals of the proposed rules while reducing potential adverse impacts on small and micro-businesses and persons required to comply.

One alternative was to maintain status quo. This alternative was rejected because the regulated community has requested alteration of the current rules to allow for permit transfers and the department has determined that it is reasonable and practicable to allow permit transfers.

Another alternative was to allow permit transfers at no cost to the permittee. This alternative was rejected because implementing a transfer between two parties, which would include the issuance and oversight to determine that all previous provisions of the per-

mit are in compliance at the time of transfer, will require very similar administrative costs as the original issuance.

The department has determined that the rules as proposed will not result in adverse impacts to rural communities, as the rules do not directly regulate any rural community.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not directly impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; affect the amount of a fee (by imposing a $200 fee for permit transfers); create a new regulation (by creating a process to transfer a permit); not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

The department has determined that the proposed rules are in compliance with Government Code §505.11 (Actions and Rule Amendments Subject to the Coastal Management Program).

Comments on the proposed rule may be submitted to Michaela Cowan, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8575; email: cfish@tpwd.texas.gov; or via the department website at www.tpwd.texas.gov.

SUBCHAPTER E. CULTIVATED OYSTER MARICULTURE

31 TAC §§58.352, 58.353, 58.355, 58.356

The amendments are proposed under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish a program governing cultivated oyster mariculture, which may establish requirements for the taking, possession, transport, movement, and sale of cultivated oysters; the taking, possession, transport, and movement of broodstock oysters; fees and conditions for use of public resources, including broodstock oysters and public water, and any other matter necessary to implement and administer Parks and Wildlife Code, Chapter 75; and Parks and Wildlife Code, §75.0101, which requires the commission to adopt rules to establish requirements for permit applications and application fees; criteria for the approval, transfer, revocation, and suspension of permits; and procedures for hearings related to a permit.

The proposed amendments affect Parks and Wildlife Code, Chapter 75.

§58.352. Definitions.

When used in this subchapter, the following words and terms shall have the following meanings, except where the context clearly indicates otherwise. All other words and terms used in this subchapter shall have the meanings assigned by the Parks and Wildlife Code.

(1) Administratively complete--An application for a permit or permit renewal that contains all information requested by the department, as indicated on the application form, without omissions.

(2) Approved area--As defined by Texas Health and Safety Code, §436.002(1).

(3) Conditionally Approved area--As defined by Texas Health and Safety Code, §436.002(7).

(4) [~~(2)~~] Container--Any bag, sack, box, crate, tray, conveyance, or receptacle used to hold, store, or transport oysters possessed under a permit issued under this subchapter.

(5) Cultivated Oyster Mariculture Harvest Authorization (harvest authorization)--A yearly authorization to allow the harvest of mariculture oysters.

(6) [~~(3)~~] Cultured oyster mariculture facility (facility)--Any building, cage, or other infrastructure within a permitted area.

(7) [~~(4)~~] Gear tag--A tag composed of material as durable as the device to which it is attached.

(8) Hatchery--A facility that spawns oyster broodstock.

(9) [~~(5)~~] Infrastructure--A building, platform, dock, vessel, cage, nursery structure, or any other apparatus or equipment within a permitted area.

(10) [~~(6)~~] Larvae--The free-swimming, planktonic life stage of an oyster.

(11) [~~(7)~~] National Shellfish Sanitation Program (NSSP)--The cooperative program administered by the United States Food and Drug Administration (USFDA) for the sanitary control of shellfish produced and sold for human consumption in the United States and adopted by rule of the Department of State Health Services.

(12) [~~(8)~~] Nursery structure--A tank or chamber or system of tanks or chambers or other, similar devices in which a cultivated oyster is grown.

(13) [~~(9)~~] Oyster seed--Shellstock one inch or less in length [~~of less than legal size~~].

(14) [~~(11)~~] Permit Identifier (permit ID)--A unique alphanumeric identifier issued by the department to a permittee holding a Cultivated Oyster Mariculture permit.

(15) [~~(10)~~] Permitted area--The geophysical and/or geographical area identified in a permit where cultivated oyster mariculture activities are authorized.

(16) [~~(12)~~] Permittee--A person who holds a permit issued under this subchapter.

(17) [~~(13)~~] Prohibited Area--As defined by Texas Health and Safety Code, §436.002(27).

(18) [~~(14)~~] Restricted Area--As defined by Texas Health and Safety Code, §436.002(30).

(19) [~~(15)~~] Restricted visibility--Any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorm, sandstorms, or any other similar causes.

(20) [~~(16)~~] Shellstock (stock)--Live eastern oysters (*Crassotrea* virginica) in the shell.

(21) [~~(17)~~] Wild-caught oyster--An oyster harvested from natural oyster beds.

§58.353. General Provisions.

(a) No person may engage in cultivated oyster mariculture (COM) in this state unless they have on their person a valid permit issued by the department authorizing the activity. A valid permit may be possessed in physical or electronic format. [~~that person either:~~]

[~~(1) physically possesses a valid permit issued by the department authorizing the activity; or~~]

[~~(2) is acting as a subpermittee as provided in this subchapter.~~]

(b) A Cultivated Oyster Mariculture (COM) Grow-out Permit authorizes the permittee [~~Permit (COMP) authorizes a person~~] to purchase, receive, grow, and sell cultivated oysters.

(c) A Cultivated Oyster Mariculture (COM) Nursery-Hatchery Permit authorizes a permittee to: [~~A Cultivated Oyster Mariculture Permit--Nursery Only (nursery permit) authorizes a person to purchase, receive, and grow oyster seed and larvae, and sell oyster seed to a COMP permittee.~~]

(1) hold oyster broodstock and germplasm;

(2) spawn oyster broodstock;

(3) purchase, receive, and grow oyster seed and larvae; and

(4) sell oyster broodstock, germplasm, seed, and larvae; but

(5) does not authorize the sale of oysters in any form for human consumption.

(d) No person may conduct an activity authorized by a permit issued under this subchapter at any location other than the location specified by the permit.

(e) It is unlawful for a permittee or subpermittee to possess an oyster dredge or oyster tongs within a permitted area or aboard a vessel transporting oysters under the provisions of this subchapter.

(f) [~~(e)~~] The period of validity for a permit issued under this subchapter is 10 years, subject to the limitations of this subchapter.

(g) [~~(f)~~] Unless otherwise specifically authorized in writing by the department, one year from the date of issuance of a COM Grow-Out Permit [~~COMP~~] and by the anniversary of the date of issuance for each year thereafter, the permittee must provide evidence to the department's satisfaction that at least 100,000 oyster seed per acre of permitted area has been planted.

(h) [~~(g)~~] Unless otherwise specifically authorized by the department in writing, cultivated oyster mariculture is restricted to seed and larvae from native Eastern oyster (*Crassostrea* virginica) broodstock collected or originating from [~~in~~] Texas waters and propagated in a permitted Nursery-Hatchery [~~hatchery~~] located in Texas.

(1) The department may authorize a person permitted under this subchapter to, on or before December 31, 2033 [~~December 31, 2027~~], import:

(A) [~~triploid,~~] tetraploid seed, larvae, and/or [~~and or~~] semen/eggs (germplasm) produced in department-approved [~~permitted~~] out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state; and/or

(B) triploid seed, larvae, and/or semen/eggs (germplasm) from a tetraploid line of oysters originating from the Gulf of Mexico crossed with broodstock originating from Texas waters produced in department-approved out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state; and/or

(C) [~~(B)~~] diploid seed, larvae, and/or semen/eggs (germplasm) produced from Texas broodstock at department-approved out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state.

(2) A department authorization made under the provisions of this subsection must be in writing and provide for any permit conditions the department deems necessary.

(3) The department will not authorize the possession of any oyster, larvae, or oyster seed that the department has determined, in the context of the prospective activity, represents a threat to any native oyster population, including to genetic identity.

(i) It is unlawful to possess wild caught oysters:

(1) within a COM Grow-Out permitted area;

(2) within a COM Nursery-Hatchery permitted area unless:

(A) they are legally obtained;

(B) labeled as to their identity and use for broodstock; and

(C) held separately from cultivated oysters; or

(3) on a vessel operating under a permit issued under this subchapter.

(j) [~~(h)~~] The department may:

(1) inspect any permitted area, facility, infrastructure, container, vessel, or vehicle used to engage in cultivated oyster mariculture;

(2) sample any oyster in a permitted area, facility, container, vessel, or vehicle used to engage in cultivated oyster mariculture in order to determine genetic lineage; and

(3) specify any permit provisions deemed necessary.

(k) [~~(i)~~] The holder of a COM Permit (Grow-out or Nursery-Hatchery) [~~COMP or nursery permit~~] must notify the department within 24 hours of the:

(1) discovery of any disease condition within a permitted area; and

(2) discovery of any condition, manmade or natural, that creates a threat of the unintentional release of stock or larvae.

(3) The requirements of this subsection do not apply to the discovery of dermo (Perkinosis, *Perkinsus* marinus).

(l) [~~(j)~~] The department may take any action it considers appropriate, including ordering the removal of all stock and larvae from a permitted area or facility and the cessation of permitted activities, upon:

(1) a determination that a disease condition other than dermo (Perkinsosis, *Perkinsus* marinus) exists; or

(2) the suspension or revocation by a federal or state entity of a permit or authorization required under §58.355 of this title (relating to Permit Application).

(m) [~~(k)~~] The department may order the suspension of any or all permitted activities, including the removal of all stock and larvae from a permitted area or facility, upon determining that a permittee is not compliant with any provision of this subchapter, which suspension

shall remain in effect until the deficiency is remedied and the department authorizes resumption of permitted activities in writing.

(n) [~~(l)~~]Harvest Requirements [~~Size limit~~].

(1) No person may harvest for the purpose of delivery and/or sale for human consumption any oyster less than 2.0 inches in length (measured along the greatest length of the shell) from a COM Grow-Out permitted area; however, a cargo of oysters may contain oysters between 1.5 inches and 2 inches (measured along the greatest length of the shell), provided such oysters constitute five percent or less of the cargo in question.

(2) Oysters produced under a Nursery-Hatchery permit in waters or using waters from an area classified as Prohibited or Unclassified must be transferred to a COM permitted Grow-Out location in waters classified as Approved or Conditionally Approved before they reach one inch in length (as measured along the greatest length of the shell) and held in that area for a minimum of 120 days before harvest.

(3) Oysters produced under a Nursery-Hatchery permit in waters or using waters from an area classified as Restricted must be transferred to a COM permitted Grow-Out location in waters classified as Approved or Conditionally Approved before they reach one inch in length (as measured along the greatest length of the shell) and held in that area for a minimum of 60 days before harvest. Oysters greater than one inch may be transferred from these facilities but are subject to relay regulation requirements under the NSSP.

(4) Oysters that are out of the water for a time period exceeding the parameters specified by the Time-to-Temperature controls established by DSHS in 25 TAC §241.68, relating to *Vibrio* vulnificus Management Plan for Oysters, must be re-submerged for a minimum of 14 days prior to harvest. Records regarding re-submergence must be maintained in accordance with permit provisions.

(5) It is unlawful for a permittee to harvest oysters under this subchapter unless they have a Grow-Out permit and a Cultivated Oyster Mariculture Harvest Authorization.

[~~(1) No person may remove or cause the removal of any oyster less than 2.5 inches in length (measured along the greatest length of the shell) from a COMP permitted area.~~]

[~~(2) Oysters greater than one inch in length (as measured along the greatest length of the shell) produced under a nursery permit in waters classified as a Restricted Area must be transferred to a DSHS-approved depuration area and held in that depuration area for a minimum of 120 days before harvest.~~]

[~~(3) No person may remove or cause the removal of oysters obtained by a COMP from a nursery facility located in waters classified as a Prohibited or Restricted Area until a minimum of 120 days following the date of transfer to the COMP.~~]

(o) [~~(m)~~] Harvest of oysters under this subchapter is unlawful between sunset and [~~30 minutes after~~] sunrise.

(p) [~~(n)~~] Except as may be specifically provided otherwise in this section, activities authorized by a permit issued under this subchapter shall be conducted only by the permittee or subpermittees [~~subpermittee~~] named on the permit.

(1) A permittee may designate subpermittees to perform permitted activities in the absence of the permittee.

(A) The permittee shall submit a subpermittee request on a form provided by the department that is signed and dated by both the permittee and subpermittee.

(B) The department will review the request and issue a list of individuals authorized as subpermittees.

(C) The department may refuse to approve a subpermittee if that person would not be eligible to be a permittee under this subchapter.

(2) At all times that a subpermittee is conducting permitted activities, the subpermittee shall have[~~possess~~] on their person a valid permit and subpermittee list in physical or electronic format.[~~:~~]

[~~(A) a legible copy of the appropriate permit under which the activity is being performed; and~~]

[~~(B) a completed subpermittee authorization. The subpermittee authorization shall be on a form provided or approved by the department and shall be signed and dated by both the permittee and the subpermittee.~~]

(3) It is an offense for a permittee to allow any permitted activity to be performed by a person not listed with the department as a subpermittee as required under this subsection.

(4) A permittee and subpermittee are jointly liable for violations of this subchapter or the provisions of a permit issued under this subchapter.

(q) [~~(o)~~] A permittee shall, prior to the placement of any infrastructure within a permitted area located in or on public water:

(1) mark the boundaries of the permitted area with buoys or other permanent markers and continuously maintain the markers until the termination of the permit. All marker, buoys, or other permanent markers must:

(A) be at least six inches in diameter;

(B) extend at least three feet above the water at mean high tide;

(C) be of a shape and color that is visible for at least one half-mile under conditions that do not constitute restricted visibility; and

(D) be marked with the permit identifier assigned by the department to the permitted area, in characters at least two inches high, in a location where it will not be obscured by water or marine growth; and

(2) install safety lights and signals required by applicable federal regulations, including regulations of the United States Coast Guard (U.S.C.G.) [~~must be installed~~] and must be functional. A permittee shall repair or otherwise restore to functionality any light or signal within 24 hours of notification by the U.S.C.G or the department.

(r) [~~(p)~~] Transfer of Permit. The department may approve the transfer of a permit. [~~Permits shall not be transferred or sold.~~]

(1) A transfer request must be submitted to the department for approval on a form provided by the department, accompanied by the application fee specified in §53.13 of this title (relating to Business License and Permits (Fishing)).

(2) The department may refuse to approve a transfer if that person would not be eligible to be a permittee under this subchapter.

(3) A transfer does not change the terms, conditions, or provisions of a permit.

(s) [~~(q)~~] Permittees must remove, at the expense of the permittee, all containers, enclosures, and associated infrastructure from public waters within 60 calendar days of permit expiration or revocation.

(t) [(r)] A valid gear tag must be attached to each piece of component infrastructure (e.g., containers, cages, bags, sacks, totes, trays, nursery structures) within a permitted area. The gear tag must bear the name and either address or phone number of the permittee and the permit identifier of the permitted area. The information on a gear tag must be legible.

(u) [(s)] It is unlawful for any person to harvest [remove or cause the removal of] oysters from a COM Grow-Out [COMP] area for purposes of delivery and/or [and] sale for human consumption unless the oysters are in a container that has been tagged in accordance with the applicable provisions of the NSSP concerning shellstock identification, and this subchapter. Tagging must occur prior to leaving the permitted area. [In addition to the tagging requirements imposed by the NSSP, the tag must clearly identify the destination, by permit identifier and/or business name and physical address, to which the shellstock is to be delivered.]

(v) [(t)] Except as provided by subsection (u) [(s)] of this section for harvested oysters transported for delivery and/or [and] sale for human consumption, it is unlawful for any person to possess oysters, oyster seed, or oyster larvae outside of a permitted area unless the person also possesses a department-issued Oyster Transport Authorization or the department has authorized in a permit provision the transport of oysters for tumbling and sorting: [completed Oyster Seed Transport Document.]

(1) [An] Oyster [Seed] Transport Authorization. [Document must:]

(A) An Oyster Transport Request must be submitted to the department prior to the proposed transport date and:

(i) be on a form provided or approved by the department;

(ii) [(B)] contain the name, address, and, if applicable, permit identifier [of each person] from whom the oysters, oyster seed, or oyster larvae were [was] obtained;

(iii) [(C)] contain the name, address, and permit identifier [of each permittee] to whom the oyster, oyster seed, or oyster larvae are [is] to be delivered; and

(iv) [(D)] precisely account for and describe all containers in possession.

(B) [(2)] The department will review the request and, if approved, will issue an Oyster Transport Authorization specific to the oysters, oyster seed, or oyster larvae being transported. [Each Oyster Seed Transport Document shall bear a numeric or alphanumeric unique identifier supplied by the permittee. Identifiers under this subsection must be systematic and sequential and no identifier may be used more than once.]

(2) Permit Provision Authorization for Tumbling and Sorting outside of permitted area

(A) The department may authorize, within a permit's provisions, a permittee to transport oysters to a specified location outside of their permitted area for tumbling and sorting oysters.

(B) Oysters must be returned to the permitted area after tumbling and sorting before harvest.

(C) It is unlawful to transport oysters for tumbling and sorting while in possession of oysters tagged for harvest.

(w) [(u)] A vessel used to engage in activities regulated under this subchapter shall prominently display an identification plate supplied by the department at all times the vessel is being used in such activities.

§58.355. Permit Application.

(a) An applicant for a permit under this subchapter must submit an administratively complete application to the department. The department will not review an application that is not administratively complete.

(b) The department will place notification on the departmental website [publish notice] of the application for a permit under this subchapter and provide opportunity for public comment. The department will consider all public comment relevant to matters under the jurisdiction of the department.

(c) For proposed facilities that will be within or partially within public water, the department will hold a public meeting virtually or in person in the city or municipality closest to the proposed permitted area and provide an opportunity for [to take] public comment on the proposed project. The department will publish notice of the public meeting on the departmental website at least two weeks prior to the meeting[, in print or electronically, in the daily newspaper of general circulation closest to the proposed operational area. Costs of newspaper notice are the responsibility of the applicant and no permit will be issued until the department has received payment for the required notice].

(d) An application for a permit under this subchapter shall be accompanied by the applicable permit fee established in §53.13 of this title (relating to Business License and Permits (Fishing)).

(1) The department shall assess a nonrefundable annual fee based on the size of the permitted area for which a COM Grow-Out or Nursery-Hatchery [COMP or nursery] permit is issued. The fee is as specified under §53.13 of this title [for a COMP].

(2) For Nursery-Hatchery [nursery] structures located on public waters, a surcharge in addition to the fee imposed by paragraph (1) of this subsection shall be assessed as specified under §53.13 of this title.

(3) The fees established in this subsection may [shall] be recalculated at three-year intervals [beginning on the effective date of the permit] and proportionally adjusted to any change in the Consumer Price Index.

(4) The fees established by this subsection are due annually by the anniversary of the date of permit issuance.

§58.356. Renewal.

The department may renew a permit under this subchapter, provided the permittee has submitted an administratively complete application for permit renewal on a form provided or approved by the department, accompanied by the application [permit renewal] fee specified in §53.13 of this title (relating to Business License and Permits (Fishing)).

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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James Murphy
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Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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31 TAC §§58.354, 58.359, 58.360

The repeals are proposed under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish a program governing cultivated oyster mariculture, which may establish requirements for the taking, possession, transport, movement, and sale of cultivated oysters; the taking, possession, transport, and movement of broodstock oysters; fees and conditions for use of public resources, including broodstock oysters and public water, and any other matter necessary to implement and administer Parks and Wildlife Code, Chapter 75; and Parks and Wildlife Code, §75.0101, which requires the commission to adopt rules to establish requirements for permit applications and application fees; criteria for the approval, transfer, revocation, and suspension of permits; and procedures for hearings related to a permit.

The proposed repeals affect Parks and Wildlife Code, Chapter 75.

§58.354. Oyster Seed Hatchery.

§58.359. Agency Decision to Refuse to Issue or Renew Permit; Review of Agency Decision.

§58.360. Prohibited Acts.

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

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CHAPTER 61. DESIGN AND CONSTRUCTION SUBCHAPTER A. CONTRACTS FOR PUBLIC WORKS

31 TAC §61.21

The Texas Parks and Wildlife Department (the department) proposes an amendment to 31 TAC §61.21, concerning Contracts for Public Works. The proposed amendment would delegate authority to the executive director of the department to award "job order contract" jobs, tasks, and purchase orders in excess of $1,000,000 or greater under the provisions of Government Code, Chapter 2269, to qualifying projects. The proposed amendment would also delegate authority to the department's Infrastructure Division director and deputy director for awards in excess of $500,000 but not more than $1,000,000.

Under Parks and Wildlife Code, §11.0171, the commission is required to adopt by rule policies and procedures consistent with applicable state procurement practices for soliciting and awarding contracts for project management, design, bid, and construction administration consistent with Subchapter A, Chapter 2254, Government Code.

Under Government Code, §2269.401, "job order contracting" is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite. Government Code, §2269.403, requires the governing body of a governmental entity to approve each job, task, or purchase order under a blanket job order contract that exceeds $500,000 in value. The legislature established the statutory threshold of $500,000 years ago. Since then, the planning, procurement, and construction costs for maintenance activities have increased to the extent that projects in excess of $500,000 in value are now numerous and commonplace. Government Code, §2269.053, provides that a governing body of a governmental entity may delegate its authority under Chapter 2269 regarding an action authorized or required by that chapter to a designated representative, committee, or other person. To reduce the amount of time for project delivery, staff seeks an alternative to the cumbersome and time-consuming process of presenting every minor construction/repair project to the commission for funding approval.

Proposed new §61.21(c) would delegate authority to the executive director of the department to award job order contract jobs, tasks, and purchase orders of $1,000,000 or greater under the provisions of Government Code, Chapter 2269, to qualifying projects.

Proposed new 61.21(d) would delegate authority to the division director and deputy division director to award job order contract jobs, tasks, and purchase orders in excess of $500,000 but no more than $1,000,000 under the provision of Government Code, Chapter 2269, Subchapter I to qualifying projects.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the proposed rule.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect the public benefit anticipated as a result of enforcing or administering the proposed rule will be more efficient administrative processes relating to construction and maintenance contracting, which in turn will result in faster completion of projects that benefit the public.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. These guidelines state that "[g]enerally, there is no need to examine the indirect effects of a proposed rule on entities outside of an agency's regulatory jurisdiction." The guidelines state that an agency need only consider a proposed rule's "direct adverse economic effects" to small businesses and micro-businesses to determine if any further analysis is required. The guidelines also list examples of the types of costs that may result in a "direct economic impact." Such costs may include costs associated with additional recordkeeping or reporting requirements; new taxes or fees; lost sales or profits;

changes in market competition; or the need to purchase or modify equipment or services.

The department has determined that the rule as proposed will not affect small businesses, micro-businesses, or rural communities, since the rule does not impose any direct economic impacts on any business or community. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; not expand, limit, or repeal an existing regulation; not increase the number of individuals subject to regulation; and neither positively nor adversely affect the state's economy.

Comments on the proposed rule may be submitted to Darrell Owens, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4660; email: darrell.owens@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendment is proposed under the authority of Parks and Wildlife Code, §11.0171, which requires the commission to adopt by rule policies and procedures consistent with applicable state procurement practices for soliciting and awarding contracts, and Government Code §2269.053, which authorizes the governing body of a governmental entity to delegate by rule its authority to approve job order contract jobs, tasks, or purchase orders that exceed $500,000.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§61.21. Authority to Contract.

(a) The department shall solicit, evaluate, negotiate, select, and award contracts for construction projects by means of a fair and impartial method as authorized by applicable law and department policy.

(b) The department shall ensure that any method used to solicit, evaluate, select, and award a contract for construction results in the best value for the department.

(c) The executive director of the department is authorized to award job order contract jobs, tasks, and purchase orders in excess of $1,000,000 under the provisions of Government Code, Chapter 2269, Subchapter I, for any qualifying project.

(d) The director and deputy director of the department's Infrastructure Division are authorized to award job order contract jobs, tasks, and purchase orders in excess of $500,000 but not more than $1,000,000 under the provisions of Government Code, Chapter 2269, Subchapter I, for any qualifying project.

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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James Murphy
General Counsel
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4037

The Comptroller of Public Accounts proposes the repeal of §9.4037, concerning the use of electronic communications for transmittal of property tax information. The comptroller repeals existing §9.4037 to replace it with new §9.4037. The repeal of §9.4037 will be effective the date the new Rule §9.4037 takes effect.

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

Ms. Melnyk also has determined that the proposed rule repeal would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed rule repeal would benefit the public by conforming the rule to current statute. There would be no anticipated significant economic cost to the public. The proposed rule repeal would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This repeal is proposed under Tax Code, §1.085, which provides the comptroller with the authority to prescribe a form, to

adopt rules relating to acceptable media, formats, content, and methods for the electronic delivery of communications under Tax Code, Title 1, and to adopt guidelines for tax officials to implement the form and rules.

The repeal implements Tax Code, §1.085.

§9.4037. Use of Electronic Communications for Transmittal of Property Tax Information.

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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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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34 TAC §9.4037

The Comptroller of Public Accounts proposes new §9.4037, concerning electronic delivery of communications between tax officials and property owners. The new section replaces existing §9.4037, concerning use of electronic communications for transmittal of property tax information, which the comptroller is proposing to repeal. New §9.4037 implements House Bill 1228, 88th Legislature, R.S., 2023, which amended Tax Code, §1.085 (Electronic Delivery of Communication), allowing a property owner or person designated by the property owner to elect to exchange communications with a tax official electronically.

Subsection (a) describes when electronic communications are required.

Subsection (b) lists acceptable methods and formats for electronic communications.

Subsection (c) describes the required form for electing electronic communications.

Subsection (d) describes the guidelines for implementation of this section by tax officials.

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

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

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This section is proposed under Tax Code, §1.085 (Electronic Delivery of Communication), which provides the comptroller with the authority to prescribe by rule acceptable media, formats, content, and methods for the electronic delivery of communications, adopt guidelines for implementation and prescribe a form. The form and guidelines will not be adopted by reference, but are available for review on the comptroller's website at https://comptroller.texas.gov/taxes/property-tax/rules/index.php.

This section implements Tax Code, §1.085 (Electronic Delivery of Communication).

§9.4037. Electronic Delivery of Communications between Tax Officials and Property Owners.

(a) Electronic Delivery of Communications. A communication that is required or permitted by Tax Code, Title 1 (Property Tax Code) to be delivered between a tax official and a property owner or a person designated by a property owner under Tax Code, §1.111(f) shall be delivered electronically if the property owner or person designated by the owner elects to exchange communications with the tax official electronically under Tax Code, §1.085.

(b) Media, Formats, Content and Methods. The tax official shall implement a process for the receipt and delivery of electronic communications with property owners or persons designated by property owners using any electronic format, which may include the use of electronic mail (email), Internet access, Instant Messaging (IM), Short Message Service (SMS), and other paperless means of communication.

(c) Request for Electronic Delivery. A property owner or person designated by a property owner under Tax Code, §1.111(f) must make the election by submitting the form prescribed by the comptroller to the applicable tax official(s) in the county where the property is located. A tax official must post on their website method(s) property owners can use to submit the form. The election remains in effect until rescinded in writing by the property owner or the person designated by the owner under Tax Code, §1.111(f).

(d) Guidelines. The Comptroller of Public Accounts will publish and periodically revise the Guidelines for Electronic Communications. Current guidelines can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division website at https://comptroller.texas.gov/taxes/property-tax/rules/index.php.

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

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SUBCHAPTER M. LOCAL GOVERNMENT RELIEF FOR DISABLED VETERANS EXEMPTION

34 TAC §9.4323

The Comptroller of Public Accounts proposes amendments to §9.4323, concerning application. The comptroller amends the section to add an option for supporting documentation provided with applications.

The comptroller adds new subsection (b)(2)(C) to provide an option allowing an applying city or county to provide certified documentation from an internal auditor or financial officer.

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

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

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Local Government Code, §140.011(i), which requires the comptroller to adopt rules necessary to implement Local Government Code, §140.011 (Local Governments Disproportionately Affected by Property Tax Relief for Disabled Veterans).

This amendment implements Local Government Code, §140.011 (Local Governments Disproportionately Affected by Property Tax Relief for Disabled Veterans).

§9.4323. Application.

(a) In order to receive payment under this subchapter, an applicant must submit a completed application. The completed application must be received no earlier than February 1 nor later than April 1 of the year following the end of a fiscal year for which the applicant is seeking a payment under this subchapter.

(b) A completed application must include the following items:

(1) A map showing that:

(A) if the applicant is a municipality, the municipality is adjacent to a United States military installation; or

(B) if the applicant is a county, a United States military installation is wholly or partly located within that county.

(2) Documentation to substantiate the sources and amounts of general fund revenues listed on the application. That documentation must be:

(A) an independent audit covering the fiscal year for which the applicant is requesting payment; [~~or~~]

(B) a comprehensive annual financial report covering the fiscal year for which the applicant is requesting payment; or [.]

(C) documentation from the applicant's internal auditor or financial officer certifying that the information submitted is true and correct to the best of their knowledge.

(3) If the documentation listed in paragraph (2)[~~(A) or (B)~~] of this subsection does not substantiate all of the sources and amounts of general fund revenues listed on the application, the applicant must submit additional documentation to substantiate the sources and amounts of general fund revenue which is certified by a city, county or independent auditor.

(4) Documentation to substantiate the exemption amount.

(5) Documentation to substantiate the property tax rate adopted by the applicant for the tax year in which the fiscal year for which the applicant is requesting payment begins.

(c) Documentation submitted with the application under subsection (b)(2) - (5) of this section must be highlighted for easy identification of the following values:

(1) the specific total for each general fund revenue source;

(2) the adopted property tax rate; and

(3) the total exemption amount.

(d) The application must be submitted on the comptroller prescribed form. The method in which the application is submitted must conform to the instructions in the comptroller prescribed form.

(e) The application must be signed by an official of the local government that is authorized to bind the local government. The local official must certify that all information in the application is true and correct.

(f) The applicant is responsible for verifying receipt by the comptroller of the completed application and any information requested under §9.4325 of this title (relating to Review by Comptroller).

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 817. CHILD LABOR

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 817, relating to Child Labor:

Subchapter A. General Provisions, §§817.2, 817.5 and 817.6

Subchapter B. Limitations on the Employment of Children, §817.22 and §817.24

Subchapter C. Employment of Child Actors, §817.31 and §817.32

TWC proposes the following new subchapter to Chapter 817, relating to Violations and Administrative Penalties:

Subchapter D. Violations and Administrative Penalties, §§817.34 - 817.36

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the amendments to Chapter 817 is to address statutory changes enacted by House Bill (HB) 2459, 88th Texas Legislature, Regular Session (2023); clarify definitions and terms under Texas Labor Code, Chapter 51; provide policy clarifications; and make other technical corrections.

Prior to the enactment of HB 2459, only employers had appeal rights relating to child labor preliminary determination orders or child labor appeal tribunal decisions. HB 2459 repealed and replaced several sections of Texas Labor Code, Chapter 51, and amended Texas Labor Code §301.0015 to establish Commission review of child labor appeal tribunal orders. The administrative hearings process in Texas Labor Code, Chapter 51, now mirrors the process in Texas Labor Code, Chapter 61. TWC is taking the opportunity to use its policy function to provide additional clarity to employers regarding how inspections and penalties operate under Texas Labor Code, Chapter 51, along with technical cleanup.

Rule Review

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC has assessed whether the reasons for adopting or readopting the rules continue to exist. TWC finds that the rules in Chapter 817 are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist. TWC, therefore, proposes to readopt Chapter 817 as amended.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§817.2. Definitions

Section 817.2(1) adds a definition for Agency.

Section 817.2(8) adds a definition for Commission.

Section 817.2(12) modifies the definition of Employer from an entity to a person to be consistent with Texas Labor Code §51.002.

Section 817.2(14) adds a definition for Employs.

§817.5. Certificate of Age

Section 817.5(a)(1) is amended to clarify that applicants must use the TWC-provided application form.

§817.6. Appeals

Section 817.6 is amended to clarify that hearings conducted under Texas Labor Code, Chapter 51, are subject to the rules and hearing procedures set out in TWC Chapter 815 Unemployment Insurance.

SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

TWC proposes the following amendments to Subchapter B:

§817.22. Hardship Waiver of Hours Requirements for 14- and 15-Year-Old Children

Section 817.22 is amended to clarify the roles of the Agency and Commission.

§817.24. Limitations on the Employment of Children to Solicit

Section 817.24 is amended to clarify the roles of the Agency and its Wage and Hour Department.

SUBCHAPTER C. EMPLOYMENT OF CHILD ACTORS

TWC proposes the following amendments to Subchapter C:

§817.31. Hardship Waiver of Hours Requirements for 14- and 15-Year-Old Children

Section 817.31 is amended to clarify the roles of the Agency and Commission.

§817.32. Application Exceptions

Section 817.32 is amended to clarify the roles of the Agency and Commission.

SUBCHAPTER D. VIOLATIONS AND ADMINISTRATIVE PENALTY

The Commission proposes new Subchapter D as follows:

New Subchapter D, regarding violations and administrative penalties, provides clarification regarding TWC's interpretation of the enforcement provisions in Texas Labor Code, Chapter 51.

§817.34. Violations

New §817.34 clarifies the requirements to establish a violation under Texas Labor Code, Chapter 51, or this chapter. While an offense under Texas Labor Code, Chapter 51, includes a culpability requirement, a violation that may lead to an administrative penalty does not include a required culpability. As such, an offense will always be a violation, but a violation will not always be an offense. This section also clarifies that TWC has jurisdiction over child labor violations for the two-year period preceding the inspection, as established under Texas Labor Code §51.021, and jurisdiction over violations by a sexually oriented business for a five-year period preceding an inspection under Texas Labor Code §51.016. The new section also clarifies that TWC has jurisdiction to impose an administrative penalty for child labor violations that occurred during the two-year period even if the child is no longer working for the employer at the time the administrative penalty is imposed.

§817.35. Inspection; Collection of Information; Hinderance

New §817.35 clarifies the places that TWC may inspect by defining the basis that can be used to establish good reason to believe a violation has occurred and addresses TWC's authority to request records concerning the employment of a child. This sec-

tion also specifies what actions are considered a hinderance to an inspection and a violation under Texas Labor Code, Chapter 51, and this chapter.

§817.36. Administrative Penalty

New §817.36 provides clarification regarding TWC's interpretation of the administrative penalty factors under Texas Labor Code §51.033 and requires the Commission to adopt a penalty matrix.

PART III. IMPACT STATEMENTS

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

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

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

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

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

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

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

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

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to implement the statutory changes in HB 2459, particularly the Commission's review of child labor appeal tribunal decisions, and to clarify the TWC's enforcement of the child labor protections in Texas Labor Code, Chapter 51.

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

Government Growth Impact Statement

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

--will not create or eliminate a government program;

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

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

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

--will not create a new regulation;

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

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

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Chuck Ross, Director, Fraud Deterrence and Compliance Monitoring, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide better clarity regarding the enforcement of Texas Labor Code, Chapter 51.

PART IV. COORDINATION ACTIVITIES

HB 2459 amended Texas Labor Code, Chapter 51, to establish Commission review of child labor appeal tribunal orders. The proposed rule amendments clarify the rules and make technical corrections to align with the changes made to the Texas Labor Code. The public will have an opportunity to comment on these proposed rules when they are published in the *Texas Register* as set forth below.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than November 4, 2024.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§817.2, 817.5, 817.6

STATUTORY AUTHORITY

The rules are proposed under:

--Texas Labor Code §51.023, which provides TWC with the specific authority to adopt rules necessary to promote the purpose of Texas Labor Code, Chapter 51; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Labor Code, Title 2.

§817.2. Definitions.

The following words and terms, when used in this chapter or in Texas Labor Code, Chapter 51, shall have the following meanings.

(1) Agency--The unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system; administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code, Title 4, Subtitle A, as amended; and enforce child labor protections under Texas Labor Code, Chapter 51.

(2) [~~(1)~~] Applicant--A child or the child's parent, legal guardian, legal custodian, or prospective employer.

(3) [~~(2)~~] Business or enterprise operated by a parent or custodian--A business or enterprise in which a parent or custodian exerts active direct control over the entire operation of the business or enterprise by making day-to-day decisions affecting basic income and work assignments, hiring and firing employees, and exercising direct supervision of the work.

(4) [~~(3)~~] Business or enterprise owned by a parent or custodian--A business or enterprise owned by a parent or custodian as a sole proprietor, a partner in a partnership, or an officer or member of a corporation.

(5) [~~(4)~~] Casual employment--Employment that is irregular or intermittent and not on a scheduled basis.

(6) [~~(5)~~] Child--An individual under 18 years of age.

(7) [~~(6)~~] Child actor--A child under the age of 14 who is to be employed as an actor or other performer.

(8) [~~(7)~~] Child actor extra--A child under the age of 14 who is employed as an extra without any speaking, singing, or dancing roles, usually in the background of the performance.

(9) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The duties of the Commission include reviewing the decision of a child labor appeal tribunal under Subchapter D, Chapter 51, of the Texas Labor Code. The definition of Commission shall apply to all uses of the term in rules contained in this part, unless otherwise defined, relating to the Texas Workforce Commission.

(10) [~~(8)~~] Direct supervision of the parent or custodian--A child is employed under the direct supervision of a parent or custodian when the parent or custodian controls, directs, and supervises all activities of the child.

(11) [~~(9)~~] Employee--An individual who is employed by an employer for compensation.

(12) [~~(10)~~] Employer--A person [~~An entity~~] who employs one or more employees or acts directly or indirectly in the interests of an employer in relation to an employee.

(13) [~~(11)~~] Employment--Any service, including service in interstate commerce, that is performed for compensation or under a contract of hire, whether written, oral, express, or implied.

(14) Employs--To suffer or permit to work.

(15) [~~(12)~~] Executive director--The executive director of the Texas Workforce Commission or the executive director's designee.

(16) [~~(13)~~]Private school--As set forth in Texas Education Code, Chapter 5, a school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12, and is not operated by a governmental entity.

§817.5. Certificate of Age.

(a) To request a certificate of age, an applicant must submit the following:

(1) a completed application on a form provided by the Agency [~~Commission~~];

(2) a recent photograph (color or black and white) approximately 1 1/2 inches by 1 1/2 inches, showing a full head shot of the applicant; and

(3) proof of age. A copy of one of the following documents is required as proof of age:

(A) birth certificate;

(B) baptismal certificate showing the date of birth;

(C) life insurance policy insuring the life of the child and reflecting the date of his or her birth;

(D) passport or certificate of arrival in the United States issued not more than one year prior to the date of application for certificate; or

(E) the school record or the school-census record of the age of the child, together with the sworn statement of a parent, guardian, or person having custody of the child as to the age of the child, and [~~also~~] a certificate signed by a physician specifying his or her opinion as to the age of the child, and the height, weight, and other facts relating to development upon which his or her opinion concerning age is based.

(b) Certificates of age are effective from the date of their issuance until the applicant reaches 18 years of age. No renewal is necessary, but lost certificates may be reissued upon new application.

§817.6. Appeals.

Hearings conducted under Texas Labor Code, Chapter 51, are subject to the rules and hearing procedures set out in Chapter 815 of this title, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under this chapter [~~the Unemployment Insurance Rules at 40 TAC Chapter 815, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under the Texas Child Labor Rules~~] or under Texas Labor Code, Chapter 51.

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

Filed with the Office of the Secretary of State on September 17, 2024.

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

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SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

40 TAC §817.22, §817.24

STATUTORY AUTHORITY

The rules are proposed under:

--Texas Labor Code §51.023, which provides TWC with the specific authority to adopt rules necessary to promote the purpose of Texas Labor Code, Chapter 51; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Labor Code, Title 2.

§817.22. Hardship Waiver of Hours Requirements for 14- and 15-Year-Old [~~14 and 15 Year Old~~] Children.

(a) An applicant applying for a hardship waiver from the limitations on hours worked for 14- and 15-year-old [~~14 and 15 year old~~] children must obtain a certificate of age under the provisions of §817.5 of this chapter [~~title (relating to Certificate of Age)~~] and file a hardship application. The applicant may file both applications concurrently.

(b) A hardship application must contain:

(1) full details of the prospective employment and the proposed hours to be worked;

(2) a written statement that it is necessary for the child to work to support himself or his immediate family, with supporting information;

(3) a written statement from the principal of the school in which the child is enrolled as to the advisability of allowing the child to work the hours identified; and

(4) a written statement from the prospective employer. The prospective employer's statement shall provide:

(A) that the child will be employed; and

(B) full details of the work, including rate of pay, hours to be worked, and expected duration of employment.

(c) A hardship application may contain any other information the applicant believes would support granting [~~the granting of~~] the waiver.

(d) All waivers shall be valid for one year unless established for a shorter period and may be extended at the sole discretion of the executive director.

(e) After all pertinent information has been reviewed by the Agency [~~Commission~~], the waiver will be granted or denied. If additional information is needed before a decision is made, the Agency [~~Commission~~] may gather additional facts and schedule a conference to review the merits of the application with interested persons.

(f) At any conference, the Agency [~~Commission~~] will be represented by an employee designated by the executive director, who shall make a written report to the executive director within 20 working days following the conference. The report shall contain a determination as to whether or not the waiver should be granted. Unless changed by the executive director, the initial determination shall remain in full force and effect. All interested parties will be advised in writing of the final determination of the Agency [~~Commission~~] as soon as practicable. No appeal to the Commission [~~Commissioners~~] is authorized.

(g) This proceeding is not a contested case under the Texas Government Code, Chapter 2001, Administrative Procedure Act.

§817.24. Limitations on the Employment of Children to Solicit.

(a) A person may not begin the employment of a child to solicit as defined in Texas Labor Code §51.0145 and as described in §817.4(b) of this chapter [~~Chapter (relating to Statement of Commission Intent)~~], until the Agency's Wage and Hour [~~Commission's Labor Law~~] Department has received:

(1) a copy of the signed Parental Consent Form approved by the Agency [~~Commission~~]; and

(2) the information required by statute to be provided to the individual who gives consent.

(b) A copy of the Parental Consent Form may be obtained from the Agency's Wage and Hour [~~Commission's Labor Law~~] Department.

(c) A person employing a child under Texas Labor Code §51.0145 shall limit each solicitation trip to within a radius of no greater than thirty miles from the child's home, unless the parent or other person identified in Texas Labor Code §51.0145(c)(1) signs a Parental Consent Form in advance of the solicitation trip specifically approving a greater distance.

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

Filed with the Office of the Secretary of State on September 17, 2024.

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

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SUBCHAPTER C. EMPLOYMENT OF CHILD ACTORS

40 TAC §817.31, §817.32

STATUTORY AUTHORITY

The rules are proposed under:

--Texas Labor Code §51.023, which provides TWC with the specific authority to adopt rules necessary to promote the purpose of Texas Labor Code, Chapter 51; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Labor Code, Title 2.

§817.31. Child Actor Authorization.

(a) A child under 14 years of age may be employed in Texas as a child actor only by compliance with the provisions of this subchapter.

(b) Every person applying for child actor authorization must submit:

(1) an application for authorization on a form provided by the Agency [~~Commission~~] and signed by a parent, guardian, or person having custody of the child;

(2) proof of age; and

(3) a photograph that complies with §817.5 of this chapter [~~title (relating to Certificate of Age)~~].

(c) An authorization is effective when issued and expires when the child reaches 14 years of age[~~,~~] unless the Agency [~~Commission~~] establishes a shorter time period. Lost authorization certificates may be reissued upon new application.

§817.32. Application Exceptions.

(a) Special authorization for child actors to be employed as extras is granted without the need for filing an application if the employer or its agent:

(1) communicates with the Agency [~~Commission~~] prior to the actual work being performed, identifying the employer, the project, the approximate number of extras intended to be employed on the particular project, and the anticipated dates of employment;

(2) prior to employment, uses reasonable efforts to establish that each prospective child actor extra is under 14 years of age;

(3) secures the written consent of a parent, guardian, or person having custody of the child to his or her employment as an extra on the particular project;

(4) notifies all affected school principals of the intent to employ their students as extras, furnishing such details concerning the nature and duration of the work as to give school authorities reasonable information concerning the proposed use of their students in the particular project; and

(5) submits a written post-production report to the Agency [~~Commission~~], within 10 days following the last day extras are employed, identifying the name, social security number, date of birth, and inclusive dates of employment for each child actor so employed, certifying compliance with Texas Labor Code, Chapter 51 and this chapter [~~(relating to Child Labor)~~].

(b) Special authorizations for extras are deemed effective upon employment and expire as soon as one of the following events occurs:

(1) the child reaches age 14;

(2) the child receives a Child Actor Authorization;

(3) the parent, guardian, or person having custody of the child revokes consent in writing; or

(4) the child's employment on the particular project by that employer ends.

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

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

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SUBCHAPTER D. VIOLATIONS AND ADMINISTRATIVE PENALTIES

40 TAC §§817.34 - 817.36

STATUTORY AUTHORITY

The rules are proposed under:

--Texas Labor Code §51.023, which provides TWC with the specific authority to adopt rules necessary to promote the purpose of Texas Labor Code, Chapter 51; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Labor Code, Title 2.

§817.34. Violations.

(a) An offense under Texas Labor Code, Chapter 51, is criminal conduct and includes a requirement of culpability per Texas Penal Code, Chapter 6.

(b) A person commits a violation by failing to adhere to a requirement or restriction of Texas Labor Code, Chapter 51, or this chapter. A person may commit a violation and an offense for the same activity. A violation under Texas Labor Code, Chapter 51, is administrative in nature and not criminal conduct and does not include a requirement of culpability.

(c) An inspection may result in multiple violations, each with a penalty amount not to exceed $10,000.

(d) The Agency has jurisdiction over violations that occurred during the five-year period preceding, up to, and including the date of an inspection under Texas Labor Code §51.016.

(e) The Agency has jurisdiction over violations that occurred during the two-year period preceding, up to, and including the date of an inspection under Texas Labor Code §51.021.

§817.35. Inspection; Collection of Information; Hinderance.

(a) The Agency has authority to inspect, request proof or records, and collect information under Texas Labor Code §51.016 and §51.021.

(b) Per §51.016(h), the Agency has good reason to believe that an individual younger than 21 years of age is employed, has been employed, or has entered into a contract for the performance of work or the provision of service with a sexually oriented business based upon complaints, observations, or information obtained from law enforcement or the attorney general.

(c) Per §51.021, during working hours, the Agency, or its designee, may inspect a place where there is good reason to believe that a child is employed or has been employed within the last two years. The Agency may consider location, historical data, industry characteristics, complaints, trends, or observations when determining whether good reason to believe a child is or has been employed exists.

(d) Per §51.021, during working hours, the Agency, or its designee, may collect information concerning the employment of a child who works, or within the last two years has worked, at a place inspected under Texas Labor Code §51.021(a)(1). The Agency may require the person to produce any records necessary to properly administer Texas Labor Code, Chapter 51, or this chapter.

(e) A person commits a violation under §51.021(b) if the person resists, delays, or obstructs the Agency's inspection or collection of information under this section, which includes, but is not limited to, preventing access to a place, failing to timely provide to the Agency requested information, or destroying records to obscure a violation.

§817.36. Administrative Penalties.

(a) The Commission shall adopt a penalty matrix that will be used to determine the amount of an administrative penalty under Texas Labor Code §51.033.

(b) When evaluating "the seriousness of the violation" under Texas Labor Code §51.033, the Commission will consider the level of risk of injury or death to a minor.

(c) When evaluating "the history of previous violations" under Texas Labor Code §51.033, the Commission will look at an employer's pattern or practice of violations.

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

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

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CHAPTER 844. PROHIBITED CORONAVIRUS VACCINE MANDATES BY PRIVATE EMPLOYER

The Texas Workforce Commission (TWC) proposes new Chapter 844, relating to Prohibited Coronavirus Vaccine Mandates by Private Employer, comprising the following subchapters:

Subchapter A. General Provisions, §844.1 and §844.2

Subchapter B. Complaints, §§844.25 - 844.30

Subchapter C. Determinations, §§844.50 - 844.55

Subchapter D. Administrative Hearings and Judicial Review, §§844.75 - 844.92

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of Chapter 844 is to establish rules as required by Senate Bill (SB) 7, 88th Texas Legislature, Third Special Session (2023), which added Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

SB 7 prohibits employers from taking adverse actions against applicants, employees, or contractors based on a refusal to be vaccinated against COVID-19. If an adverse action was taken by an employer against an applicant, employee, or contractor, the applicant, employee, or contractor can file a complaint and TWC will investigate. An employer who is determined to have taken a prohibited adverse action is subject to an administrative penalty unless the employer takes reasonable efforts to make the complainant whole. SB 7 also allows TWC to recover the reasonable cost of investigation when it is determined that the employer took a prohibited adverse action.

Chapter 844 rules address the requirements for and methods of submitting a complaint. The chapter also establishes an appeal procedure to provide parties notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes new Subchapter A, General Provisions, as follows:

§844.1. Purpose

New §844.1 defines the purpose of the Chapter 844 rules.

§844.2. Definitions

New §844.2 defines "Adverse Action," "Agency," "Complainant," "Complaint Form," "Contractor," "COVID-19," "Day," "Department," "Employee," "Employer," "Governmental Entity," "Party," and "Person." The definition of Employee would include an individual who seeks admission to or is employed under a medical residency program in Texas.

SUBCHAPTER B. COMPLAINTS

TWC proposes new Subchapter B, Complaints, as follows:

§844.25. Complaint Requirements

New §844.25 establishes the requirements and method to file a complaint. Complaints must be filed online within 90 days of the adverse action and must provide the name of the complainant, name of the employer, and the nature and description of the adverse action. The complainant must also declare that the information provided in the complaint is true and correct.

§844.26. Valid Complaints

New §844.26 addresses issues concerning the validity of a complaint. These issues include that the adverse action must have occurred after the effective date of SB 7, that the employer is not a governmental entity, and that the complaint is not duplicative of a prior complaint. All references to days in this chapter mean calendar days.

§844.27. Jurisdiction

New §844.27 defines when employers are subject to TWC's jurisdiction under this Chapter as it relates the connection of the work, complainant, and employer to Texas.

§844.28. Dismissal

New §844.28 allows TWC to dismiss complaints that are incomplete or do not meet the requirements of §844.26. Dismissed complaints can be refiled by the complainant within 30 days of the dismissal.

§844.29. Adverse Action

New §844.29 provides context to the definition of adverse action by further addressing the reasonable person standard. Examples of an adverse action include, but are not limited to, termi-

nating an employee, terminating a contractual relationship, demoting an employee, reducing pay or compensation, not hiring an employee, not offering a contract for a contract position, or a reduction in hours not related to a business need. When determining whether an employer's action was an adverse action, the Agency will consider the employer's good faith attempt to comply with a legal obligation as evidence that the employer's action would not be considered by a reasonable person to be for the purpose of punishing, alienating, or otherwise adversely affecting a complainant.

§844.30. Investigation of Complaints in Health Care

New §844.30 requires TWC to consult with the Texas Department of State Health Services (DSHS) when a complaint against a health care facility, health care provider, or physician concerns a policy that requires the use of protective medical equipment to determine if the policy is reasonable. Section 844.30 also requires TWC and DSHS to enter an MOU to facilitate coordination.

SUBCHAPTER C. DETERMINATIONS

TWC proposes new Subchapter C, Determinations, as follows:

§844.50. Preliminary Determination Order, Determination on Remedial Action, and Penalty and Cost Order

New §844.50 defines the procedures for issuing a determination after the investigation is complete. A preliminary determination order will be mailed to each party informing them whether TWC found a violation, which would require the imposition of an administrative penalty, and whether TWC will seek to recover investigative costs from the employer. SB 7 prescribes the administrative penalty amount of $50,000 for each violation and did not provide TWC with discretionary authority to adjust the penalty amount. The preliminary determination order would inform the parties of appeal rights and the employer's ability to take remedial action to avoid the administrative penalty. If an employer completes remedial action and submits proof of remedial action within 30 days of a preliminary determination order or decision, TWC will issue a determination on remedial action, which is an appealable document. Once the determination or decision is final, a penalty and cost order will be issued instructing the employer to make payment to TWC. If an employer fails to make payment in accordance with the penalty and cost order, TWC will refer the amount to the Office of the Attorney General in accordance with Texas Government Code §2107.003 as well as reporting the indebtedness to the Texas Comptroller of Public Accounts under the warrant hold provisions in Texas Government Code §403.055(f).

§844.51. Remedial Action

New §844.51 establishes how an employer may take remedial action, in accordance with Texas Health and Safety Code §81D.006, to avoid the imposition of an administrative penalty. The section also defines acceptable proof of a remedial action and the method for submitting proof of remedial action, which must be submitted within 30 days of a preliminary determination order.

§844.52. Investigative Costs

New §844.52 addresses when TWC may seek to recover the reasonable costs of an investigation.

§844.53. Corrected Determinations

New §844.53 allows TWC to issue corrected determinations or decisions to correct an error including an incorrect address for a party.

§844.54. Withdrawal of Complaint

New §844.54 allows a complainant to withdraw a complaint before the preliminary determination order becomes final.

§844.55. Appeal and Determination Finality

New §844.55 establishes that a party can file an appeal to a determination within 30 days of the mailing date of the determination by submitting a written appeal by mail, fax, or other method approved by TWC on the preliminary determination order.

SUBCHAPTER D. ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

TWC proposes new Subchapter D, Administrative Hearings and Judicial Review, as follows:

§844.75. Administrative Hearings

New §844.75 states that an administrative hearing will be conducted by the Agency's Special Program Appeals department by electronic means.

§844.76. Parties

Under new §844.76, the parties to the hearing are the complainant, the employer and TWC.

§844.77. Hearing Scheduling and Notice

New §844.77 prescribes the procedures for scheduling and issuing a hearing notice upon the receipt of an appeal. The section states what information must be included in the hearing notice.

§844.78. Representation

New §844.78 allows parties to be represented by an attorney or other individual of their choice.

§844.79. Ex Parte Communications

New §844.79 prohibits ex parte communications without notice and an opportunity for all parties to participate.

§844.80. Hearing Procedures

New §844.80 establishes hearing procedures for the administrative hearing including general procedures and procedures for evidence, witnesses, exchange of exhibits, and maintaining the hearing record.

§844.81. Postponement and Continuance

New §844.81 addresses situations when the hearing can be postponed or continued.

§844.82. Default

New §844.82 describes the procedures when a party fails to appear for the hearing and for a non-appearing party to file a motion to set aside the default.

§844.83. Timeliness

New §844.83 establishes the timeliness guidelines for this chapter including address changes, dating of appeal documents, and the evidence required to overcome the presumption of receipt.

§844.84. Withdrawal of an Appeal

New §844.84 allows a party to withdrawal an appeal before the hearing officer's decision is final.

§844.85. Decision

New §844.85 states that the hearing officer's decision must be issued in writing as soon as possible after the hearing closes; states the information that must be included in the decision; and states that the decision must be mailed to the parties or their representatives. A decision can be reopened if the employer submits a notice to the hearing officer within 14 days of the mailing date of the decision that the employer intends to take remedial action. The employer would then have 30 days to submit proof of remedial action.

§844.86. Finality of Decision

New §844.86 states that the hearing officer's decision becomes final 14 days after the date the decision is mailed unless before that date the hearing officer reopens the decision, a party files a timely appeal, or the commission decides to remove the case to itself.

§844.87. Commission

New §844.87 sets forth the Commission's duties under this chapter, including which member of the Commission shall serve as chair when the Commission acts under this chapter.

§844.88. Removal of Order Pending Before a Hearing Officer

New §844.88 allows the Commission to remove a pending hearing to itself.

§844.89. Commission Review of Hearing Officer Order

New §844.89 establishes that the Commission may affirm, modify, or set aside a penalty order on the basis of previously submitted evidence or direct the taking of additional evidence.

§844.90. Notice of Commission Action

New §844.90 defines the issues to be addressed in a notice of Commission action and requires the Commission to enter a written order for the payment of any penalty or investigative costs the Commission has assessed.

§844.91. Finality of Commission Order

New §844.91 establishes that the Commission order is final 14 days after the date the order is mailed unless the Commission reopens the appeal or a party files a motion for rehearing.

§844.92. Judicial Review

New §844.92 sets forth the method of seeking judicial review of TWC's final decision or order.

PART III. IMPACT STATEMENTS

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

There are additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

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

There are estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

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

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

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

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

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to implement and interpret the provisions of Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

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

Government Growth Impact Statement

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

--will create or eliminate a government program;

--will require the creation or elimination of employee positions;

--will require an increase or decrease in future legislative appropriations to TWC;

--will require an increase or decrease in fees paid to TWC;

--will create a new regulation;

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

--will change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Chuck Ross, Director, Fraud Deterrence and Compliance Monitoring, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure compliance with new state law.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

SB 7 requires consultation with the Department of State Health Services.

TWC will provide notice to employers and other stakeholders to increase awareness during the public comment period.

PART V. PUBLIC COMMENTS

Comments on the proposed new rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than November 4, 2024.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §844.1, §844.2

PART VI.

STATUTORY AUTHORITY

The rules are proposed to implement Senate Bill 7, 88th Texas Legislature, Third Special Session (2023), which added Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

The rules are proposed under:

--Texas Health and Safety Code §81D.007, which provides TWC with the specific authority to adopt rules as necessary to implement and enforce Texas Health and Safety Code, Chapter 81D; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Health and Safety Code, Chapter 81D.

§844.1. Purpose.

The purpose of this chapter is to implement and interpret the provisions of Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

§844.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the statute or context in which the word or phrase is used clearly indicates otherwise.

(1) "Adverse Action" means an action taken by an employer that a reasonable person would consider was for the purpose of punishing, alienating, or otherwise adversely affecting an employee, contractor, applicant for employment, or applicant for a contract position.

(2) "Agency" shall have the meaning established under §800.2 of this title.

(3) "Applicant for employment" means a person who has submitted a formal application for an employment position for which the person meets the minimum qualifications and who has a genuine interest in the position.

(4) "Applicant for a contract position" means a person who has submitted a formal application or proposal for a contract position for which the person meets the minimum qualifications and who has a genuine interest in the contract position.

(5) "Complainant" means an employee, contractor, applicant for employment, or applicant for a contract position who files a complaint against an employer alleging an adverse action by the employer against the person in violation of Texas Health and Safety Code, Chapter 81D.

(6) "Complaint Form" means the COVID-19 Vaccine Complaint Form approved by the Agency.

(7) "Contractor" means a person who undertakes specific work for an employer in exchange for a benefit without submitting to the control of the employer over the manner, methods, or details of the work.

(8) "COVID-19" means the 2019 novel coronavirus disease and any variants of the disease.

(9) "Day" means calendar day.

(10) "Department" means the Department of State Health Services.

(11) "Employee" means an individual who is employed by an employer, whether or not for compensation. The term does not include:

(A) a person related to the employer or the employer's spouse within the first or second degree by consanguinity or affinity, as determined under Texas Government Code, Chapter 573; or

(B) a contractor.

(12) "Employer" means a person, other than a governmental entity, who employs one or more employees.

(13) "Governmental Entity" means this state, an agency of this state, a local government entity, or a political subdivision of this state as defined in §821.4 of this title. This definition includes the definition of governmental entity as provided by Texas Health and Safety Code §81B.001(2).

(14) "Party" means the agency, a complainant or employer.

(15) "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

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

Filed with the Office of the Secretary of State on September 18, 2024.

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

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SUBCHAPTER B. COMPLAINTS

40 TAC §§844.25 - 844.30

The rules are proposed to implement Senate Bill 7, 88th Texas Legislature, Third Special Session (2023), which added Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

The rules are proposed under:

--Texas Health and Safety Code §81D.007, which provides TWC with the specific authority to adopt rules as necessary to implement and enforce Texas Health and Safety Code, Chapter 81D; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Health and Safety Code, Chapter 81D.

§844.25. Complaint Requirements.

(a) A complaint must be filed in writing by the complainant completing the Complaint Form.

(b) A Complaint Form may only be submitted by online submission as identified through the Agency's website page related to COVID-19 mandate complaints or by other means authorized in writing by the Agency.

(c) The complainant must provide the following information on the Complaint Form:

(1) the name of the complainant;

(2) the name of the employer;

(3) the nature and description of any alleged adverse action the employer took against the complainant; and

(4) any other information specifically requested by the Agency on the Complaint Form that is necessary to resolve the complaint.

(d) The complainant must declare that the information provided in the completed Complaint Form is true and correct.

§844.26. Valid Complaints.

(a) A complaint may only be filed for an adverse action that occurred after the effective date of Senate Bill (SB) 7, 88th Texas Legislature, Third Special Session (2023), which was February 6, 2024.

(b) The complaint must be received by the Agency within 90 days of the date of the adverse action. For adverse actions that occurred after the effective date of SB 7, and before the effective date of this chapter, a complaint must be received by the Agency within 90 days of the date this chapter becomes effective.

(c) A contractor or applicant for a contract position may only file a complaint if the contractor or applicant for a contract position was or would have been a party to the contract with the employer.

(d) A complaint must name an employer that is a non-governmental entity that satisfies the definition of employer in §844.2(12) of this chapter.

(e) A complaint may only be filed by a complainant for an adverse action that was taken against the complainant for a refusal to be vaccinated against COVID-19.

(f) A Complaint Form must be filled out completely and sufficiently to allow the Agency to attempt contact with the employer to investigate the adverse action.

(g) A complainant may not file an additional complaint for an adverse action that has already been the basis of another complaint that is still pending or resulted in the issuance of a preliminary determination order, other than a dismissal under §844.28 of this subchapter, or for a complaint that was withdrawn under §844.54 of this chapter.

(h) During the course of an investigation, a complainant or an employer may provide additional information to the Agency prior to the issuance of a preliminary determination order, which the Agency will consider in addition to evidence offered in the original complaint.

§844.27. Jurisdiction.

(a) The Agency may exercise jurisdiction over complaints under this chapter in which:

(1) the work was performed or would have been performed in Texas; and:

(2) the employer:

(A) is a resident employer; or

(B) is a non-resident employer pursuant to the Texas Civil Practice & Remedies Code, Chapter 17, Subchapter C, also known as the "Texas Long-Arm Statute," when the following are met:

(i) the employer employs the complainant in Texas at the time of the adverse action or the employer's contact with Texas is continuing and systematic; and

(ii) exercising jurisdiction is consistent with:

(I) fair play and justice as determined by the quality, nature, and extent of the employer's activities in Texas including the extent to which the employer avails itself of the benefits and protections of Texas law; and

(II) the relative convenience of the parties.

(b) The Agency shall not exercise jurisdiction over complaints based on work performed or intended to be performed outside the United States.

§844.28. Dismissal.

(a) The Agency may dismiss a complaint that is incomplete or does not meet the requirements of §844.26 of this subchapter.

(b) A dismissal under subsection (a) of this section becomes final unless a complainant refiles the complaint within the period to file a complaint or within 30 days of the mailing of the dismissal, whichever is later.

§844.29. Adverse Action.

(a) To support a finding of a violation under this chapter, the adverse action must cause a result that a reasonable person would regard as an objective and demonstrated harm to the complainant.

(b) If an adverse action was taken, the Agency will consider the reason(s) provided by an employer when determining whether the adverse action was taken due to a refusal to be vaccinated against COVID-19 in violation of Texas Health and Safety Code, Chapter 81D.

§844.30. Investigation of Complaints in Health Care.

If a complaint against a health care facility, health care provider, or physician alleges an adverse action that involved an employer policy that includes requiring the use of protective medical equipment, as described in Texas Health and Safety Code §81D.0035(b), the Agency

will consult with the Department to determine whether the policy was reasonable.

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

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SUBCHAPTER C. DETERMINATIONS

40 TAC §§844.50 - 844.55

The rules are proposed to implement Senate Bill 7, 88th Texas Legislature, Third Special Session (2023), which added Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

The rules are proposed under:

--Texas Health and Safety Code §81D.007, which provides TWC with the specific authority to adopt rules as necessary to implement and enforce Texas Health and Safety Code, Chapter 81D; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Health and Safety Code, Chapter 81D.

§844.50. Preliminary Determination Order, Determination on Remedial Action, and Penalty and Cost Order.

(a) After an investigation, the Agency will mail a preliminary determination order to each party stating whether the Agency determined the employer took an adverse action against the complainant for a refusal to be vaccinated against COVID-19 in violation of Texas Health and Safety Code, Chapter 81D.

(b) If the Agency determines that a violation exists, but no remedial action has occurred prior to the preliminary determination order being issued, the preliminary determination will notify the parties that:

(1) a violation has occurred;

(2) an administrative penalty will be imposed;

(3) the employer may remediate the violation;

(4) the amount of reasonable investigative costs, if any, the Agency will seek to recover from the employer; and

(5) each party has the right to file an appeal.

(c) If the Agency determines that a violation exists, and the employer has taken remedial action prior to the preliminary determination order being issued, the preliminary determination will notify the parties:

(1) that a violation has occurred;

(2) whether the remediation was sufficient to remove the administrative penalty;

(3) whether an administrative penalty will be imposed;

(4) of the amount of reasonable investigative costs, if any, the Agency will seek to recover from the employer; and

(5) that each party has the right to file an appeal.

(d) If an employer submits proof of remedial action after the preliminary determination order is issued, the Agency will issue to each party a separate determination on remedial action with separate appeal rights. An employer has 30 days to submit proof of remedial action from the mailing date of the preliminary determination order. If the employer does not submit proof of remediation within 30 days, and/or does not appeal, the Agency will not consider any proof of remediation. An employer's timely submission of proof of remedial action will be considered an employer appeal of the preliminary determination order and the appeal will be abated until the appeal period for the determination resolving the sufficiency of the remedial action has expired.

(e) If the employer files a timely appeal to the preliminary determination order, the employer may remediate at any time up until the hearing officer issues his or her decision, after which the employer must comply with the requirements of §844.85(e) of this chapter.

(f) After a preliminary determination order, a determination on remedial action, or decision becomes final, the Agency will issue a penalty and cost order to the employer detailing the final amount owed to the Agency by the employer with instructions for submitting payment.

(g) Determinations shall be mailed to each party at the best address available as required by §815.3 of this title, or at the location each party usually receives mail.

(h) A penalty and cost order shall be mailed to the employer at the best address available as required by §815.3 of this title, or at a location the employer usually receives mail.

(i) An administrative penalty under this chapter is not an award of damages to the complainant and no funds will be issued to the complainant by the Agency.

§844.51. Remedial Action.

(a) Under Texas Health and Safety Code §81D.006(a)(1) and (2), an administrative penalty will not be assessed if prescribed remedial action is taken in response to a complaint. The remedial action required to avoid a penalty depends upon the specific facts that resulted in a violation. Depending upon the circumstances of the violation, remedial action may require:

(1) if the complainant applied for an employment or contract position with the employer, and was not offered such position based upon his or her refusal to be vaccinated against COVID-19, the employer must offer the complainant the position applied for;

(2) if the complainant is currently, or was recently, an employee or contractor of the employer, the employer shall take the following remedial steps as applicable to the violation. Not all steps may be applicable to remedy the adverse action that resulted in a violation:

(A) reinstatement of the employee or contractor;

(B) providing the employee or contractor with back pay from the date the employer took the adverse action; and/or

(C) the employer must take every reasonable effort to reverse the effects of the adverse action. Reasonable efforts include, but are not limited to, reestablishing employee benefits for which the

employee or contractor otherwise would have been eligible if the adverse action had not been taken.

(b) Acceptable proof of a remedial action may include an offer or hiring letter on company letterhead, a signed new hire paperwork, a signed settlement letter, or completion of an Agency form by the complainant attesting to the remedial action.

(c) Proof of remedial action shall be submitted online as identified through the Agency's website page related to COVID-19 mandate complaints, by other means authorized in writing by the Agency, or to the assigned hearing officer in accordance with §844.85(e) of this chapter.

§844.52. Investigative Costs.

(a) If the Agency determines that the employer violated this chapter, the Agency may recover from the employer reasonable investigative costs incurred in conducting the investigation into whether the employer violated Texas Health and Safety Code, Chapter 81D, regardless of whether the employer took remedial action.

(b) The Agency may not recover from the employer investigative costs incurred in conducting an investigation into whether the employer took remedial action.

(c) The preliminary determination order will inform the employer of the investigative costs calculated by the Agency.

(d) The investigative costs may, at the discretion of the Agency, be included in the amount owed in the penalty and cost order even if the employer took remedial action.

§844.53. Corrected Determinations and Decisions.

(a) If Agency staff discover a clerical error of a non-substantive nature in connection with a determination or decision issued under this chapter, within the applicable appeal period, the Agency may reconsider and reissue the determination unless an appeal has already been filed.

(b) A reissued determination voids and replaces the determination or decision issued under this chapter requiring correction and becomes final unless an appeal is filed from the determination within 30 days of the date the reissued determination is mailed.

(c) Notwithstanding subsection (a) of this section, if a determination or decision issued under this chapter is mailed to a party's incorrect address, the Agency may reissue the determination to the party's correct address at any time.

§844.54. Withdrawal of Complaint.

(a) A complainant may withdraw a complaint at any time before the date the preliminary determination order becomes final.

(b) A complainant withdrawing a complaint shall submit a form as prescribed by the Agency.

(c) A complaint that is withdrawn may not be refiled and a new complaint cannot be filed for the same adverse action as the withdrawn complaint.

§844.55. Appeal and Determination Finality.

(a) Appealable Determinations:

(1) An employer determined to have violated this chapter may appeal the preliminary determination order, within 30 days of the mailing date of the determination, to dispute whether a violation of Texas Health and Safety Code, Chapter 81D occurred, or the amount of the assessed investigative costs.

(2) An employer determined to have not met the remedial action requirements under §844.51 of this subchapter may appeal the determination on remedial action within 30 days of the mailing date of the determination.

(3) An employer may appeal a combined determination under §844.50(c) of this subchapter to dispute any of the issues contained therein within 30 days of the mailing date of the determination.

(b) A determination becomes final unless a party files an appeal before the appeal deadline.

(c) An appeal must be filed in writing by mail, common carrier, facsimile (fax), or other method approved by the Agency on the preliminary determination order or on the determination on remedial action.

(d) A penalty and cost order is not an appealable document.

(e) A complainant may appeal any determination or decision issued under this subchapter, regardless of the finding, within 30 days of the mailing date of the determination.

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

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SUBCHAPTER D. ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

40 TAC §§844.75 - 844.92

The rules are proposed to implement Senate Bill 7, 88th Texas Legislature, Third Special Session (2023), which added Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

The rules are proposed under:

--Texas Health and Safety Code §81D.007, which provides TWC with the specific authority to adopt rules as necessary to implement and enforce Texas Health and Safety Code, Chapter 81D; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Health and Safety Code, Chapter 81D.

§844.75. Administrative Hearings.

(a) Administrative hearings shall be conducted subject to the rules and hearing procedures set out in Chapter 815 of this title, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under this chapter.

(b) The hearing is not subject to Texas Government Code, Chapter 2001.

(c) Hearings may be conducted by electronic means, including but not limited to telephonic hearings, unless the hearing officer determines that an in-person hearing is necessary.

(d) Accommodations may be requested, including the need for an in-person hearing or interpreters, through the hearing officer or Agency staff.

§844.76. Parties.

The parties to proceedings under this chapter are the Agency, the complainant, and the employer named in the preliminary determination order or determination on remedial action.

§844.77. Hearing Scheduling and Notice.

(a) Upon receipt of an appeal, the Agency shall assign an impartial hearing officer and mail a notice of hearing to the employer and complainant and/or their designated representatives.

(b) The notice of hearing shall be in writing and include:

(1) a statement of the date, time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the sections of the statutes and rules involved;

(4) a statement of the issues to be considered during the hearing; and

(5) either:

(A) a short, plain statement of the factual matters asserted; or

(B) an attachment that incorporates by reference the factual matters asserted in the complaint.

(c) The notice of hearing shall be issued at least 10 days before the date of the hearing unless all parties agree to waive this requirement.

§844.78. Representation.

Parties have the right to be represented by an attorney or other individual of their choice in accordance with §815.18(3) of this title.

§844.79. Ex Parte Communications.

(a) Except as provided in this chapter, and unless required for the disposition of ex parte matters authorized by law, the hearing officer may not communicate, directly or indirectly, in connection with any issue of fact or law with a party, representative of a party, witness, or individual providing testimony except on notice and opportunity for each party to participate.

(b) The hearing officer may communicate concerning the case with an Agency employee who has not participated in the hearing but may do so only for the purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.

§844.80. Hearing Procedures.

(a) General Procedure. The hearing shall be conducted informally and, in such manner, as to ascertain the substantive rights of the parties. The hearing officer shall develop the evidence. All issues relevant to the appeal shall be considered and addressed.

(1) Presentation of Evidence. The parties may present evidence that is material and relevant, as determined by the hearing officer. In conducting a hearing, the hearing officer shall actively develop the record on the relevant circumstances and facts to resolve all issues. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing. A party has the right to object to evidence offered at the hearing by the hearing officer or other parties.

(2) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is relevant and if in the judgment of the hearing officer it is the kind of evidence on which reasonably prudent persons are accustomed to relying on in conducting their affairs. However, the hearing officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.

(3) Examination of Witnesses and Parties. The hearing officer shall examine parties and any witnesses under oath and shall allow cross-examination to the extent the hearing officer deems necessary to afford the parties due process.

(4) Additional Evidence. The hearing officer, with or without notice to any of the parties, may take additional evidence deemed necessary, provided that a party shall be given an opportunity to rebut the evidence if it is to be used against the party's interest.

(5) Appropriate Hearing Behavior. All parties shall conduct themselves in an appropriate manner. The hearing officer may expel any individual, including a party, who fails to correct behavior the hearing officer identifies as disruptive. After an expulsion, the hearing officer may proceed with the hearing and render a decision.

(b) Records.

(1) The hearing record shall include the audio recording of the proceeding and any other relevant evidence relied on by the hearing officer, including documents and other physical evidence entered as exhibits.

(2) The hearing record shall be maintained in accordance with federal or state law.

(3) Confidentiality of information contained in the hearing record shall be maintained in accordance with federal and state law.

(4) Upon request, a party has the right to obtain one copy of the hearing record, including recordings of the hearing and file documents at no charge.

§844.81. Postponement and Continuance.

(a) On the hearing officer's own motion, or for good cause, at a party's request, the hearing officer may postpone or continue a hearing.

(b) Requests for a continuance or postponement may be made informally by a party, either orally or in writing, to the hearing officer.

(c) The hearing officer shall use his or her best judgement to determine when to grant a continuance or postponement of a hearing to secure all necessary evidence and to be fair to the parties.

(d) The notice of the hearing must indicate the times and places at which the hearing may be continued unless waived by the parties.

§844.82. Default.

If a party to whom a notice of hearing provided under this chapter fails to appear for a hearing, the hearing officer may proceed in that party's absence on a default basis. If a final decision is issued, the factual allegations listed in the notice of hearing may be deemed admitted. If a party fails to appear at a hearing, the hearing officer will issue a notice of default to that party. A party may file a motion no later than 14 days after the notice of default is mailed to set aside a default announced at the hearing and to reopen the record. If a timely motion to set aside a

default is filed, the hearing officer may grant the motion, set aside the default, and reopen the hearing for good cause shown, or in the interests of justice. The hearing officer may issue a decision denying the motion to set aside a default without a hearing if the motion fails to allege a reason for the party's failure to appear or if a party has failed to appear at three or more scheduled hearings.

§844.83. Timeliness.

(a) Parties shall promptly notify, in writing or during the recorded hearing, the Agency of any change of mailing address. Determinations and decisions shall be mailed to the new address.

(1) If a party properly designates a party representative, a determination or decision must be mailed to the designated party representative for it to become final.

(2) The Agency is responsible for making an address change only if the Agency is specifically directed by the party to mail subsequent correspondence to the new address.

(3) If the Agency addresses a document incorrectly, but the party receives the document, the time frame for filing an appeal shall begin as of the actual date of receipt by the party, whether or not the party receives the document within the appeal time frame. However, this does not apply if the party fails to provide a current address or provides an incorrect address.

(b) A determination or decision mailed to a party shall be presumed to have been delivered if the document was mailed as specified in subsection (a) of this section.

(1) A determination or decision shall not be presumed to have been delivered:

(A) if there is tangible evidence of nondelivery, such as being returned to the sender by the US Postal Service; or

(B) if credible and persuasive evidence is submitted to establish nondelivery or delayed delivery to the proper address.

(2) If a party provides the Agency with an incorrect mailing address, a mailing to that address shall be considered a proper mailing, even if there is proof that the party never received the document.

(c) The filing date for a complaint or an appeal shall be:

(1) the postmark date or the postal meter date (where there is only one or the other);

(2) the postmark date if there is both a postmark date and a postal meter date;

(3) the date the document was delivered to a common carrier, which is equivalent to the postmark date;

(4) three business days before receipt by the Agency, if the document was received in an envelope bearing no legible postmark, postal meter date, or date of delivery by a common carrier;

(5) the date of the document itself, if the document date is fewer than three days earlier than the date of receipt and if the document was received in an envelope bearing no legible postmark, postal meter date, or date of delivery by a common carrier;

(6) the date of the document itself, if the mailing envelope containing the complaint or appeal is lost after delivery to the Board or Agency. If the document is undated, the filing date shall be deemed to be three business days before receipt by the Board or Agency; or

(7) the date of receipt by the Agency if the document was filed online or by fax.

(d) Credible and persuasive testimony under oath, subject to cross-examination, may establish a filing date that is earlier than the dates established under subsection (c) of this section. A party shall be allowed to establish a filing date earlier than a postal meter date or the date of the document itself only upon a showing of extremely credible and persuasive evidence. Likewise, when a party alleges that a complaint or appeal has been filed that the Agency has never received, the party must present credible and persuasive evidence to support the allegation.

(e) A decision or preliminary determination order shall not be deemed final if a party shows that a representative of the Agency has given misleading information on appeal rights to the party. The party shall specifically establish:

(1) how the party was misled; or

(2) what misleading information the party was given, and, if possible, by whom the party was misled.

(f) Appeal and complaint deadlines are extended one working day following a deadline which falls on a weekend, an official state holiday, a state holiday for which minimal staffing is required or a federal holiday.

(g) There is no good cause exception to the timeliness rules.

§844.84. Withdrawal of an Appeal.

A party may request a withdrawal of its appeal at any time before the hearing officer's decision is issued. The hearing officer may grant the request for withdrawal in writing and issue an order of dismissal.

§844.85. Decision.

(a) The hearing officer shall issue a written decision as soon as possible after the hearing is finally closed.

(b) The Agency shall notify each party to a contested case of any decision of the hearing officer by mailing the decision to the parties or the parties designated representative if requested.

(c) The decision shall include findings of fact and conclusions of law separately stated and a list of the individuals who appeared at the hearing. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Findings of fact shall be based exclusively on the evidence and on matters officially noticed and any issues the parties waived notice of. The hearing officer shall rule on any contested determinations issued as a result of the complaint.

(d) If the decision rules that the employer violated Texas Health and Safety Code, Chapter 81D or this chapter and if no remediation determination has been issued prior to the hearing, the hearing officer's decision shall indicate the amount of the administrative penalty, any applicable investigative costs, and inform the employer of the ability to avoid the administrative penalty by taking remedial action and submitting proof thereof.

(e) If no decision has ruled on remedial action and the employer intends to take remedial action in response to a decision issued under subsection (d) of this section, the employer must notify the hearing officer of their intent to remedy within 14 days of the decision being issued. Notice of intent to remedy must be filed in accordance with the instructions provided in the decision. Upon notification, the hearing officer's decision will be reopened for 30 days for the employer to provide proof of remedial action to the hearing officer.

(f) The hearing officer may hold an additional hearing to consider additional evidence of remediation. After consideration of any

evidence of proof of remediation, the hearing officer shall issue a combined decision addressing all issues in front of the hearing officer resulting from the complaint.

§844.86. Finality of Decision.

The decision of the hearing officer becomes final 14 days after the date the decision is mailed unless before that date the hearing officer reopens the decision, a party files a timely appeal to the Commission, or the Commission by order removes to itself the proceedings pending before the hearing officer.

§844.87. Commission.

The duties of the Commission include reviewing the order of a hearing officer under this chapter. The member of the Commission who represents the public shall serve as chair when the Commission acts under this chapter.

§844.88. Removal of Order Pending Before a Hearing Officer.

(a) The Commission by order may remove to itself the proceedings pending before a hearing officer.

(b) The Commission promptly shall mail to the parties to the proceedings a notice of the order under subsection (a) of this section.

(c) A quorum of the Commission shall hear a proceeding removed to the Commission under subsection (a) of this section.

§844.89. Commission Review of Hearing Officer Order.

(a) The Commission may, on its own motion:

(1) affirm, modify, or set aside a decision issued under §844.85 of this subchapter on the basis of the evidence previously submitted in the case; or

(2) direct the taking of additional evidence.

(b) The Commission may permit the parties to initiate a further appeal before the Commission.

§844.90. Notice of Commission Action.

(a) The Commission shall mail to each party notice of:

(1) the Commission's decision;

(2) the violation;

(3) the amount of any penalty assessed;

(4) if applicable, the amount of any investigative costs; and

(5) the parties' right to file a motion for rehearing.

(b) The notice shall be mailed to the party's last known address, as shown by the Agency's records.

(c) The Commission shall enter a written penalty order for the payment of any penalty or investigative costs the Commission has assessed.

§844.91. Finality of Commission Order.

An order of the Commission becomes final 14 days after the date the order is mailed unless before that date:

(1) the Commission by order reopens the appeal; or

(2) a party files a written motion for rehearing.

§844.92. Judicial Review.

(a) If a final decision or order imposes an administrative penalty or the recovery of investigative costs, a party may obtain judicial review of the decision by filing a petition in a Travis County district court against the Agency on or after the date on which the decision or order is final, and not later than the 14th day after that date.

(b) Judicial review under this subchapter is by trial de novo based on the substantial evidence rule.

(c) A party may not obtain judicial review of the decision unless the party has exhausted the party's remedies as provided by 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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